

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006, section 22(1)

Chamber Ref: FTS/HPC/RP/19/0183

Title number: DMB79850

Ref: 19 Boyle Street, Whitecrock, West Dunbartonshire, G81 1DT (“the House”)

Miss Amanda Lancaster, formerly 19 Boyle Street, Whitecrock, West Dunbartonshire, G81 1DT (“The Former Tenant”)

Ms Sobia Rasul, c/o Belvoir Lettings, 18 Queensgate, Inverness, IV1 1DJ (“The Landlord”)

Mr Amjed Rasul, c/o Belvoir Lettings, 18 Queensgate, Inverness, IV1 1DJ (“The Landlord’s Representative”)

Tribunal Members:

Susan Christie (Chairing /Legal Member);

Lori Charles (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit for the purpose of determining whether the has complied with the duty imposed by Section 14 (1) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the House, and taking account of all of the available evidence, determined that the Landlord has complied with the duty imposed by Section 14(1) (b) of the Act. The Tribunal’s decision is unanimous.

Background

1. By Application received on 18 January 2019, the Former Tenant applied to the Housing and Property Chamber under section 22(1) of the Housing (Scotland) Act 2006 for a determination of whether the

- Landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Housing (Scotland) Act 2006 ('the Act').
2. The Application specifically stated that the Former Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and that i) the Landlord had failed to ensure that the installations in the House for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order and ii) the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 3. The detail of the complaint being that the boiler displays error codes frequently and that this has happened for around 2 years, but more so since June/July 2018 after the annual gas check and the House has an unsatisfactory Domestic Electrical Installation Condition Report ('EICR') dated 5 October 2018.
 4. The Former Tenant stated that work required to be carried out at the House by way of 'rewire' and boiler repair to fix error codes.
 5. By Minute of Decision dated 11 February 2019, a Convenor of the Tribunal, with delegated powers under section 23A of the Act, decided to refer the Application to a Tribunal.
 6. An Inspection was assigned for 3 April 2019 at the House at 10am and a Hearing for 11.30 am in Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow G2 8GT. Both Parties were given intimation of same.
 7. Written Representations were due by 7 March 2019. Following a request for an extension by the Landlord's Representative, the time allowed was extended to 14 March 2019.
 8. A response was received with a Written Representation from the Landlord's Representative dated 14 March 2019. This was accompanied by paperwork including a copy of the tenancy agreement, call out charge invoice dated 13 November 2018 when the boiler was found to be working, invoices relating to a boiler repair -supply and fit PCB dated 18 August 2018, callout charge to inspect the boiler on 13 November 2018, EICR invoice dated 5 October 2018, EICR Reports and Gas Safety Record Reports spanning over a historical period. In particular: an EICR was produced for the House dated 25 February 2019, that stated the overall assessment of the installation in terms of its suitability for continued use to be 'satisfactory', and; a Gas Safety Record dated 16 August 2017 showed no defects. A second Gas Safety Record for the House dated 25 July 2018 noted a defect had been identified as, 'Flue not sealed internally'-Reported-No warning /Advice Notice issued.'
 9. The Landlord's Representative set out a detailed response to the Application and referred to failures to obtain access from the Former Tenant, a history of calls made by the Former Tenant regarding the issues complained of and a visit to the House by the Landlord's Representative on 3 March 2019 when no issues were found with the smoke alarm or boiler. The Landlord's Representative considered the fire alarms to be in satisfactory order and the boiler was working. He took footage of the boiler in operation on his mobile phone. The

Landlord and the Landlord's Representative considered the House met the repairing standard requirements.

10. On 28 March 2019 the Applicant sought to postpone the Inspection and Hearing assigned as her child had a contagious disease. Given the reason for the postponement request, the Tribunal granted it.
11. A fresh date for Inspection was assigned for 15 May 2019 at the House at 10am and a Hearing for 11.30 am in Glasgow Tribunals Centre, Room 107, 20 York Street, Glasgow G2 8GT. Both Parties were given intimation of same.
12. The Tribunal thereafter received confirmation from the Tenant that the tenancy of the House has been terminated, and accordingly, under Schedule 2 Paragraph 7(1) of the Act, the Tenant is to be treated as having withdrawn the Application under Section 22(1) of the Act. The Tribunal then considered whether the Application should be determined or abandoned in terms of Schedule 2 Paragraph 7(3) of the Act and decided to continue the Application. A Minute to that effect is dated 13 May 2019.
13. The Landlord's Representative indicated that he had been notified by the Former Tenant that it would be unlikely that the Inspection and Hearing would go ahead, and the matter had been cancelled at his end. As the Former Tenant had left the House and returned the keys no access would be available. In response, the Tribunal Caseworker indicated to the Landlord's Representative that the matter would proceed as scheduled.
14. The Decision to proceed with the Inspection and Hearing was relayed in writing to the Landlord's Representative on 14 May 2019. He was advised the Inspection of the House was to take place on 15 May 2019 at 10am when he must ensure access is provided.
15. The Landlord's Representative sought a postponement. The Tribunal refused the request having regard to the overriding objective of the Tribunal to avoid delay.

The Inspection

16. On the morning of 15 May 2019, the Tribunal attended at the House. The Tribunal inspected the House in the presence of the Landlord's Representative. The weather conditions at the time of the Inspection were dry and sunny. Photographs were taken during the Inspection and these are attached as a Schedule to this Decision.
17. The House is a terraced dwelling house.
18. The Former Tenant had vacated the House leaving a debit of £14.76 on the electricity meter. The gas boiler therefore could not be switched on or operated. The pressure bar was recorded as slightly below 1 bar but was pressurised and needed topped up. The Flue was noted to be sited on the external wall running from the kitchen of the House.
19. The smoke alarms in the House were operated and were working satisfactorily. They were interlinked and hardwired and were sufficient in number. There was a heat alarm in the kitchen.

The First Hearing

20. Following upon the Inspection of the House, the Tribunal held a Hearing at 12.30 pm in Glasgow Tribunals Centre, Room 107, 20 York Street, Glasgow G2 8GT. The start time having been delayed allowing the Landlord's Representative to inspect the House and then travel to the venue.
21. The Landlord's Representative was present.
22. The Tribunal's preliminary findings of the Inspection were relayed to the Landlord's Representative. That there was adequate provision for detecting fires within the House and that on Inspection they were fully operational, interlinked and hardwired and there was a heat detector in the kitchen. The gas boiler could not be operated due to the electricity debit and was noted to be pressurised.
23. The video taken by the Landlord's Representative on 3 March 2019 was viewed. This showed the boiler as operating.
24. The content of the Homeowner Gas Safety Record for the House dated 25 July 2018 was then discussed at length. The Tribunal's concern being that a defect had been identified as, 'Flue not sealed internally'- Reported-No warning /Advice Notice issued.' There was a concern therefore at the Hearing today some ten months or so later that the Tribunal might not be satisfied that the repairing standard is met.
25. The Landlord's Representative provided background information explaining that he considered the Former Tenant to have unjustly complained about the matters raised in the Application. He stated that his staff had been distressed by the frequency and persistence of the Former Tenant's contact when complaining about the matters raised in the Application. He had spent money on callouts and repairs to appease the Former Tenant, some of those were not really needed as he said that engineers had found nothing wrong with the boiler. When he had attended at the House on 3 March 2019 there had been a small credit on the electricity meter, and he noted the boiler had been switched off at the mains. He had switched it back on, re-set it and it worked straight away. He had taken a video on his mobile phone which he showed to the Tribunal. He pointed out that the defect noted on the Gas Safety Record had not invoked a Warning Notice at the time.
26. He did however understand the Tribunal's concern as explained to him regarding the repairing standard test and the need to determine the Application having regard to the specific Act of 2006 and in particular sections 14(1) (b) and 13(1) (c) and (f). After some discussion, it was deemed appropriate in the particular circumstances of this Application that the Hearing be adjourned so that further documentation be produced to the Tribunal to confirm the Flue of the boiler had been sealed internally to meet the repairing standard and allow the Tribunal to consider all available evidence. The Hearing was adjourned.
27. On 28 May 2019 the Landlord's Representative submitted to the Tribunal a letter from Glasgow Boiler Repairs dated 27 May 2019 that the rubber seal which was already in place at the House gas boiler was removed, filled with appropriate cement mix to completely seal tight

the area around the internal flue pipe and the rubber seal replaced thereafter.

The Second Hearing

28. The Tribunal held a Hearing on 31 May 2019 at 2p.m. in Glasgow Tribunals Centre, Room 107, 20 York Street, Glasgow G2 8GT. Intimation of the Hearing was made on the Landlord's Representative.
29. Neither the Landlord nor the Landlord's Representative was present. The Landlord's Representative telephoned and advised the Caseworker by telephone that he would not be attending. The Tribunal was content to proceed in his absence and consider all evidence and make a Decision today.
30. The letter from Glasgow Boiler Repairs dated 27 May 2019 was considered by the Tribunal along with the e mail from the Landlord's Representative dated 28 May 2019 in which the Landlord's Representative considered that the House meets the repairing standard.

The Evidence

31. The Tribunal then considered all evidence before it which consisted of written evidence in the form of the Application form with the supporting documentation, documents lodged by the Landlord and all communication exchanges with the Tribunal along with the oral evidence of the Landlord's Agent, the findings of the Inspection, the Homeowner Gas Safety Record of 25 July 2018 and the letter from Glasgow Boiler Repairs dated 27 May 2019.

Summary of the issue

32. The issue to be determined was whether the House meets the repairing standard as set out in section 13 (1) (c) and (f) of the Act, and whether the Landlord had complied with the duty imposed by section 14(1) (b) of the Act.

Findings in fact

33. The Tribunal finds the following facts to be established:
 - I. The Landlord is the registered owner and Landlord of the House.
 - II. The tenancy between the Landlord and the Former Tenant is a tenancy to which the repairing standard applies.
 - III. The House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

- IV. The gas boiler which supplies heating and hot water to the House is in a reasonable state of repair and in proper working order.
- V. The Tribunal found, based on the available evidence, that the House does meet the repairing standard required under section 13 (1) (c) and (f) of the Act in respect of the matters complained of in the Application.

Reasons for Decision

- 34. Firstly, the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- 35. Secondly, it was noted that the gas boiler had also been found to be operating by the Landlord's Representative in March 2019. The Tribunal accepted his oral evidence to this effect. It was unfortunate that the Tribunal was not able to see the gas boiler in operation at the Inspection but that was not due to the fault of the Landlord. The Tribunal did not therefore observe any defect codes showing, as the electricity was switched off.
- 36. Thirdly, it was evident to the Tribunal that whilst a defect had been identified on 25 July 2018 that the Flue was not sealed internally and reported to the Landlord by the Gas Safety Engineer, no Warning Notice was issued. It did however raise a doubt in the mind of the Tribunal as to whether the gas boiler which supplies heating and hot water to the House was in a reasonable state of repair and in proper working order. The letter from Glasgow Boiler Repairs dated 27 May 2019 produced prior to the Second Hearing which stated that the rubber seal which was already in place at the House on the gas boiler had been removed, filled with appropriate cement mix to completely seal tight the area around the internal flue pipe and the rubber seal replaced thereafter satisfied the Tribunal and removed that doubt. The gas boiler is due to be inspected again by 25 July 2019.
- 37. The Landlord has therefore, on balance, and based on the available evidence complied with the duty imposed by section 14 (1) (b) of the Act and has ensured that the House meets the repairing standard under sections 13(1) (c) and (f) of the Act in respect of the matters complained of in the Application as at the date of this Decision. The decision of the Tribunal is unanimous.

A landlord, tenant or third-party applicant aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof, these presents type written on this and the preceding pages are executed by Susan Christie, Legal Member and Chair of the Tribunal at Glasgow on 31 May 2019 before this witness: -

F Boyle

S Christie

witness

Legal Member and Chair

FRAZER BOYLE name in full

20 York Street, Glasgow G2 8GT Address

Glasgow, 31 May 2019.

FTS/HPC/RP/19/0183

This is the Schedule of Photographs referred to in my
Decision of even date.

S Christie

Housing and Property Chamber First-tier Tribunal for Scotland



Date of Inspection – 15 May 2019 at 10:00am

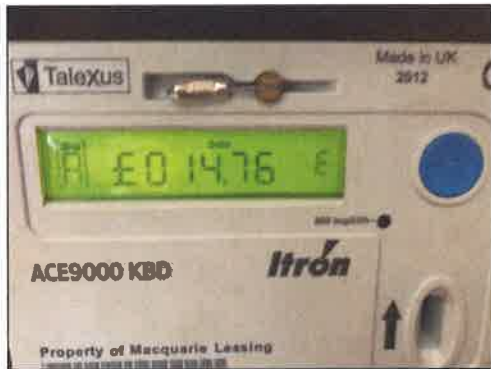
Property Reference – FTS/HPC/RP/19/0183

Property Address – 19 Boyle Street, Whitecrook. West Dunbartonshire, G81 1DT

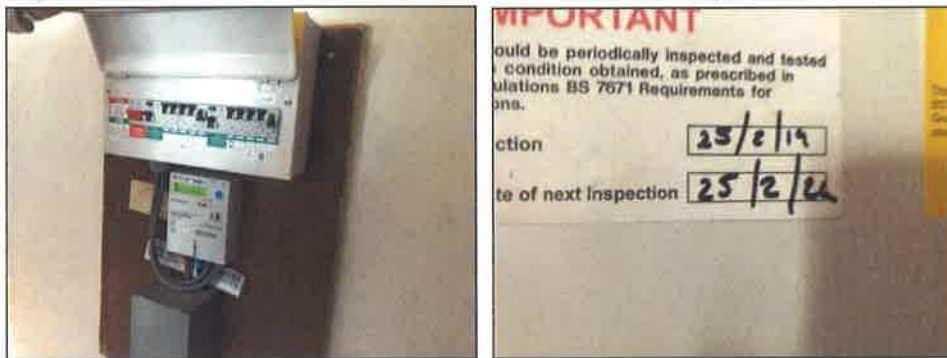
Surveyor – Lori Charles

Weather – Dry/Sunny

Hall



No Key and electric meter in £14.76 debt unable to test electrics or boiler.



Modern consumer unit fitted, recently inspected on the 23/2/19 next inspection 25/2/22 current electrical certificate indicates no issues with electrics.

Kitchen



Unable to test boiler no electricity - Landlord showed video of boiler working at inspection. Carbon monoxide monitor fitted.

Lounge



Kitchen



Hard wired interlinked smoke and heat detectors fitted and tested.

Lori Charles BSc Hons MRICS

Ordinary Member (Surveyor)

Date 29/05/19

Schedule of photographs taken by the Ordinary Member of the First Tier Tribunal for Scotland (Housing and Property Chamber) on the 15 May 2019 .

Reference Number FTS-HPC-RP-19-0183