

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006

In connection with

Property at 29 Henderson Court, Motherwell ML1 3GZ (hereinafter referred to as "the House")

Michael Hashim, formerly of 29 Henderson Court, Motherwell ML1 3GZ (hereinafter referred to as "the Tenant")

Joanna Cox, 135 Kylepark Drive, Uddingston G71 7DB (hereinafter referred to as "the Landlord")

Chamber Ref: FTS/HPC/RP/19/0789

DECISION

The Tribunal, having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the Landlord at the inspection and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 12 March 2019 (hereinafter referred to as "the Application") the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*"...(c) 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...
...(h) the house does not meet the tolerable standard."*

The Tenant complained that the radiator in the living room did not work.

By letter of 22 April 2019, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson
Donald Wooley, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

Having been informed that the Tenant had vacated the House, the Tribunal elected to continue with the Application and a Minute of Continuation was issued on 24 April 2019 all in terms of Paragraph 7 of Schedule 2 to the Act.

A hearing and inspection were fixed for 30 May 2019.

The Tribunal inspected the House on 30 May 2019. The Tenant was neither present nor represented, no longer being the tenant of the House. The Landlord was present.

Following the inspection, the Tribunal held a hearing at The Glasgow Tribunals Centre. The Tribunal considered the written evidence submitted by the parties. Again, the Tenant was neither present nor represented at the hearing. The Landlord, having made representations at the inspection, agreed with the Tribunal that she would not attend the hearing.

Submissions at the Hearing

There were no submissions. The Landlord explained at the inspection that the repairs had been carried out to the central heating pipe work within the living room and that the radiator now worked. The Landlord produced a Landlords Gas Safety Certificate dated 29 March 2019.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on 8 and 27 July 2018.
- 2 The Landlord is the registered owner of the House.
- 3 The Tenant took possession of the House from 29 September 2017.
- 4 Occupation appears to have continued on that basis although the parties signed into a six month "Short Assured Tenancy Agreement" from 29 September 2018.
- 5 The Tenant ceased to occupy the House from on or around April 2019.
- 6 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 7 The Tenant notified the Landlord of the defects in the House which are now the subject of the Application in email correspondence dated 21 January 2019.
- 8 The inspection on 3 February 2017 revealed:
 - a. The House is a top floor, relatively modern purpose built flat within a three and four storey building. It is located within a development of similar style units and is of traditional brick and tile construction.
 - b. Space heating is provided by a wall mounted Worcester boiler, gas fired combination, condensing boiler situated in the kitchen serving panel radiators throughout.

- c. The central heating was functioning during the inspection and the living room radiator, fitted with a thermostatic control valve, was fully operational.

A schedule of photographs taken at the inspection is attached to this Decision.

Reasons for the Decision

The radiator in the living room appears to be operating adequately. A Landlords Gas Safety Certificate dated 29 March 2019 confirms that the central heating system is in order.

The Repairing Standard

The Tribunal considers that there is no breach of the repairing standard. Accordingly, no Repairing Standard Enforcement Order should be made.

Observations

It is not clear what the parties' intentions were when they signed what purported to be a short assured tenancy agreement in September 2018. The Landlord is however reminded that with effect from December 2017 and the coming into force of the Private Housing (Tenancies)(Scotland) Act 2016, all Scottish tenancies require to be Private Residential Tenancies and that no new short assured tenancies are capable of being created.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

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

J McHugh

John M McHugh
Chairperson

Date: 3 June 2019

29 Henderson Court Motherwell ML1 3GZ

Schedule of Photographs taken at the inspection on 30th May 2019



1:- Front elevation



2:- Rear elevation



3:- Gas combination boiler



4:- CO detector on kitchen ceiling

Regio LANDLORD/HOME OWNER GAS SAFETY RECORD Serial No: 45C 5648983

This inspection is for gas safety purposes only to comply with the Gas Safety (Installation and Use) Regulations. Flues have been inspected visually and checked for satisfactory evacuation of products of combustion. A detailed internal inspection of the flue integrity, construction and lining has NOT been carried out.

| REGISTERED BUSINESS DETAILS | | INSPECTION/INSTALLATION ADDRESS | | LANDLORD (OR AGENT) NAME & ADDRESS | |
|------------------------------|-------------------------------|---------------------------------|------------------------------|------------------------------------|------------------------------|
| Party No: 123456 | Company: ABC Gas Services Ltd | Name & Title: Mr J. Smith | Address: 123 Main St, London | Name & Title: Mr J. Brown | Address: 456 High St, London |
| Address: 789 Park Rd, London | Postcode: E1 2AB | Postcode: W1 3CD | Id: 123456789 | Postcode: SW1 4DE | Id: 987654321 |
| Number of appliances: 2 | | | | | |

| APPLIANCE DETAILS | | | | FLUE TESTS | | | | INSPECTION DETAILS | | | | | |
|-------------------|--------------|-------|-----------|--------------|---------------|---------------|----------------------|--------------------|-------------------|-------------|------------------|----------------|-------------|
| Appliance | Manufacturer | Model | Serial No | Gas Pressure | Flue Gas Temp | Flue Gas Flow | Flue Gas Composition | Flue Integrity | Flue Construction | Flue Lining | Flue Termination | Flue Clearance | Flue Access |
| 1. BOILER | WATTS | WATTS | WATTS | 15.0 | 150 | 10.0 | 10.0 | Pass | Pass | Pass | Pass | Pass | Pass |
| 2. WATER HEATER | WATTS | WATTS | WATTS | 15.0 | 150 | 10.0 | 10.0 | Pass | Pass | Pass | Pass | Pass | Pass |

Gas Installation Particulars: Satisfactory No Emergency Control Yes No Satisfactory Gas Particulars Yes No Satisfactory Flue Particulars Yes No

| GIVE DETAILS OF ANY FAULTS | | RECTIFICATION WORK CARRIED OUT | |
|----------------------------|--|--------------------------------|--|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

Active CO Alarm: Yes No N/A Any CO Alarm at Date: Yes No N/A Satisfactory CO Alarm: Yes No N/A Smoke Alarm: Yes No N/A

OTHER COMMENTS OR OBSERVATIONS:
 NEXT GAS SAFETY CHECK DUE BEFORE: 29/03/20

ISSUED BY (GAS ENGINEER):
 Name: J. Smith, Signed: J. Smith, Issue Date: 29/03/20

RECEIVED BY:
 Received By: M. Brown, Signed: M. Brown, Print Name: M. Brown

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5:- Gas Safety Certificate – dated 29 March 2019



6:- Living room radiator & thermostatic valve



7:- Living room radiator