

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/17/1954

Title no: PH38511

**Property at The Beeches, Mains of Condie, Forgandenny, Perth PH2 9DN
("The Property")**

The Parties:-

- **Ms Mayuko Morgan, The Beeches, Mains of Condie, Forgandenny, Perth PH2 9DN ("the Tenant")**
- **Mr Ralph Schenk, Mrs Suni Magyar Duncrub Park House, The Stables, Dunning Perth PH2 0QR ("the Landlord")**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Robert Buchan	-	Ordinary Member

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw 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 ("the Act") in relation to the House and taking account of the evidence led by the Tenant and the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application received 3rd August 2018, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

3. The application by the Tenant stated by that she considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard in that the provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. She did this by ticking the form at point 8 to this effect. However, she raised further complaints in the paper apart and a subsequent email to the Housing and Property Chamber in particular, the complaints consisted of:-
 - a) The boiler was not in working order;
 - b) The wood burner stove was not in working order;
 - c) There was mould in the kitchen and bathroom;
 - d) The chimney was not in working order;
 - e) There were holes in the eaves of the House;
 - f) The water supply was not usable; and
 - g) The French doors were not in working order.
4. Though the Tenant had not specifically ticked the box for section 13(1)(a), (b) and (c) the Tribunal accepted that she had referenced points within the application form to indicate that she considered the Landlord had failed to comply with the duty to ensure that the House was wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order and that the installations in the house for supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in a proper working order and that the Landlord had been notified of these complaints.
5. On 12th September 2018, a Convenor for the First-Tier Tribunal for Scotland (Housing and Property Chamber) signed Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act and this was duly served upon the Landlord and the Tenant.
6. A hearing date was initially fixed for 29th October 2018 but was postponed due to a large volume of paperwork being received by email on the day of the Tribunal. A new date for the hearing was set for 9th January 2019.

The Inspection

7. The Tribunal attended the House on the morning of 9th January 2019. Only the Tenant and her partner were present. The Landlord lives abroad and indicated that he would not be in attendance at the inspection. The Tribunal was let into the property by the Tenant. It was clear, dry and of cold temperature on the day of the inspection.
8. The House is a single storey bungalow in a rural location. It appears to have been the conversion of two or more properties into one at some time in the past and is of traditional stone and slate construction.

9. The living room was inspected first. The wood burning stove was located in this room. The Tenant did not have any means of lighting the stove as she was in the process of moving out of the House. The stove was not seen in operation. She informed the Tribunal that it was now in working order but highlighted the damp patch on the on the featured stonework behind the stove. High instrumental moisture meter readings were recorded by the Tribunal on this wall.
10. The three set French doors in the living room were inspected next. All were seen to be in a poor condition. One did not open at all. One had a significant gap at the bottom between the door and the seal. All had clear signs of condensation.
11. There was no smoke detector in the living room but one was in the entrance hall approach to the living room.
12. The Tribunal then inspected the outside of the House. The rendering immediately outside the feature stonework was cracked and hollow and was clearly contributing to the dampness noted internally. Other areas of cracked and hollow render were noted particularly on the south gable wall. The tenant explained that this was the "holes in the eaves" she complained of.
13. The windows were inspected from the outside and found to be generally in poor decorative order with various areas of soft and rotten joinery noted. From inside the House one window was seen to be painted shut.
14. The boiler was inspected next. It was located above a toilet adjacent to the kitchen. It looked to be modern.
15. The kitchen was inspected. It was noted that there were signs of condensation but within what would be expected for a property of its age though it was reasonable to think that the poor state of the rendering could be contributing to the condensation.
16. The bathroom was inspected next. Although there were signs of mould in the bathroom it was not considered significant beyond what would be expected for a property of the age and type. The Tenant informed the Tribunal that they had applied special bathroom paint to reduce the mould.
17. It was noted that there was a hard wired smoke detector in the hall outside the bathroom that was beeping to signal that the internal battery had died.
18. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
19. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

20. The hearing took place at Inveralmond Business Centre, Auld Bond Road, Perth. The Tenant was present with her partner Mr Barrie Colton. The Landlord was present through teleconferencing.
21. The House was discussed room by room.
22. The boiler was discussed first. The gas safety certificate had been received by the Tribunal. Both parties were satisfied that the boiler had been fixed. The Tenant confirmed that there had been no further problems. The Tribunal was satisfied that there were no further issues arising from the boiler.
23. The wood burning stove was discussed next. It was confirmed by both parties that an extra partition extension had been added to the metal flue which had resolved the problems with using the wood burning stove. Both parties agreed that there were no ongoing issues with the stove or flue. The Tribunal was satisfied that there were no further issues arising from the stove or flue.
24. The stone wall behind the wood burning stove was discussed next. The Tribunal noted that the dampness was most likely arising from the poor state of the rendering on the wall behind it. The rendering was in very poor condition with large parts of it hollow and other parts of it cracked. The Tenant confirmed that she had repeated this to the Landlord. The Landlord stated that he was very worried about the dampness and had engaged a property agent in December 2018 to enable matters of the House to be dealt with as he lives abroad. The property agent was to engage a builder to damp proof the walls and rendering on the walls. He accepted that there was a problem with dampness. He had let out the House 4 years prior but had seen no signs of dampness at that point. He accepted that he needs to take action to repair the rendering. The Ordinary Member highlighted that it would be reasonable to conclude that the dampness would be due to the poor state of the rendering.
25. The mould in the bathroom and kitchen were discussed next. The Tribunal noted that there was some but not a lot of mould. There was condensation on the windows. The Landlord stated that he had seen the bathroom in February 2018. He believed there to be not enough ventilation and that it was best to have the window open. He did not think that it was to do with the rendering. He was happy to hear that it was not looking too bad. The Ordinary Member referred the Landlord to the Scottish Government Guidance that can be used by a landlord to provide information to tenants on condensation. The Tenant informed the Tribunal that she considered the dampness to be more than just ventilation as they had treated the wall and painted it. They had done what they could. However, it was emphasised to the Landlord that it is reasonable to conclude that this was directly related to the poor condition of the rendering. The Tenant

confirmed the cracks in the rendering was what she had meant when she had complained of holes in the eaves.

26. The windows were discussed next. The Tribunal noted that the windows had been inspected. Many of the windows were not in a reasonable state of repair. Decoration was poor and softness and rot were evident in several of the windows. Some could not be opened. The Tenant stated that she had been told that they were problems painting the windows due to the wind tunnel effect of the location of the property. The Landlord stated that he remembered the windows being painted but could not confirm when. He agreed that the windows needed to be painted. He had been informed by a joiner who had looked at the House that this work needed to be carried out later in the year. The Ordinary Member noted as an advisory point that consideration should be given to the band of the energy efficiency as the property was in the bottom two bands. The windows would be part of this. It maybe that the Scottish Government follows England and Wales in prohibiting the letting of properties with such low energy efficiency bands. Regardless of the energy efficiency the windows did not meet the repairing Standard.
27. The French doors were discussed next. The French doors were not in proper working order. One did not open at all. All were in a very poor condition. The Tenant informed that the one that does not open has never been able to open. The Landlord stated that the doors had been put in as brand new doors 7 years ago. He has instructed a joiner who will look to fix it. He noted that the lock needed fixed. He had not been aware of the state of the French doors.
28. The water supply was raised as issue within the paperwork. All parties agreed that the matter had been dealt with and the issue resolved.
29. The Tribunal raised, by means of observations, that the carbon monoxide alarm was working and appeared new. The parties were asked about the beeping fire alarm. The Tenant stated that this had been recently installed within the last two weeks. The Tribunal advised that this needs to be repaired or replaced.
30. The Landlord accepted that there were repairs that need to be carried out but that the time of the year made matters more difficult to undertake the tasks.
31. All parties were asked if they wished to make any further comment. Both parties advised that they felt that everything had been covered in the Hearing.
32. It was explained to the parties that the Tribunal must make a Repairing Standard Enforcement Order ("RSEO") if they find that the property does not meet the Repairing Standard.

Summary of the issues

33. The issues to be determined are: -
- a) Whether the boiler was not in working order;
 - b) Whether the wood burner stove was not in working order;
 - c) Whether there were unacceptable levels of condensation in the kitchen and bathroom;
 - d) Whether the chimney was not in working order;
 - e) Whether the water supply was suitable;
 - f) Whether there were holes in the eaves; and
 - g) Whether the French doors were not in working order.

Findings of fact

34. Having considered all the evidence, the Tribunal found the following facts to be established: -
- a) The tenancy is a short assured tenancy between the Landlord and the Tenant. The tenancy commenced on 30th May 2015 for a period of 6 months. It has continued by tacit relocation thereafter.
 - b) Rendering is in poor condition all around the House. It needs repaired or replaced.
 - c) The windows are in poor condition. The windows need repaired or replaced.

Reasons for the decision

35. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Tenant and the Landlord at the hearing.
36. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
37. The Tribunal was in no doubt, from its inspection, that the property did not meet the Repairing Standard.
38. There was clear evidence that the rendering was in poor condition. It was hollow in parts and cracked in others. Mould and dampness had occurred in the House and it was reasonable to think that the condition of the rendering is a contributing factor.
39. There was clear evidence that the windows were in a poor state of repair. The windows were suffering from various degrees of rot and poor decoration and at least one had been painted shut. For the purpose of this decision the French doors were considered to be included in the Tribunal's assessment of the windows.

40. Accordingly, in view of its findings the Tribunal found that the Landlord was in breach of the duty to comply with the Repairing Standard.
41. The Act states that where a Tribunal determines that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal “must by order require the landlord to carry out such work”.
42. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Observations

43. The Tribunal would wish to point out that
- a) the smoke detector that was beeping in the hall is defective and needs to be repaired or replaced
 - b) The Landlord should consider the energy efficiency of the property, carry out recommended improvements and thereafter obtain an up to date energy performance certificate
 - c) The Landlord should address the issue of condensation and ventilation in the kitchen and bathroom. He may consider looking at the Scottish Government guidance.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

G Miller

G Miller, Chair

7th February 2019