



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

**STATEMENT OF DECISION of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 24 (1) of the Housing (Scotland) Act 2006**

**Reference number: FTS/HPC/RP/22/2846**

**Land Register Title number MID195956**

**Re: Property at 8M King Street, Musselburgh, East Lothian EH21 7EP (“the Property”)**

**The Parties:**

**Ms Abbi Lynch (“the Applicant/Tenant”)**

**Alison Lowther De Cotta and Gonzalo De Cotta Lowther (“the Respondents/Landlords”)**

**James Bauld (Chairman) and Andrew McFarlane (Ordinary Member)**

**Background**

1. By application initially lodged on 15 August 2022, the applicant as tenant of the property made an application to the First Tier Tribunal (Housing and Property Chamber) indicating that she believed that the respondents who are the landlords were failing to comply with the duty imposed on them by section 14 (1) (b) of the Housing Scotland Act 2006 (hereinafter referred to as “the 2006 Act”). They complained that the property did not meet the repairing standard set out in the 2006 Act.
2. On 8 September 2022 the tribunal determined that the application could be referred to the tribunal for determination.
3. An inspection and hearing were subsequently arranged to take place on 11 November 2022 and appropriate intimation of the time and date was sent to all parties.

## **The inspection**

4. The tribunal members attended at the property on 11 November 2022 at 10.00 a.m. to carry out an inspection. The tenant was present. The landlords were not present nor were they represented.
5. The tribunal carried out an inspection of the property. A report of what was observed at the inspection (including a schedule of photographs) prepared by the ordinary member of the tribunal is attached to this decision.

## **The hearing**

6. The hearing took place on 11th November 2022 at 2.00 p.m. by telephone case conference. Again the landlords will neither present nor represented.
7. The tenant joined the telephone case conference.
8. At the hearing the tenant was questioned by the tribunal with regard to the observations which had been made at the inspection.
9. The tenant indicated that the gas fire within the property had never worked since the date she moved in in April 2021. She has used plug in electrical heaters that she bought. No heating system has ever been provided by the landlord. She indicated that she has been in email contact with the landlord's letting agent for a number of months and there is now a proposal that a full central heating system will be installed in the property commencing in the week starting 14 November 2022.
10. She indicated that the water boiler in the property, which is situated in the cupboard in the bedroom, takes about five or six hours to heat the water to a sufficient temperature for it to be used. If the boiler is switched off, then the property has no hot water supply.
11. With regard to the draughty windows, the tenant indicated that the landlord had sent someone in October to carry out some repairs. Since that day the window in the living room has been much better, but there is still a significant draught in the bedroom.
12. The tenant also complained that there was significant draughts in the kitchen from the skylight window. She indicated that the landlord had sent someone to install a frame at the foot of the window which they had attempted to seal with a Perspex sheet. However, the Perspex sheet is itself moving in the wind and is not preventing draughts getting into the kitchen.
13. She also complained that there were nails coming through the kitchen floor. These were puncturing the linoleum covering.
14. The tenant indicated that the smoke detector in the living room and the heat detector in the kitchen appear to be battery operated and did not appear to be hardwired. A carbon monoxide detector had been sent to her by post but was

not yet installed. There was no smoke alarm in the hall.

15. The tenant indicated that she had been reporting these problems to the previous letting agent who were Braemore. She was aware that a new letting agent DJ Alexander had recently been appointed and they seemed to be attempting to resolve matters. However, as that the date of the heating none of the matters had been properly resolved, and were all still outstanding.

### **Observations and findings in fact**

16. The property is self-contained flatted dwelling located at second floor level in a block of 12 similar flats.
17. Accommodation comprises Kitchen, Living Room, Bathroom and one Bedroom, all located off a hallway accessed from the common stair.
18. There was no fixed heating system
19. A Gas Fire had been installed in the Living Room. The gas supply pipe serving this was found to be disconnected.
20. In a cupboard off the Bedroom there was a copper hot water cylinder, of an older style, wrapped in an insulating jacket of limited thickness which was partially displaced. An electrical heater immersed in the cylinder heated water and was controlled by an on/off switch with neon indicator. The cover to the electrical wiring and terminal on the immersion heater was displaced and insecure.
21. The Kitchen floor covering was examined. One nail head projected through the covering near the door from the hallway. A further two minor "lumps" in the surface of the covering were observed giving the appearance of nail heads which had become raised but had not yet penetrated the covering.
22. There is a translucent plastic panel in a metal frame at roof level in the Kitchen. This provided daylight to this apartment. As a lowered ceiling has been provided in this apartment a shaft has been created between ceiling and roof levels. In the period immediately before the inspection, it was reported that, contractors acting for the Landlord had attended and placed some Perspex sheeting on a timber frame over the base of the shaft in an attempt to restrict air flow. There were high winds at the time of inspection, and this caused the Perspex sheet to move, as the silicone used to seal it to the timber framing did not appear to be effective.
23. There are uPVC framed tilt and turn style windows in the Bedroom and Living Room. Following the application and before the inspection, it was reported that, contractors acting for the Landlord had attended and adjusted the windows. The window seals in the Living Room were found to be compressed properly whilst those in the bedroom were not. A business card could be introduced between the seal on the sash and the frame.

24. The timber front door was inspected. A gap exists between the bottom of the door leaf and the floor.
25. It was reported that the Wasps Nest was not visible and thought to be on the roof of the property.
26. The tenant had received a Carbon monoxide alarm through the post, but this had not been "installed".
27. It was noted that the smoke detector and alarm in the hallway was missing. A heat detector and alarm was noted in the Kitchen and a smoke detector and alarm was present in the Living Room. These operated when tested.

**Discussion and reasons for decision.**

28. The tribunal carefully considered the evidence which had been obtained at the inspection and the evidence given by the tenant at the hearing.
29. The tribunal has no hesitation in deciding that this property does not meet the repairing standard set out in the legislation. It requires a number of works to bring it up to standard. The Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006.
30. The tribunal accordingly proposes to make a repairing standard enforcement order requiring the landlord to undertake a number of works.
31. These works will include the requirement to instruct an appropriately qualified electrician to carry out a full inspection of the electrical installations and apparatus throughout the property and to produce an appropriate electrical installation condition report to the tribunal.
32. The order will also require that the landlord instructs a Gas Safe registered engineer to undertake a full inspection of all gas fittings and appliances and to repair and renew any parts which are identified within that report as requiring repair or replacement. The landlord will require to provide a gas safety certificate to the tribunal which meets the current standards.
33. The order will also require that the landlord to provide evidence showing the installation of smoke detectors, heat detectors and carbon monoxide detectors within the property in compliance with the requirements set out in the guidance issued by the Scottish Government in terms of the Housing (Scotland) Act 2006.
34. The order will also require that the landlords to make satisfactory provision for heating in all apartments regularly used by occupants.
35. The order will also require that the landlords to either remove the existing gas fire, if an alternative satisfactory provision is made, and make good any damage caused or if it is to be retained restore to proper working order.

36. The order will also require that the landlords to either remove the installation for heating water, if an alternative satisfactory provision is made, and make good any damage caused or if it is to be retained restore to proper working order in a manner which provides a satisfactory supply of hot water.
37. The order will also require that the landlords to remove or otherwise adjust nails in Kitchen floor to prevent them penetrating the floor covering and repair or replace the damaged covering to render the flooring in all respects fit for human habitation.
38. The order will also require that the landlords to carry out works necessary to eliminate or control draughts, whilst ensuring required levels of ventilation are maintained, to leave the House wind and watertight and in all other respects fit for human habitation.
39. The order will also require that the landlords to carry out works necessary to the Bedroom window to eliminate or control draughts, whilst ensuring required levels of ventilation are maintained, to leave the House wind and watertight and in all other respects fit for human habitation.
40. The appropriate repairing standard enforcement order is attached to this decision.
41. The decision of the tribunal is unanimous.

J Bauld

Signed

Date 14 December 2022

# Housing and Property Chamber First-tier Tribunal for Scotland



## Pre-hearing inspection summary and schedule of photographs



*Street view / Front elevation*

**Property**                      *8M King Street, Musselburgh, East Lothian EH21 7EP*

**Ref No:**                         *FTS HPC RP 22 2846*

**Tribunal members** *Mr J Bauld (Legal Chair) and Mr A McFarlane (Ordinary (Surveyor) Member)*

### **Purpose of inspection**

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

## Access

The above Tribunal Members attended the property at 10:00 on 11 November 2022. Also in attendance were Miss A Lynch (Tenant) and Mr Lewis Cranston (Supporter).

## Extent of inspection

Prior to the inspection commencing the Tribunal Members confirmed with Miss Lynch that the items comprising her application were as follows.

- a) No fixed heating system
- b) Gas Fire provided but not operational
- c) Water Boiler does not work and provides inconsistent temperature of water
- d) Nails coming through Kitchen floor covering
- e) Draughts from skylight window in Kitchen
- f) Draughts from windows
- g) Draughts from Front Door
- h) Wasps Nest
- i) Lack of Carbon Monoxide Detector and Alarm

## Observations as a result of inspection

- a) The property is self-contained flatted dwelling located at second floor level in a block of 12 similar flats.
- b) Accommodation comprises Kitchen, Living Room, Bathroom and one Bedroom, all located off a hallway accessed from the common stair.
- c) There was no fixed heating system
- d) A Gas Fire had been installed in the Living Room. The gas supply pipe serving this was found to be disconnected. [**Photos 1 and 2**]
- e) In a cupboard off the Bedroom there was a copper hot water cylinder, of an older style, wrapped in an insulating jacket of limited thickness which was partially displaced. An electrical heater immersed in the cylinder heated water and was controlled by an on/off switch with neon indicator. The cover to the electrical wiring and terminal on the immersion heater was displaced and insecure. [**Photos 3, 4, 5 and 6**]
- f) The Kitchen floor covering was examined. One nail head projected through the covering near the door from the hallway. A further two minor "lumps" in the surface of the covering were observed giving the appearance of nail heads which had become raised but had not yet penetrated the covering. [**Photos 7 and 8**]
- g) There is a translucent plastic panel in a metal frame at roof level in the Kitchen. This provided daylight to this apartment. As a lowered ceiling has been provided in this apartment a shaft has been created between ceiling and roof levels. In the period immediately before the inspection, it was reported that, contractors acting for the Landlord had attended and placed some Perspex sheeting on a timber frame over the base of the shaft in an attempt to restrict air flow. There

were high winds at the time of inspection, and this caused the Perspex sheet to move, as the silicone used to seal it to the timber framing did not appear to be effective. [**Photos 9 and 10**]

- h) There are uPVC framed tilt and turn style windows in the Bedroom and Living Room. Following the application and before the inspection, it was reported that, contractors acting for the Landlord had attended and adjusted the windows. The window seals in the Living Room were found to be compressed properly whilst those in the bedroom were not. A business card could be introduced between the seal on the sash and the frame. [**Photo 11**]
- i) The timber front door was inspected. A gap exists between the bottom of the door leaf and the floor. [**Photo 12**].
- j) It was reported that the Wasps Nest was not visible and thought to be on the roof of the property.
- k) Miss Lynch confirmed that she had received a Carbon monoxide alarm through the post, but this had not been “installed”.
- l) It was noted that the smoke detector and alarm in the hallway was missing. A heat detector and alarm was noted in the Kitchen and a smoke detector and alarm was present in the Living Room. These operated when tested. [**Photo 13**].

Andrew McFarlane FRICS  
Ordinary (Surveyor) Member  
First-Tier Tribunal for Scotland  
11 November 2022

Appendix 1

Schedule of photographs taken during the inspection on 11 November 2022. (13 No in total)



1. Gas Fire in Lounge



2. Disconnected gas supply pipe to Gas Fire in Lounge



3. Hot water cylinder.



4. Switch controlling immersion heater in hot water cylinder.



5. Switch activated and neon indicator lit.



6. Electric immersion heater with cover displaced and cables and terminals exposed.



7. Nail penetrating vinyl floor covering in Kitchen at door from Hallway.



8. Two raised areas (arrowed) of vinyl floor covering which appear to be nails in underlying floor structure.



9. Perspex and timber framing added to skylight window in Kitchen.



10. Skylight window in Kitchen.



11. Bedroom window. Card inserted easily between sash frame seal and frame.



12. Main door from flat to stair. Gap visible under door.



13. Missing smoke detector and alarm in Hallway.