

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 24 (1)

Chamber Ref: Reference number: FTS/HPC/RP/21/2460

Property: 11/3 (1F2) Wardieburn Street West, Edinburgh, EH5 1EB (“The property”)

Parties:

Toni Gamble-White formerly residing at 11/3 (1F2) Wardieburn Street West, Edinburgh, EH5 1EB (“the Applicant”)

and

Rehana Shafqat, 50 Crewe Crescent, Edinburgh, EH5 2JP (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Andrew McFarlane (Ordinary Member)

Decision

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) in relation to the property, and taking account of the submissions made for the Landlord at the Case Management Discussion, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 6 October 2021 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.
2. The applicant maintains that there is a failure to meet the repairing standard, and in particular that:

(a) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair nor are they in proper working order because the heating boiler is not operational.

(b) The fixtures and fittings provided by the respondent under the tenancy are not in a reasonable state of repair nor are they in proper working order referring to the heating and hot water system.

(c) The property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

(d) The property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

And

(e) that the house does not meet the tolerable standard.

3. On 28 October 2021 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. Following service of the Notice of Referral the tenant removed from the property. In a minute of continuation dated 2 November 2021, the tribunal decided that the application should be determined on public interest grounds due to the nature of the applicant's complaint, which raises health and safety concerns for any future tenants. The Tribunal decided to continue to determine the application relying on Schedule 2 Paragraph 7(3) of the Housing (Scotland) Act 2006.

6. On 17 November 2021 the respondent's solicitor lodged written submissions, which contained admissions that the property does not meet the repairing standard and expressed the hope that remedial works would be completed by February 2022.

7. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 1 December 2021. The applicant is no longer a party to these proceedings. The respondent was represented by her solicitor, Ms Kirstin Bruce of Complete Clarity Solicitors and Simplicity Legal.

8. Ms Bruce candidly agreed that her written submissions contained admissions that the property does not meet the requirements of section 13 (1)(c), (d), (f) and (g) of the 2006 Act. Tribunal members suggested that there is sufficient material before the tribunal to enable a Repairing Standard Enforcement Order (RSEO) to be made today without further enquiry. Ms Bruce agreed.

Summary of the issues

9. The issues to be determined are

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of Fact

10. (a) The respondent is the heritable proprietor of the flatted dwelling-house at 11/3 (1F2) Wardieburn Street West, Edinburgh, EH5 1EB ("the property"). On 1 July 2021 the respondent let the property to the applicant. The applicant vacated the property on 28 October 2021.

(b) The property is a first floor flat, forming part of a tenement of six dwelling-houses.

(c) When the applicant, moved into the property, she discovered that the previous tenant had tampered with the electricity meter. On 6 August 2021, a Siemens engineer inspected the electricity meter and found scorch marks and melted components. The electricity meter was replaced.

(d) The respondent does not have an up-to-date electrical installation condition report (EICR) for the property

(e) The respondent does not have a current gas safety certificate for the property. The respondent accepts that the gas boiler in the property was condemned on 8 August 2021. The boiler requires to be repaired or replaced. The respondent's daughter has discovered that the parts needed to repair the boiler are expensive and not immediately available.

(f) There has been no provision for space heating in the property, nor for heating water, since the start of August 2021.

(g) None of the electrical appliances supplied by the landlord have been PAT tested.

(h) There are no interlinked smoke and heat detectors within the property, nor does the property have any CO detectors.

Reasons for decision

11. (a) The respondent's candour, and her solicitor's pragmatism, enable tribunal members to determine this case at the case management discussion without the need for either inspection or hearing. The facts of this case are not in dispute.

(b) The agreed facts are that the applicant inherited this property. The previous tenants vacated the property leaving it in a poor state of repair. In the knowledge that

the gas and electrical systems require repairs, and that there was no provision for detecting heat, fire or smoke, the respondent offered the property to the applicant. The applicant, knowing that there were defects in the property, accepted the tenancy.

(c) The respondent agrees that the gas boiler does not work and requires either repair or replacement.

(d) The respondent candidly admits that she has neither an up-to-date gas safety certificate nor an up-to-date EICR. On the respondent's own evidence, a satisfactory gas safety certificate and an unqualified EICR will only be issued after remedial works are carried out.

(e) On the respondent's own admission, the property does not have provision for detecting fires and for giving warning in the event of fire or suspected fire. On the respondent's own admission, the property does not have CO2 detectors.

(f) To comply with The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, the property requires interlinked smoke and heat detectors and a CO monitor.

(g) On the admitted facts in this case, the property cannot meet the requirements of section 13 (1)(c), (d), (f) and (g) of the 2006 Act. The property does not, therefore, meet the Repairing Standard and a Repairing Standard Enforcement Order (RSEO) is necessary.

(h) What is left of this application is a complaint that the property does not meet the tolerable standard. S.86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as follows

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(p) On the facts as we find them to be, the property does not have a working gas boiler. The property does not have a provision of hot water. Because we find that works are necessary before a satisfactory gas safety certificate and an unqualified EICR can be issued, we have to find that the property does not have satisfactory facilities to cook food.

(q) The property cannot, therefore, meet the tolerable standard.

(r) Amendments are expected to the definition of tolerable standard next year. It is expected that those amendments will include a requirement for interlinked smoke and heat detectors which are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

12. The tribunal therefore make a repairing standard enforcement order requiring the landlord to

(i) Install interlinked smoke, heat detectors and CO detectors within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(ii) Carry out all remedial works to the electrical system and then instruct an Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) on the entire electrical installation of the property and all electrical appliances and equipment supplied by the landlord to be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor. to repair or renew any areas categorised C1 or C2 to ensure the installation and apparatus is fully functioning and meets current regulatory standards. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an unqualified report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming the works are completed.

(iii) Repair or replace the gas central heating boiler and then provide the First-tier Tribunal for Scotland (HPC) with a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central heating boiler and all other gas appliances in the property, &, if necessary, carry out any further repairs or replacement to ensure that all gas appliances are safe to use.

13. Because the property is unoccupied and the repairs are expected to be completed in February 2022, we allow a period of three months to complete the works required by the RSEO.

Decision

14. The tribunal accordingly determined that the respondent has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

15. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

16. The decision of the tribunal was unanimous.

Right of Appeal

17. 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

18. 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.

Signed **P Doyle**

1 December 2021

Legal Member