

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: FTS/HPC/RP/22/4492

**23 East High Street, Forfar DD8 2EL
("the House")**

The Parties:-

**Mr Jack Murphy and Mrs Erika Murphy, 23 East
High Street, Forfar DD8 2EL("the Tenants")**

**William Saddlers & Sons 35 East High
Street, Forfar DD8 2EL("theLandlord")**

The Tribunal

**Graham Harding (Legal Member)
Robert Buchan (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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 15 December 2022 and amended on 11 January 2023 the Tenants applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application stated that the Tenants considered that the Landlord

had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) Any fixtures and fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (c) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
- (d) The house meets the tolerable standard.

Specifically, the Tenant's representative complained that:-

"The front door needs sealed and holes filled; bathroom exhaust fan needs the proper condensation and watertight fittings; oven needs new dials or labels; boiler needs new on/off setting control parts."

- 3. A Legal Member of the Tribunal with delegated powers accepted the application and an inspection and hearing was assigned.
- 4. By emails dated 19 and 24 March and 5 and 21 April 2023 the Tenants submitted further written representations advising that various repairs had been carried out.
- 5. By email dated 21 April the Landlord advised the Tribunal that all repairs had been completed.
- 6. By email dated 24 April 2023 the Tenants advised the Tribunal that the boiler at the property had been repaired.
- 7. The Tribunal inspected the Property on the morning of 25 April 2023 Mrs Murphy was present during the inspection. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
- 8. Following the inspection of the Property the Tribunal held a hearing by teleconference and heard from the Tenants and the Landlord.

The Hearing

- 9. It was agreed that all the issues complained of by the Tenants had been addressed by the Landlord however although contractors had repaired the boiler there was still a fault causing it to cut out. Mr Saddler explained that he had been unaware of this and agreed to instruct the contractors to return to inspect the boiler.

10. The parties were agreed that once the boiler was working properly the application could be withdrawn.
11. By emails dated 16 and 17 May 2023 both the Landlord and the Tenants advised the Tribunal that the repairs to the boiler had been completed.
12. By two emails dated 26 May 2023 the Tenants contacted the Tribunal to advise that there were still issues with the boiler. It continued to fail when in use and the controls were faulty. They also advised the Tribunal that a plumber had said it required to be replaced.
13. By emails dated 8 and 22 June the Tribunal asked the Landlord for a response but none was forthcoming.
14. By email dated 27 June 2023 the Tenants advised the Tribunal that the boiler was still broken.

Findings in fact

15. The parties entered into a Private Residential tenancy Agreement that commenced on 7 October 2022.
16. The Landlord has carried out repairs to the property at the front door.
17. The landlords have carried out repairs to the extractor fan in the bathroom at the property.
18. The Landlord has replaced the oven in the kitchen at the property.
19. The Landlord has instructed repairs to the gas boiler at the property.
20. The boiler is still faulty.

Reasons for the decision

21. The parties were agreed that once the issues with the boiler had been resolved the application could be withdrawn as all the other matters that were the subject of the Tenants' complaint had been addressed by the Landlord prior to the inspection. Unfortunately, despite the Landlord having again instructed engineers to attend the property and carry out repairs to the boiler and for it to work for a short time it appears that the same issues remain. The Tribunal attempted to elicit a further response from the Landlord in order to resolve matters without success. In the circumstances the Tribunal has concluded that it is appropriate to conclude that the property does not meet the repairing standard as the gas boiler is not in proper working order.

Decision

- 22. The tribunal accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 23. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 24. The decision of the tribunal was unanimous.

Right of Appeal

- 25. **A landlord or tenant 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

- 26. 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.

G Harding

Signed

Date 1 August 2023

Chairperson

RP/22/449

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Photographs taken during the inspection of
23 East High Street, Forfar, DD8 2EL. Ref:



Front



Front door

Photographs taken during the inspection of
23 East High Street, Forfar, DD8 2EL. Ref:



Boiler



New oven

Photographs taken during the inspection of
23 East High Street, Forfar, DD8 2EL. Ref:



Moisture meter reading around extractor fan

RP/22/449

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