

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

Chamber Ref: FTS/HPC/RP/22/2991

Property: 3 Falahill Cottages, Heriot EH38 5YG ('The House')

The Parties: -

Joyce Garrity, residing at 3 Falahill Cottages, Heriot EH38 5YG ('the tenant')

Network Rail Infrastructure Ltd, Network Rail Property Services, Buchanan House, 58 Port Dundas Road, Glasgow G21 1AY ('the landlord')

Robb Residential, 150 St. Vincent Street, Glasgow G2 5NE ('the landlord's agent')

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('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 (the "Act") in relation to the house concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Greig Adams, Ordinary Member (surveyor)

Background

1. By application received on 23rd August 2022, the applicant applied to the First-tier Tribunal (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.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
 - *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*
 - *any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.*
3. The application contained email correspondence between the applicant and the landlord's agents dating from 24th July 2022 which specified that the said failure was established as follows:
 - *Fridge does not work properly.*
 - *2 spotlights in the kitchen are not.*
 - *The gas boiler is not working – boiler is in the loft so no accessible to the tenant.*
4. Notices of Referral to a tribunal under section 23(1) of the Act were sent to parties on 7th October 2022.
5. Prior to the hearing the applicant lodged further email correspondence from the landlord's agents.

Inspection

6. The tribunal inspected the house at 10am on 21st November 2022.

7. The tenant's daughter Sarah Garrity was in attendance. She advised that her mother was unable to attend but would be attending the hearing at 2pm. No other parties attended. The tribunal was satisfied that parties had reasonable notice of the inspection and hearing and proceeded with the inspection in their absence.
8. Photographs were taken by the tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
9. The tribunal noted that the gas boiler was working and that both heating and hot water were in working order.
10. The fridge was switched off at the time of the inspection. The tribunal noted that the fridge had no contents and the tenant was using another fridge and freezer which she had brought to the property to store food.
11. The tribunal noted that 2 out of the 12 spotlights in the kitchen/dining room were not working.

Hearing

12. A hearing took place by teleconference at 2pm on 21st November 2022. The tenant was in attendance. Neither the landlord nor the landlord's agents attended. The tribunal was satisfied the parties had reasonable notice of the hearing and proceeded with the hearing in their absence.
13. The tenant confirmed that she had lived in the property since July 2019.
14. The tribunal heard from the tenant in relation to each of the issues specified in the application in turn:-
15. Gas Boiler– The tenant explained that repairs had been carried out to the boiler since the application was submitted. Since the repairs had been carried out the boiler had been working and there had been no further occasions when there was no heating or hot water. The tenant stated that she was concerned that there might be further issues with the boiler, and she was worried that if there were the landlord would take a long time to respond and carry out repairs. This would be particularly difficult if the boiler stopped working during the winter months.
16. Spotlights- The tenant confirmed that 2 spotlights in the kitchen/dining room were not working. She confirmed that there was still sufficient light from the remaining 10 spotlights. She explained that the landlord's agents had told her

that it was for her to replace bulbs. She advised that she did not know how to change the bulbs as they were spotlights.

17. Fridge/freezer- The tenant advised that the fridge in the property had not been working since 24th July 2022. The thermostat had stopped working and food stored in the fridge had been frozen. The tenant had complained to the landlord's agents. She had spoken to an engineer who told her to put the fridge in "vacation mode" which meant it could not be used. She was told that an engineer would come and look at the fridge. She was also told that a replacement fridge would be provided. No engineer checked the fridge and no replacement had been provided.

Summary of the issues

18. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1)(c) and (d) of the Act.

Findings in fact: -

19. The tribunal find the following facts to be established: -

- a. The tenant has resided in the house July 2019. The tenant entered into a private residential tenancy agreement with the landlord.
- b. The registered owner of the property is Network Rail Infrastructure Ltd.
- c. At the time of the inspection the boiler and heating system were functioning and in proper working order.
- d. At the time of the inspection two out of the twelve spotlights in the kitchen/dining room were not working and required new bulbs.
- e. At the time of the inspection the fridge in the property was not in proper working order.

Reasons for the Decision

20. The tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.

21. The tribunal was only able to consider those items which formed part of the intimated application.
22. The applicant confirmed that repairs to the boiler had been carried out and although she was concerned that there might be further issues in the future at the time of inspection it was working.
23. In relation to the spotlights in the kitchen/dining room, the tribunal determined that there was still sufficient light from the remaining spotlights and that the repairing standard had not been breached. The tribunal noted that the issue was not that the lights were broken but that the bulbs simply required to be replaced.
24. The tribunal accepted the applicant's representations in relation to the fridge/freezer. In particular the tribunal noted that the respondents had advised the applicant that an engineer would inspect the fridge – this had not happened. They had also suggested that the fridge might be replaced. The applicant had not been able to use the fridge since July, which impacted her enjoyment of the property. The tribunal determined that there had been a breach of section 13(1)(d) in relation to the fridge and that accordingly the fixtures, fittings and appliances provided by the landlord are not in a reasonable state of repair and in proper working order.

Decision

The tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

Right of Appeal

A landlord, tenant or third-party applicant 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.

Date: 21st November 2022