

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier

Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

Chamber Ref: FTS/HPC/RP/23/3382

Re: Property at 120, Millcroft Road, Cumbernauld, Glasgow, G67 2QH registered in the Registers of Scotland under Title Number DMB27834 (“the Property”)

The Parties:

Mr. Lekan Falade residing at the Property (“the Tenant”)

And

Mr. Gurminder Singh residing at 65, Peasehill Gait, Rosyth, Dunfermline, Fife, KY11 2BD (“the Landlord”)

Tribunal Members:

K Moore (Chairperson) and C Jones (Ordinary and Surveyor Member)

Decision of the Tribunal

The Tribunal determined that the Landlord has failed to comply with the duty imposed on him by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (h) of the Act.

Background

1. By application received on 29 September 2023 (“the Application”), the Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(h) of the Act. The Application comprised a copy of the tenancy agreement between the Tenant and the Landlord, copy screen shots and email correspondence between the Tenant and the Landlord regarding repairs to the Property and copy photographs of the condition of the Property and the common close.

2. The Application noted that the Property does not meet the Tolerable Standard, that there is mould throughout the Property, that the Property is wet with leaks from the roof and that there is a hole in the kitchen floor.
3. The Application was referred to the Tribunal. An Inspection of the Property and a Hearing were fixed for 6 November 2023 and intimated to the Parties.

Inspection and Hearing

4. The Inspection of the matters complained of in the Application took place at the Property on 6 November 2023 at 10.00 am. The Tenant and his wife were present. The Landlord was present for part of the Inspection.
5. The Tribunal inspected the Property in respect of Section 13(1)(h) of the Act, the Tolerable Standard, and the specific matters complained of in the Application, all as follows:
 - i) The dampness and mould throughout the Property;
 - ii) The windows;
 - iii) The heating system;
 - iv) The equipment for detecting fire and smoke;
 - v) The kitchen floor and
 - vi) The common close.
6. A Schedule of Photographs taken at the Inspection was prepared and is annexed hereto.
7. At the Inspection, the Landlord advised the Tribunal that he had “sent all the electrical and fire safety certificates to Douglas McCulloch” and that he would hire a cherry-picker to deal with the blocked gutter, which he said was not his responsibility. He stated that he had carried out damp proof work and had receipts for this work.
8. At the Inspection, the Tenant pointed out two areas from which vermin, namely rats, enter the Property.
9. The Hearing took place on 6 November 2023 at 11.45 am at the Glasgow Tribunal Centre. The Tenant was not present and was not represented, having advised the Tribunal at the Inspection that he would not be able to attend. The Landlord was not present or represented.

Findings of Fact

10. The Tribunal’s findings of fact were made from the Application and the Inspection and following the Hearing:

- i) The Property is a second floor 3 apartment flat situated in a 6 storey block of flats forming part of a terrace of 8 similar blocks. These blocks of flats were constructed around the 1960's/70's by Cumbernauld Development Corporation and are located in a residential area in the South Carbrain district of Cumbernauld, around 0.5 mile east of the town centre. The block sits to the rear of a terrace of lock-up garages, all ground floor flats have main door entrances and all upper flats are accessed by external stairs to an elevated walkway and then by a communal entrance leading to the close and stairway. This block is of concrete frame construction with rendered exterior walls and a profile aluminium roof. The area surrounding this Property is of very poor amenity, the blocks of flats and garages have not been well maintained and the common areas are showing significant signs of dilapidation. As part of a proposed housing regeneration of the area, it is understood that North Lanarkshire Council is currently promoting a CPO which includes this block.
- ii) The Property is described as being part of Stub Block 28 in the title deeds and is situated in one of 2 terraces of flatted blocks comprising a total of 112 housing units.
- iii) The glazed skylight above the communal hall or close and stairwell serving the Property is badly damaged and allows water to ingress and pool in the stairwell at ground floor level;
- iv) Vegetation and patches of damaged plasterwork/exposed brickwork can be seen on the top floor at the wall below the skylight of the communal hall or close and stairwell;
- v) Damp staining and cracked plasterwork can be seen in various places in the communal hall or close and stairwell;
- vi) The entrance door and the internal walls of the communal hall or close and stairwell are in a state of disrepair;
- vii) The internal accommodation in the Property comprises a hallway, living room with kitchen off, one main double bedroom, one single bedroom and a bathroom;
- viii) There is evidence of penetrating damp and condensation throughout the Property, with all walls showing high damp meter readings;
- ix) The walls in the main bedroom show high levels of dampness;
- x) One wall and the ceiling of the main bedroom have been recently painted;
- xi) The window in the main bedroom is timber double glazed and appears to open to allow ventilation;
- xii) There is a wall mounted electric panel heater in the main bedroom which appears to function;
- xiii) The walls in the second bedroom show high levels of dampness;
- xiv) The window in the second bedroom is timber double glazed, is sealed shut and so does not allow ventilation;

- xv) There is a wall mounted electric panel heater in the second bedroom which appears to function;
- xvi) The party wall between the bedrooms shows high damp meter readings
- xvii) There is no heating in the hallway;
- xviii) There is no heating in the bathroom;
- xix) The bathroom tiling and walls have been recently painted;
- xx) The window in the bathroom is timber double glazed;
- xxi) There is evidence of penetrating damp and condensation to all walls in the bathroom;
- xxii) Water is dripping from the bathroom ceiling above the window;
- xxiii) There is evidence of dampness on all walls in the living room with high damp meter readings on some;
- xxiv) The electric storage heater in the living room does not work and gaps behind the storage heater allow vermin to enter the Property and which gaps cause draughts;
- xxv) There is an additional wall mounted electric panel heater in the living room which appears to function;
- xxvi) The windows in the living room are timber double glazed and appear to open to allow ventilation, they are covered in condensation;
- xxvii) There is evidence of penetrating damp and condensation dampness in the kitchen;
- xxviii) The window in the kitchen is timber double glazed and is covered in condensation;
- xxix) There are gaps on the walls and at the kitchen cabinets which allow vermin to enter the Property and which gaps cause draughts;
- xxx) There is no heating in the kitchen;
- xxxi) The floor of the kitchen appears to have been repaired;
- xxxii) The new vinyl floor covering in the kitchen is loose and requires to be properly secured.
- xxxiii) The Property has inadequate interlinked fire/smoke protection.
- xxxiv) No Electrical Installation Condition Report was available at the Inspection.
- xxxv) There is no evidence of satisfactory thermal insulation at the Property.

Definition of house meeting tolerable standard.

11. Section 86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as “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;
 - (ca) has satisfactory thermal insulation;
 - (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 or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;
 - (fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
 - (g) has an effective system for the drainage and disposal of foul and surface water;
 - (ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;
- “the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances;
- the relevant requirements” are that the electrical installation is adequate and safe to use;
- (h) has satisfactory facilities for the cooking of food within the house;
 - (i) has satisfactory access to all external doors and outbuildings;
 - (j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;
 - (k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health”

Decision of the Tribunal and reasons for the decision.

12. The Tribunal’s decision is based on the Application with supporting documents, the Inspection, and the Hearing and with regard to the definition of the Tolerable Standard.
13. In respect of the complaint in terms of Section 13 (1) (h) of the Act that the Landlord has failed to ensure that the Property meets the Tolerable Standard, as the Tribunal has found that there is evidence of dampness throughout the Property and the common parts of the Property, that there is inadequate provision for ventilation and for heating and no evidence of satisfactory thermal insulation in the Property, that there is no evidence that the Property complies with the relevant requirements in relation to the electrical installation, that there is

insufficient equipment installed for detecting, and for giving warning of, fire or suspected fire and that there appears to be vermin in the Property, the Tribunal found that the Property does not meet the Tolerable Standard and so the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

14. The decision is unanimous.

Repairing Standard Enforcement Order (RSEO)

15. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1) (b), the Tribunal proceeded to make an RSEO as required by Section 24 (1) of the Act.

16. The Tribunal is mindful that the Property is part of a much larger building complex which appears to be in disrepair and the common parts of which are likely to be in multiple ownership. Therefore, the Tribunal has taken this into account in respect of the RSEO.

Appeal

17. 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.

Signed

K Moore, Chairperson

13 November 2023.

