

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber on an application made under Section 26(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/22/2547

Property: 74/9 Restalrig Road South, Edinburgh EH7 6LE (“the property/house”)

Title Number: MID140760

The Parties:-

Miss Arantzazu Mora Bellido and Miss Mercedes Bellido Gonzalez, both 74/9 Restalrig Road South, Edinburgh EH7 6EL (“the Tenants”)

Mr Trevor Wilson and Mrs Iryna Wilson, 147 Flat 3, Bukovacka, Zagreb 10000, Croatia (“the Landlords”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Andrew Murray (Ordinary Member)

Decision

The Tribunal decided that the Landlords have not failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006. to ensure the Property meets the Repairing Standard.

Background

1. By application, received by the Tribunal on 27 July 2023 and amended on 7 August 2023, the Tenants applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlords 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 Landlords had failed to comply with the duty to ensure that the house meets the Repairing Standard. In particular, the Landlords had failed to ensure that the house is reasonably fit for human habitation, as vermin were entering the Property

under the installations in the kitchen. They stated that the kitchen floor was left open when the building was constructed.

The Inspection

3. The Tribunal inspected the Property on the morning of 6 September 2023. The Tenants were present. The Landlords were not present or represented.

The Hearing

4. The Inspection was followed by a Hearing, held by means of a telephone conference call later that morning. The Tenants were present. The Landlords were represented by Mrs Karen Bruce of their letting agents, Campbell Stafford Lettings, Edinburgh.
5. The Ordinary Member of the Tribunal explained that he had removed the kick plates beneath the kitchen units on both the left-hand party wall with the common stair and the external wall of the kitchen. He had found that the floor is concrete and extends all the way to the walls, so no gaps are evident at floor level in the areas he inspected. It appeared, therefore, that the most likely point of entry was a hole or holes cut to accommodate water supply or waste pipes for the washing machine or the kitchen sink. This would, however, require further and possibly disruptive investigation.
6. The Landlord's representative told the Tribunal that she would arrange for a joiner to attend the Property to carry out further investigation and fill any holes identified as possible entry points for vermin. She pointed out that the Landlord's representatives had not been advised of the issue prior to receiving the case papers sent on 14 August 2023. The Tribunal noted that they had emailed the Tenant on 16 August 2023 saying they were happy to arrange for their joiner to fill the holes and asking the Tenant to contact them with suitable dates.
7. As the Tribunal was of the view that the Landlord had not been given adequate opportunity to remedy the alleged defect and in particular as it was hoped that the issue might be resolved very quickly, the Tribunal decided to delay issuing its Decision until it has been advised by the Parties of the outcome of the joiner's visit, which, it was hoped, would be on 13 September 2023.
8. On 14 September, the Landlords' agents advised that the joiner had visited the Property and had confirmed that there were no holes behind the kitchen units. There had at some point been holes, but they had been filled with foam and the filler was intact. On 20 September, the Tenant told the Tribunal by email that she was not satisfied with the inspection that had been carried out, as the contractor had only been in the Property for a few minutes. She wanted

a further and proper investigation. She provided two photographs which appeared to show the presence of a rodent in the kitchen. The later of these had been taken in December 2022.

9. The Tribunal was satisfied from the photographic evidence that a mouse or other rodent has at some time found its way into the kitchen of the Property. Inspections thus far had failed to identify the route by which it gained entry. The view of the Tribunal was that this required further investigation. The Tribunal was prepared to afford the Landlords a further period to arrange for a report from a suitably experienced pest control company who should be asked to identify any likely point(s) of entry and to take such action as that company might recommend to seal up such likely point(s) of entry. The Tribunal did not propose to make a Repairing Standard Enforcement Order at that stage and would issue an appropriate Direction to the Landlords. Consideration of the application was continued to a further Hearing.
10. On 25 October 2023, the Landlords' representatives told the Tribunal that they had been advised by a pest control company that there is not a mice problem within the Property, but that they had cleaned under the kick plates and put fresh poison down. They provided a copy of an email from Acorn Pest Control dated 25 October 2023, which stated that they had attended the Property on 19 October 2023 to investigate a report of mouse infestation. The tenant had told them that she had not seen any mice but thought she had heard them. On further scrutiny, the contractors could not find any recent signs of mice. They cleared some debris from under the kick plates in the kitchen, being old pieces of plaster and dust that had accumulated over the years. The said that they had previously attended the Property in December 2022 and the Tenant stated that she had not seen any mice since then. The contractors placed new baits down as a precaution.
11. On 1 November 2023, the Tenants told the Tribunal that they were not satisfied with the pest control company's report. The Tribunal decided to hold a further Hearing.
12. On 3 November 2023, the Landlords' letting agents told the Tribunal that the Tenants had admitted they had not seen any mice. The letting agents had double checked with agents for other rented properties in the block, who had confirmed that their tenants had not reported any issues with mice. They had been asked to fill any holes through which mice might be gaining access and their joiner had done that. The pest control company had inspected and reported that they could find no recent evidence of mice. They did not know what else could be done.

13. On 8 November 2023, the Tenants advised the Tribunal that the local authority's Environmental Health Department had inspected the Property on 3 November and had found rodent droppings. These had to be new, since the pest control company had not reported seeing them on 19 October.
14. On 13 November 2023, the Landlords' letting agents asked that the Tenants produce a copy of the report from Environmental Health, stating that they could instruct the pest control company to reattend, as there had been no evidence previously.
15. On 3 November 2023, the Tenants provided the Tribunal with a number of photographs which appeared to show a small amount of mouse droppings on the floor behind the kick plates in the kitchen.

Second Hearing

16. A second Hearing was held by means of a telephone conference call on the afternoon of 27 February 2024. The Tenants were present, and the Landlords were again represented by Mrs Karen Bruce of Campbell Stafford Lettings, Edinburgh.
17. The Tenant, Miss Bellido, told the Tribunal that Environmental Health did not send her a report and, when she asked them to do so, they said that they did not send out reports, but she had an audio recording of the conversation at the time they inspected the Property. The Tribunal told her that it could not consider an audio recording obtained without the permission of all whose voices could be heard on it. Miss Bellido questioned the independence of the pest control company.
18. The Landlords' representative said that they were going round in circles. They had done everything asked of them and could do no more. They used the particular pest control company because they had found them efficient and trustworthy in the past.

Reasons for Decision

19. The Tribunal did not accept that it the Environmental Health Department would not provide any sort of report on their findings after they inspected a property, and the Tenants agreed to contact them again, with a view to obtaining something in writing. The Tribunal told the Tenants that, in the absence of a report which indicated an ongoing problem, its intention was to make a finding that the Landlords had not failed to comply with their duty to ensure the Property meets the repairing standard, as they had done all that had been asked of them by the Tribunal. They had provided a satisfactory

report from Acorn Pest Control, which stated that they could find no recent signs of mice in the Property and that the Tenants had told them they had not seen any mice between December 2022 and October 2023. There were no further steps that the Tribunal thought the Landlords could reasonably be asked to take.

20. The Tribunal delayed issuing its Decision from 17 February until 11 March 2024, to afford the Tenants the opportunity of contacting the local authority and seeking written confirmation of their findings. No further documentation was received during that period.

G Clark

Signed

Date: 11 March 2024
George Clark (Legal Member/Chairman)