

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Determination: Housing (Scotland) Act 2006: Section 27

Chamber Ref: FTS/HPC/RP/23/0182

14 Mount Pleasant Street, Greenock, PA15 4DD registered in the Land Register of Scotland under Title Number REN34612 (“the Property”)

The Parties:-

Samuel James Wright, current address unknown (“the former Tenant” and “the Applicant”)

Sofia Wellander, BRF Arsta Park Tvaakersgrand 3, Alvsjo, 12673 Sweden (“the Landlord”)

Corbett and Shields Ltd, 1 Ratho Street, Greenock, PA15 2BU (“the letting agent”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Ms Lori Charles, Chartered Surveyor (Ordinary Member)

Decision

The tribunal made a repairing standard enforcement order in terms of Section 24(2) of The Housing (Scotland) Act 2006.

Background

1. By application dated 17 January 2023, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act (“the 2006 Act.”)

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the House is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, that fixtures, fittings and appliances provide by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order and that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of suspected. Specifically, the application states that there is water ingress coming from the roof area into the Property and that, as a consequence, the wall is cracking, that double glazing units are not fitted properly and that there are draughts in "multiple places". The application states that there is water ingress at windows, that a light fitting is defective, that the oven/hob does not work properly.

3. The Tribunal was made aware that the tenancy had been terminated and, on 20 April 2022, a Minute of Continuation in terms of Schedule 2, paragraph 7 (2) of the 2006 Act, was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President. On the same date, the legal member issued a Notice of Acceptance of the application.

Property Inspection

4. The members of the tribunal inspected the Property at 10 am on 3 July 2023 and a copy of a schedule of photographs prepared by the ordinary member is attached to this Decision. It is referred to for its terms.

5. The Property is a fourth floor attic flat in a tenement of eight flats.

6. High moisture readings were noted at the coomb ceiling and wall of the front bedroom and at the kitchen ceiling.

7. No evidence of water ingress at windows was found.

8. There was no evidence of draughts at windows.

9. The smoke and heat detectors were functioning satisfactorily.

10. The light fittings were in a satisfactory condition.

11. It was noted that the hob/oven had been repaired and a copy of the relevant invoice had been submitted to the Tribunal.

12. It was noted that there is evidence of missing and broken slates in the area between the tenements of 12 and 14 Mount Pleasant Street. This area adjoins the dormer window of the front bedroom of the Property.

The Hearing

13. A Hearing was held at Glasgow Tribunal Centre at 1.30 pm on 3 July 2023. Ms Mary Sellar and Ms Annette Weston of the letting agent were present and confirmed that they represented the Landlord.

Preliminary Matters

14. Ms Sellar explained that the tenancy agreement which had been submitted with the application was the wrong one and was in respect of another property which was situated in the tenement next to that in which the Property was situated.
15. Ms Sellar was asked to clarify the position with regard to the Landlord and ownership of the Property because the Property's registered owner is Wallander Property Ltd. She advised that the limited company is wholly owned by Sofia Wallander and that she is the sole director. She confirmed that there exists an arrangement with the limited company which allows Ms Wallander, the registered landlord to enter into leases in respect of the Property.
16. Ms Weston confirmed that the tenancy of the Applicant ended in April 2023 and that the Property was let to H & H Lettings which arranges housing for workers at BAE, a local employer.

Summary from Inspection

17. The ordinary member summarised what had been found at the Inspection. She said that the only matter contained in the application where there was found to be an issue was in relation to water ingress and consequent high moisture readings in the front bedroom and kitchen.

18. Findings in Fact

- 18.1 The former Tenant and Landlord were parties to a tenancy for the Property.
- 18.2 The tenancy was terminated in April 2023.
- 18.3 There is water ingress and high moisture readings in the front bedroom and kitchen.
- 18.4 The smoke and heat detectors in the Property are working satisfactorily.
- 18.5 There is no evidence that the windows in the Property are defective or that there is water ingress or draughts at the windows.
- 18.6 The hob/oven has been repaired.

Reasons

19. The tribunal did not have a full copy of the relevant tenancy agreement but accepted the evidence of Ms Sellar in this regard and also accepted that the former Tenant's tenancy had been terminated in April 2023.
20. The tribunal relied on what it had seen at the inspection with regard to the condition of the Property and which is detailed in the attached schedule of photographs. The tribunal found high moisture readings in the front bedroom and the kitchen.
21. Ms Sellar and Ms Weston said that it was accepted that there is water ingress to the Property. They said that two roofing contractors had inspected the roof and had advised that the issue was being caused by defective roofing of the adjoining tenement at 12 Mount Pleasant Street.
22. Ms Sellar and Ms Weston said that they had been making efforts to have repairs effected by the owners of the properties in the adjoining tenement. They referred the tribunal to an email dated 26 June 2023 which had been sent by Mr Simpson, one of the owners of a flat in 12 Mount Pleasant Street which stated that he had been liaising with Corbett and Shields on the matter of roof repairs. The email states that it is recognised that the defect is in relation to the roof of 12 Mount Pleasant Street and that Mr Simpson has been "campaigning furiously" to get owners to agree that roofing works should proceed. The email indicates that six out of eight owners of properties at 12 Mount Pleasant have agreed to the works being done.
23. Ms Sellar and Ms Weston accepted that the issues with the water ingress had been known prior to the current tenancy being commenced.

Discussion and Determination

24. The tribunal acknowledged the difficulties which the Landlord's letting agents were having in getting repairs carried out. Notwithstanding that, a landlord has to maintain a property to the repairing standard as set out in the 2006 Act and, in this particular case, the Landlord had entered into a new tenancy agreement in the knowledge that the Property did not meet the repairing standard as a consequence of the water ingress. The tribunal noted that there appeared to be issues in the roof between the two tenements and it may be that some of the necessary repairs may be common in nature. It is not the function of the tribunal to determine whether this is the case but it is a possible outcome once repair works commence.
25. The tribunal determined that a repairing standard enforcement order ("RSEO") should be made in the following terms:

The Landlord will carry out, or arrange for others to carry out, repairs to the roof to ensure that there is no water ingress to the Property.

26. Because of the particular issues identified by Ms Sellar and Ms Weston, the tribunal considered it reasonable that the landlord be given sufficient time to comply with the RSEO. It determined that works should be completed by 15 October 2023

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.

M McAllister

M J. McAllister,
Legal Member
9 July 2023