

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/23/3535

95 Chapelhill Mount, Ardrossan, KA22 7LZ (“the Property”)

Parties:

Angus MacKenzie, formerly residing at 95 Chapelhill Mount, Ardrossan, KA22 7LZ (“the former Tenant”)

Its Property Limited, 64 High Street, Princes Risborough, HP27 0AX (“the Landlord”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Donald Wooley (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 Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act.

Background

- 1. The former Tenant applied to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. He stated that the Landlord has failed to meet the repairing standard in relation to the property. In particular, the porch roof needs fixed as it is leaking and water is getting in and running down the wall, there is mould and dampness in the porch and wood lice, the gutter is at the wrong angle and water pours out of it, part of the gutter at the gable end has been removed and water pours down the wall and there is mould growth on walls in the living room, hall and back bedroom.**
- 2. On 7 November 2023, the Tenant notified the Tribunal that the tenancy had ended. On 9 November 2023, a Legal Member of the Tribunal with delegated**

powers of the President determined that the application should proceed to a determination in terms of Schedule 2 Paragraph 7(2) of the 2006 Act and referred the application to a Tribunal.

3. On 19 December 2023, the Landlord was notified that the Tribunal would inspect the property on 12 February 2024 at 10am and that a hearing would take place at Ardeer Community Centre, Ardrossan at 11.45 am. The Tribunal attended at the property on 12 February 2024 at 10am. Access was not provided, and the Landlord did not attend the hearing.
4. The Landlord was notified that the Tribunal had not been able to carry out the inspection. The Landlord responded, apologised for the failure to provide access and stated that he wished to provide information to the Tribunal. The Landlord was notified that an inspection would take place on 10 July 2024 at 10am and a hearing would take place at Ardeer Community Centre at 11.45am. The director of the Landlord notified the Tribunal that a contractor would provide access to the property but requested that he be allowed to participate in the hearing remotely as he lives in England and was unwell. The hearing was converted to a teleconference hearing.
5. The Tribunal attended the property on 10 July 2024 at 10am. Access was provided by a contractor, Larry Ward. The hearing took place at 11.45am. The Landlord's director, Mr Cox, participated.

The inspection

6. The property is a two storey end terraced house, formerly owned by the Local Authority. It comprises three main apartments with a single storey front porch with a flat felt roof. It is currently unoccupied and unfurnished. The Tribunal noted that a repair appears to have been carried out to the porch roof and subsequently patched. Positive moisture readings were obtained at both the external walls and ceiling in the Porch and a section of ceiling plaster has collapsed exposing roof timbers which are dry but rotten. There was no evidence of wood lice. The porch gutter is at an angle sloping down and away from the downpipe. The gutter at the rear of the property is badly choked. There is no mould in the hall, but moisture readings were positive at the front and gable walls and in the living room. No visible mould growth was noted on the rear bedroom walls. There was mould on the window frames in the bedroom but both frames and surrounding walls were dry. Although not referred to in the application, the Tribunal noted that the garden fence is in need of significant repair and/or reconstruction and is potentially dangerous to passers by in its present condition. Interlinked smoke and heat detectors and a carbon monoxide detector have been installed at the property.

The Hearing

7. The Ordinary Member of the Tribunal provided the director, Mr Cox with some information on the condition of the property noted during the inspection, as

outlined in paragraph 6. Mr Cox told the Tribunal that the former tenant had lived in the property since 2012. He moved out in November 2023, and it has been unoccupied since then. Mr Cox said that he has been trying to put the necessary funds together to carry out work at the property so it can be re-let. This has been made more difficult by the fact that he lives “down south”. The tenant had arranged for a contractor to do some work when problems arose with the porch roof. Mr Cox paid for the work, but it now appears that it was not to a suitable standard. He said that he accepts that further work is required and will speak to the contractor about it. He expects to be able to get the work carried out within the next 4 to 8 weeks.

Findings in Fact

8. The entry porch, hall and living room at the property are affected by damp.
9. A section of ceiling plaster has collapsed in the porch exposing roof timbers which are rotten.
10. The gutter at the porch is at the wrong angle.
11. The gutter at the rear of the property is choked with vegetation.
12. The window frames in the rear bedroom are affected by mould.

Reasons for Decision

13. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 14(3) of the 2006 Act “The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it”. Section 22(3) of the 2006 Act states that an application can only be made if the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard. The Tribunal is satisfied that the former Tenant notified the Landlord of the repairing standard issues at the property prior to lodging the application.
14. The Tribunal is satisfied that the hall, porch and living room are affected by damp and that this appears to have been caused by defective gutters, issues with the flat roof and associated flashing. The mould on the rear bedroom window frames is indicative of historic condensation and this room does not appear to be affected by water ingress or dampness. The condensation may be the result of inadequate heating and ventilation within the room. It was noted during the inspection that the trickle vents are in working order but were in the closed position.

15. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Section 13(a), (b) and (h) of the 2006 Act.

Decision

16. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

17. The decision of the Tribunal is unanimous.

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.

In terms of Section 63 of the Act, 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.

Josephine Bonnar, Legal Member

21 July 2024