

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)

Reference number: FTS/HPC/RT/24/1211

Re: Property at 1 Hillhead Cottages, Oldmeldrum, Inverurie, AB51 0AP (“the Property”)

The Parties:

Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA (“The Third-Party applicant”)

Simmers Ardmedden Ltd, Ardmedden Farmhouse, Oldmeldrum, Inverurie, AB51 0AG (“the Landlord”)

Mrs Sylvia Manuel, 1 Hillhead Cottages, Oldmeldrum, Inverurie, AB51 0AP (“the Tenant”)

Tribunal Members:

**Shirley Evans (Legal Member)
Angus Anderson (Surveyor Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be dismissed.

Background

1. On 13 March 2024 the Third-Party applicant made an application for a repairing standard enforcement order.
2. The Third-Party applicant complained that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”) by failing to ensure that to ensure that 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 in terms of Section 13(1)(c) of the 2006 Act. The Third-Party applicant also complained the Landlord had failed to ensure that any fixtures,

fittings and appliances provided by the Landlord were in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act.

3. The basis of the application was that that the Landlord had failed to provide a copy of the current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the Property containing no Category C1 or C2 items of disrepair or a copy of a PAT test for any appliances provided by the Landlord.
4. The application was accompanied by a letter to the Landlord from the Third-Party applicant dated 20 February 2024 requesting a copy of the EICR, PAT test certificate and energy performance certificate and a letter dated the 20 February 2024 to the Tenant requesting a copy of the tenancy agreement.
5. On 22 March 2024 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the 2006 Act to a tribunal.
6. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act upon the Third-Party applicant, the Landlord and the Tenant requiring written representations to be made by 1 July 2024. None of the parties made any representations by 1 July 2024.
7. On 23 June 2024 the Tribunal issued a Notice of Direction to the Landlord requiring the Landlord to provide a copy of the tenancy agreement and inventory for the Property, a copy of the current EICR and a copy of the energy performance certificate by 5 July 2024. The Landlord failed to respond to the Notice of Direction.
8. On 10 July 2024 the Third-Party applicant apologised for not making representations by 1 July 2024.
9. On 12 July 2024 the Tribunal advised the Third-Party applicant the Landlord had not responded to the Notice of Direction. Further the Tribunal sent a further letter to the Landlord on 12 July 2024 asking for a response to the Notice of Direction. The Landlord did not respond.
10. On 18 July 2024 the Tribunal cancelled an inspection due to take place on 26 July at 10 am and the subsequent in person hearing at 11:45 am. The Tribunal assigned the hearing to proceed by way of teleconference call at 10 am and intimated this on the parties.
11. On 17 July 2024 the Third-Party applicant advised they had received no information from the Landlord but had one telephone call from the Landlord on the 19 March 2024 advising they thought they had an EICR and that there were no portable appliances within the Property that they had provided.
12. On 23 July 2024 the Third-Party applicant advised the Tribunal they would not attend the hearing assigned for the 26 July 2024.

13. On 25 July 2024 the Tribunal emailed the Third-Party applicant enquiring as to the reason for not attending the hearing, whether they were in receipt of any documents and whether the Third-Party applicant wished to withdraw the application.
14. On 26 July 2024 the Third-Party applicant emailed the Tribunal to advise that as the inspection had been cancelled and the case was going to just a hearing, they would not be attending the hearing. They also advised they had not received any documents and wished the hearing still to go ahead but had nothing further to add.

Hearing

15. The Tribunal convened the teleconference hearing at 10 am on 26 July 2024. No party was in attendance or was represented.

Reasons for the decision

16. The Tribunal determined the application having regard to the application papers.
17. The application did not contain a copy of the tenancy agreement. The Third-Party applicant did not have a copy of any tenancy agreement. Neither the Landlord or the Tenant had provided a copy of the tenancy agreement. It is unacceptable that the Landlord failed to comply with the Notice of Direction issued by the Tribunal to provide the tenancy agreement or the other documents requested. Whilst the Tribunal does not look favourably on the Landlord's total disregard to these proceedings, the onus is nevertheless on the Third-Party applicant to satisfy the Tribunal that the tenancy was one which was not excluded in terms of Section 12 of the 2006 Act. The Third-Party applicant had also given no information to the Tribunal regarding the tenancy from any records they may hold which may have assisted the Tribunal. It was unfortunate that the Third-Party applicant did not have the courtesy to appear at the hearing in support of the application and answer any questions from the Tribunal. The Tribunal accordingly had no information before it to determine whether any tenancy of the Property was one which fell within the terms of Section 12 of the 2006 Act. The Tribunal can make no assumption as to the kind of tenancy, if any, that there is of the Property.
18. The Third-Party applicant had not provided any information to the Tribunal that the electrical installations or any fixtures, fittings and appliances were not in a reasonable state of repair and in proper working order. No complaint had been made by the Tenant that the Tribunal were aware of. The Tenant had not taken part in the proceedings. The Tribunal accordingly had no information before it to determine that the Property did not comply with Section 13(1) (c) or (d) of the 2006 Act.

Decision

19. The Tribunal determined to dismiss the application in the circumstances. The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

S Evans

12 August 2024

Legal Member

Date