



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

Decision: Section 43 Tribunals (Scotland) Act 2014 and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Reference FTS/HPC/RT/19/3633

Title number: Subjects registered in the Land Register of Scotland under title number MID101053

House address: 3F1, 13 Gillespie Crescent, Edinburgh, EH10 4HT ("the House")

The Parties

City of Edinburgh Council, East Neighbourhood Office, 101 Niddrie Mains Road, Edinburgh, EH16 4DS ("The Third Party Applicant")

Mr Mark Fortune, 2 Corstorphine High Street, Edinburgh, EH12 7ST ("The Landlord")

Tribunal Members:

H Forbes (Legal Member)

C Jones (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") at its own instance reviewed its decision of 14th January 2021 and determined not to change its decision, except in so far as to make an order adding Edinburgh Holiday & Party Lets Limited (SC577943) as a party to the application.

Background

1. By application dated 5th November 2019, the Third Party Applicant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').

2. The Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard, in that the House was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order; any furnishings provided by the Landlord under the tenancy are not capable of being used safely for the purposes for which they are designed; the House does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; the House does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and the house does not meet the tolerable standard. In particular, it was stated that the following work was required: -
 1. *Damaged window in living room, in dangerous condition requires urgent attention;*
 2. *Broken window in front bedroom currently boarded up;*
 3. *Repair leak from upper bathroom into lower bathroom;*
 4. *Investigate and repair water leaks into living room ceiling;*
 5. *To repair hard wired panel smoke detection system;*
 6. *To repair kitchen window;*
 7. *To ensure CO detector is fitted;*
 8. *To ensure gas safety certificate is carried out;*
 9. *To ensure appropriate electrical safety certificates are obtained;*
 10. *To repair kitchen flooring (not initially reported to owner)*
 11. *To repair cooker hob as not all the rings working (not initially reported to owner)*
3. The Third Party Applicant notified the Landlord of the defects (with the exclusion of 10 and 11 above) by letter dated 8th October 2019 which was posted and hand-delivered on 11th October 2019.
4. As part of the Application, the Third Party Applicant enclosed a list of 5 known occupants of the House, together with tenancy agreements issued by EHPL Limited (Edinburgh Holiday & Party Lets) to two occupants. The agreements purported to be issued under Schedule 4, paragraph 8 of the Housing (Scotland) Act 1988 ("the 1988 Act"), which

deals with 'a tenancy the purpose of which is to confer on the tenant the right to occupy the house for a holiday.' The Third Party Applicant also included payment details and receipts issued to the tenants.

5. The Third Party Applicant stated that they considered the House to be used for residential letting rather than holiday lets, as the tenants are either working or studying and some had lived in the House for several months. It was stated that the tenants did not consider themselves to be on holiday and considered the House to be their main or only home. Furthermore, it was stated that one of the tenants had claimed benefits and been provided with a lease with the landlord stated as 4M Ltd. The benefits claim started in July 2019. The registered address for 4M Ltd was 2 Corstorphine High Street, Edinburgh.
6. Thereafter, various representations were made by the Landlord including the fact that he disputed that the notification letter of 8th October 2019 had been served upon him, as the post code was incorrect and CCTV images did not show the Third Party Applicant's representative hand-delivering the letter.
7. A preliminary hearing on the jurisdiction of the application took place on 17th February 2020 at Riverside House, 502 Gorgie Road, Edinburgh. Neither party was in attendance.
8. The Tribunal issued a Direction dated 25th February 2020 to the Third Party Applicant, seeking further information in relation to the tenants residing in the Property, copy lease of one of the tenants, benefits documentation, and details of the delivery of the notification letter of 8th October 2019.
9. By email dated 13th March 2020, the Third Party Applicant provided a response to the Direction. He informed the Tribunal that he had taken various statements from tenants, witnessed by a police officer. The lease was not available as the tenant had left the Property. Information regarding a claim for Universal Credit by the same tenant was provided. An explanation was provided that the notification letter to the Landlord was hand delivered on 11th October 2019, in the presence of a police officer witness. A tenancy agreement for a further tenant, SP, was also provided.
10. Further procedure was then delayed due to the lockdown in response to the COVID-19 pandemic.
11. By letter dated 3rd December 2020, parties were notified of a Case Management Discussion set down for 14th January 2021, to be conducted by telephone conference.
12. On 18th December 2020, a further Direction was issued by the Tribunal to the Third Party Applicant requiring an update in relation to whether or

not any repairs have been carried out to the Property, and an update as to the current occupants of the Property.

13. By email dated 11th January 2021, the Third Party Applicant responded to the Direction, as follows:

I heard back from 2 of the 4, tenants at this address who I originally spoke to back in November 2019.

Sean (Patrick) Deuchars, Moved in to flat November 2019 and moved out of this flat 14 December 2020

Rorie Murdoch, Moved into this flat October 2019 and moved out of this property 23 December 2020.

I received confirmation that the property is still occupied and operating as a let property. I also received confirmation that the only repair carried out was repairs to the front windows and roof leak into the living room. All other repairs listed in the original report are still outstanding.

I am still attempting to contact the current tenants.

14. A Case Management Discussion ("CMD") took place by telephone conference on 14th January 2021. Neither party was in attendance.
15. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that parties had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the parties upon the material before the Tribunal.
16. The Tribunal noted that, in terms of Rule 17(4) it may do anything at a CMD which it may do at a hearing, including making a decision.
17. The Tribunal considered the evidence and determined that the tenancies granted in respect of the House were tenancies to which the repairing standard as set out in section 14 of the Housing (Scotland) Act 2006 ("the 2006 Act") applies. The Tribunal was satisfied on the information before it that tenants had been residing at the Property for periods exceeding 31 days, and that tenants had not been occupying the house for a holiday, therefore the exemption provided within the 2006 Act did not apply. The Tribunal also determined that, on the information before it, the Third Party Applicant had given proper notification to the Landlord of the work that required to be carried out for the purposes of complying with the repairing standard duty.

18. By email dated 22nd January 2021, the Landlord notified the Housing and Property Chamber ("HPC") that he had not been notified of the CMD that took place on 21st January 2021.
19. The Tribunal decided, in terms of Rule 39(1) to review its decision at its own instance.
20. A Direction was issued to the Landlord dated 16th February 2021, requiring him to lodge documentation.
21. By emails dated 28th January and 24th February 2021, the Landlord stated that he is the owner of the House but he is not the Landlord under the contract/lease. The Landlord is Edinburgh Holiday and Party Lets Limited. As a result, he stated that he was unable to comply with the Direction.
22. A review hearing was set down for 19th March 2021 by telephone conference.
23. Prior to the review hearing, several concerns were raised by the Landlord regarding unidentified media representatives who had been granted permission to 'observe' the forthcoming telephone conference. The Tribunal considered matters. The Tribunal was satisfied that members of the public were entitled to 'observe' proceedings, despite the hearing being held by telephone conference. The Tribunal was satisfied that the HPC was aware of the identity of each observer, and that it was not incumbent upon the HPC to inform parties of the identity of the observers.
24. By email dated 11th March 2021, the Tribunal issued a Direction to parties and observers prohibiting recording of the forthcoming hearing. The Tribunal also issued the following to the Landlord:

"The Landlord would appear to be suggesting that there are reasons that this hearing should not be held in public. If that is the case, he must put forward a coherent application in terms of Rule 24(3) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, setting out, in detail, why it is necessary that the Tribunal hears his case in private and why it would be in the interests of justice to do so."
25. By email dated 12th March 2021, the Landlord responded that he had no issue with the hearing being held in public. He reiterated his objections to unidentified observers being allowed to 'observe'.
26. The Tribunal took the view that there was insufficient information before it to justify departing from Rule 24(3), and it was decided that the hearing would be heard in public.

27. On 19th March 2021, the day of the hearing, the Third Party Applicant and three media observers joined the conference call. A person identifying themselves as 'Mr Edward' joined the telephone conference. This person was abusive towards the hearing clerk and refused to disclose his reasons for joining the telephone conference. A further unidentified person also dialed into the telephone conference and remained silent when asked to identify themselves. The Landlord was contacted to ascertain whether 'Mr Edward' was his representative. The Landlord said this person was not his representative, but he had passed this person the call-in details as he wished to participate on behalf of Edinburgh Holiday and Party Lets Limited. No further information was provided to confirm the identity and status of this person, and the second participant did not identify themselves. 'Mr Edward' was not a party and was not entitled to participate. It was not possible to exclude unidentified and unauthorised persons without ending the conference call. The hearing did not proceed.
28. By email dated 20th March 2021, the Landlord informed the Tribunal that he was concerned that the hearing on the previous day had been recorded. He enclosed screenshots from social media sites that mentioned a recording of the hearing, and stated that the observers must be excluded from any future hearing.
29. Enquiries were made by the HPC of the three observers that had joined the conference call. No evidence was found that a recording had been made of the proceedings.
30. By Direction of the Tribunal dated 16th April 2021, the Third Party Applicant was required to lodge statements taken from residents of the House, as referred to by him previously.
31. By email dated 18th April 2021, the Landlord raised issues regarding data protection legislation in relation to the statements referred to in the Direction, and stated that the next hearing should be heard in private.
32. By email dated 28th April 2021, the Third Party Applicant lodged four of the statements required by the Direction, notifying the Tribunal that a further two statements were held in storage.
33. By email dated 29th April 2021, the Landlord objected to the format and content of the statements, stating they were fake.
34. By email dated 10th May 2021, parties were informed that the review hearing set down for 12th May 2021 would take place in public.
35. On 11th May 2021, a Direction was issued to parties and observers prohibiting recording of the forthcoming hearing.
36. By email dated 11th May 2021, the Landlord stated that the Third Party Applicant was under investigation regarding data protection matters and

that holding the hearing in public would open the local authority to criminal proceedings as the local authority believed the hearing would be held in private, and that the documents referred to as statements would not be in the public domain.

37. On 11th May 2021, the Third Party Applicant lodged two further statements as required by the Direction, stating that the statements had been copied from a notebook.

38. By email dated 11th May 2021, the Landlord stated that the original notebook ought to have been lodged by the Third Party Applicant.

The Review Hearing

39. The review hearing took place by telephone conference on 12th May 2021. Mr David Ross attended on behalf of the Third Party Applicant. The Landlord was in attendance. There were three media observers in attendance.

40. The Tribunal explained the purpose of the hearing was to review its decision made on 14th January 2021

Preliminary Matters

Identity of Landlord

41. The Landlord raised a preliminary matter in relation to the notification allegedly made by the Third Party Applicant dated 8th October 2019. It was his position that it was made to him as owner of the House and not as landlord. The tenancy agreements stated the landlord was EHPL Ltd. The company has its own legal identity and he is not the landlord in law.

42. Responding to a statement from the Tribunal that the power to enter into a tenancy agreement arises from ownership of the house, the Landlord heatedly disputed this interpretation, stating that he had given permission to the company to let the House. He refuted the idea that he should have to provide any documentation to prove that the company was entitled to grant leases. He was unclear as to whether or not he is the registered proprietor of the House, despite being shown as such on the Land Register of Scotland

43. The Landlord referred to previous court cases that had established that the company was a legally incorporated company and stated that the Tribunal would be 'stepping on the toes of the Crown' if it found otherwise.

44. In response, Mr Ross said that the records showed that the Landlord is the registered owner.

Notice to Landlord

45. The Landlord raised an issue in relation to the notice dated 8th October 2019. The notice contained the wrong postcode. This postcode had been used in relation to a previous case. It was his position that the Third Party Applicant had served this notice at the postcode address rather than the correct address. He pointed out that the Third Party Applicant had previously stated in response to a Direction of the Tribunal that he had hand-delivered the letter in the company of a third party. No evidence had been provided by the third party, no Sat Nav evidence had been provided to show the Third Party Applicant attended the correct address, and no CCTV evidence was made available. The paperwork was drawn up at 'the eleventh hour' and Mr Ross's paperwork was being reviewed by his employer following concerns raised by the Landlord. He had been informed that hand-delivered items were always marked to show that was the case, but that did not happen with this notice.
46. Mr Ross stated that he had not been aware of the postcode issue. He was reminded by the Tribunal that this issue had been raised in its Direction of 25th February 2020, and that he had addressed this issue previously. Mr Ross reiterated that he had delivered the notice to the correct address, notwithstanding any error in the postcode, in the presence of a police officer. He said that he is familiar with the area. Responding to questions from the Tribunal as to why a police officer was involved, Mr Ross stated that, due to the history of the case, it was deemed best to have a police officer present.

Occupants of the House

47. Responding to questions from the Tribunal, Mr Ross said he had taken statements from occupants in response to concerns about the condition of the House, the main concern relating to the windows. He visited the House in October 2019 and took statements from two tenants regarding the condition of the House. The tenants indicated that they intended to stay in the House for more than the one month referred to in their leases. The tenants were told that the statements may be used in legal or licensing proceedings. A neighbour had initially raised concerns about repairing issues.
48. Mr Ross said he was not aware at present how many tenants are living in the House. The repairing issues arose in July 2019. He spoke to the tenants in October and November 2019. There were tenants in the House in December 2020. He has since tried to make contact in writing, but he has had no response. He will continue to attempt to make contact.
49. The Landlord's position was that no tenant had complained about the repairing issues. He was concerned that each tenant had been asked different questions during the process of taking statements. A number

of those questioned had told him the statements were not a true reflection of what was said. One tenant had told him he did not want to give a statement. He felt bullied and pressured and it had resulted in him being late for university. The Third Party Applicant and his witness had banged on all the bedroom doors and had 'rounded everyone up' into the living room to take their statements.

50. The Landlord referred to a previous position put forward by the Third Party Applicant in relation to a lease said to have been granted to the tenant JC by a company called 4M Ltd. The Third Party Applicant had stated in correspondence to the Tribunal that the lease was no longer available from the local authority. The Landlord stated that he found this perplexing and that there must be a paper trail to avoid benefit fraud. He pointed to a discrepancy between the previous statement attributed to JC that his landlord was 4M Ltd. and paragraph 6 of the recent statement whereby JC stated that his landlord was Mark Fortune. The lease was never lodged and JC appeared to have vanished.
51. The Landlord said the statements should have been typed up and signed. Mr Ross should have lodged his full notes. One of the tenants had stated in his statement that it was not his permanent home. He wondered if the tenants from whom statements were taken had ever lived in the House.
52. Responding to questions from the Tribunal regarding his knowledge of whether the tenants that were interviewed by Mr Ross had lived in the House, whether any tenants were living there now, and whether any tenants had lived there in excess of the one month provided for in their leases, the Landlord said he does not have knowledge of the day to day running of the business, despite being its only director. He resides abroad. He was in the House at the start of lockdown. He is not party to information regarding the occupants of the House. All records relating to the business had been destroyed. The Crown had accepted that documents were valid and legal, and that he had no obligation to manage the business on a day to day basis.
53. The Landlord said he had been told by tenants that the local authority had told tenants not to move out of the House unless an eviction order was granted.
54. Mr Ross stated that the statements provided were as recorded in his notebook. They were not formal statements. Some tenants preferred not to answer all the questions put to them. The enquiries made regarding JC's lease were made of the Department of Work and Pensions, who do not keep copy leases. They confirmed that they would have had to see a lease before making any payments, and that payments of benefits were made to JC from July 2019.
55. Responding to questions from the Tribunal regarding whether the local authority had told any of the tenants of this House not to leave, Mr Ross

confirmed that this was not the case. None of these tenants had been in discussion with the local authority about eviction.

56. The Landlord referred to a message dated 30th April 2021, that he had received from one of the tenants interviewed by Mr Ross. The tenant had stated that the statement was not a correct reflection of what he had said in October 2019. Responding to questions from the Tribunal, the Landlord said that, having discussed matters with his solicitor, he had arranged for a WhatsApp message to be sent to the tenant. He confirmed that the tenant is no longer living in the House.

Repairing Issues

57. Responding to questions from the Tribunal, Mr Ross said the House is a double upper top floor flat in a tenement building, He believed there had been repairs carried out to the front living room and bedroom windows and the roof of the tenement. He had been notified by a neighbour that the window was repaired during lockdown and another third party had also confirmed this. He was unaware if repairs had been carried out to the kitchen window. There was also an issue with a ceiling collapse in the lower floor bathroom, as shown on photographs lodged with the application. He had no evidence of any certification being carried out in terms of gas or electricity. He has not been in the House since late 2019. At that time, there was a fault light showing on the smoke detection system. There were battery operated alarms throughout the House but the detector heads had been removed.

58. The Landlord said a neighbour had arranged for repairs to be carried out to the roof in February 2020 and all proprietors had been billed. Issues with the roof arose as a result of a poor repair carried out by the local authority around 10 years ago. The roof continued to leak. More recently around £5000 has been spent on roof repairs and investigation. The neighbour arranged for windows to be replaced, having deemed the repairs an emergency, and a bill of £1200 was sent to the Landlord. The Landlord was not aware of the alleged bathroom leaks and said the photos lodged by Mr Ross, showing a hole in a ceiling, were eight years old.

59. The Landlord referred to invoices from his accountants which showed various works had been carried out in May 2020. The invoices were for £7000 and £2500. Far from being in a poor state, he said, a sum of £10000 to £15000 had been spent on the House before Mr Ross visited.

60. The Landlord said he was in the House at the start of lockdown, in or around March 2020. New bathrooms, including showers and tiling, had been installed. Decorating had been carried out to the hall and bedrooms. There was a new washing machine. It was his position that a sum of around £20000 had probably been spent on the House in 2020.

61. The Landlord said the smoke alarm system was HMO compliant in 2009. There are hard-wired alarms and a sprinkler system. Mr Ross would not know how to operate the smoke detection system and would not know if it was working or not. The Landlord was unaware of any contact from the HSE or the fire service in regard to this matter.
62. The Landlord described the layout of the House and said there are 3 rooms and a shower room on the upper floor and 3 bedrooms, a living room, kitchen and bathroom on the lower floor. He said he thought the leaking roof issues had eventually been repaired. He was billed for repairs. The internal ceiling had been repainted in the living room. There was no hole in the bathroom ceiling when he was last in the House.
63. Responding to questions from the Tribunal as to whether there were any tenants in the House when he was there in or around March 2020, the Landlord said there was no one there, so there were either no tenants, or they were all out at the time. There was no sign that people were living there. There did not appear to be a problem with the kitchen window. A new sub-floor had been installed in the kitchen, new linoleum fitted and a new washing machine installed. There is a gas boiler, and the Landlord presumed the gas engineer would also have installed a carbon monoxide detector. He was unable to say when the boiler was last serviced. He does not have a copy of the gas safety record or EICR. It was his position that there are no portable appliances to test under the PAT scheme. It was his position that the landlord is a limited company and they will have the necessary documentation.
64. Mr Ross said he was encouraged to hear that works had been carried out. He confirmed that the photographs he submitted were taken at the time of his visits in October and November 2019, as shown by the date stamps, and were not eight years old. He said he made a referral to the Fire Service following his visit to the House in 2019.
65. Responding to questions from the Tribunal, Mr Ross said he had tried to contact current tenants in the House but had not received a response. He said he could try to visit the House to see what repairs had been carried out.
66. In response, the Landlord said the Fire Service had not done anything, which suggested there was no issue. He said that the only person complaining about this property was Mr Ross, suggesting it was a personal issue. He said Mr Ross had been recorded telling tenants to stay put and cause trouble. Tenants had suggested to him that they felt bullied by Mr Ross and that he had upset many people. The date stamp on the photographs lodged with the application only verified the date on the camera. He believed the photos of the hole in the bathroom ceiling were supplied by another tenant. In 2018/2019, £9000 was spent

upgrading the House. The ceiling issue was a communal issue and had been fixed five or six times.

Findings in Fact

67.

- (i) The Landlord is the registered owner of the House which is registered in the Land Register for Scotland under Title Number MID101053.
- (ii) The Landlord is the sole director of the company Edinburgh Holiday and Party Lets Limited (SC577943).
- (iii) The House is a double upper tenement flat that housed six tenants.
- (iv) Tenancy agreements in respect of the House purporting to be between EHPL Ltd. (Edinburgh Holiday and Party Lets) and tenants RD, RM and SP were put in place between July and December 2019.
- (v) The tenancy agreements granted to tenants RD, RM and SP purported to be made under the 1988 Act and to be for a period of one month for the purposes of holiday accommodation.
- (vi) Tenant MI was granted a holiday let of the House in July 2019.
- (vii) Tenant EM was granted a tenancy of the House by renewing monthly contract in September 2019.
- (viii) A tenancy agreement in respect of the House was put in place between 4M Ltd and the tenant JC in July 2019.
- (ix) Universal Credit including housing costs towards his rent at the House was paid to the tenant JC by the Department of Work and Pensions from 27th July 2019.
- (x) The tenants RM, RD, JC, SP, EM and MI resided in the House for a period of more than 31 days.
- (xi) The House was the principal home of the tenants RM, RD, JC, SP, EM and MI.
- (xii) The tenants RM, RD, JC, SP, EM and MI were not residing in the House for the purposes of a holiday.
- (xiii) The tenancy agreements granted to the tenants RM, RD, JC, SP, EM and MI were private residential tenancy agreements.

- (xiv) Notification of required repairs dated 8th October 2019 was made to the Landlord by the Third Party Applicant on 11th October 2019.

Reasons for decision

Notice to Landlord

67. The Tribunal was satisfied that the Third Party Applicant had served notice on the Landlord by hand-delivery at the correct address, notwithstanding the inclusion of an incorrect postcode.
68. The Tribunal was satisfied that the Landlord is the registered owner of the House and that the power to enter into a tenancy agreement arises from ownership of the house. Accordingly, the Tribunal is satisfied that notification was made to the Landlord.
69. The Tribunal has seen no evidence of a formal agreement between the Landlord and Edinburgh Holiday & Party Lets Limited that would entitle the latter to grant tenancy agreements in respect of the House; however, the Tribunal decided to make an order in terms of Rule 32, to add Edinburgh Holiday & Party Lets Limited (SC577943) as a party to the application.

Occupants of the House

70. The Tribunal considered all the documentary and oral evidence. The Tribunal had regard to the lease documentation supplied by the Third Party Applicant as part of the application, namely the two tenancy agreements referred to above, and the further tenancy agreement provided by the Third Party Applicant on 13th March 2020.
71. The Tribunal considered the additional evidence provided by the Third Party Applicant, which were referred to as statements taken from various tenants of the House. The Tribunal accepted the evidence of Mr Ross regarding the circumstances under which the statements were taken. Whether or not the tenants were unhappy with the circumstances in which they were taken is not important. Although the Landlord referred to messages from a tenant stating that his statement was not accurate, the Tribunal was provided with no documentary evidence in this regard.
72. The Tribunal noted that the tenant RM stated that he took the tenancy initially for at least one month, moving in on 27th October 2019. Previous evidence from the Third Party Applicant to the effect that RM moved out in December 2020 was accepted by the Tribunal. He, therefore, resided in the House for a period of around 13 months.
73. The Tribunal noted that the tenant RD moved in on 16th September 2019. His tenancy agreement covered the period from 20th September

to 19th October 2019, yet he was still residing in the House when the statement was taken on 1st November 2019.

74. The Tribunal noted that the statement from the tenant JC stated he had moved into the House on 20th July 2019, and that he was still there when the statement was taken on 1st November 2019.

75. In relation to the tenant, JC, the Tribunal took note of the email exchange between Mr Ross and the DWP dated 5th to 8th November 2019, whereby Mr Ross requested a copy of JC's lease, and the DWP confirmed that a claim had been paid from 27th July 2019 for Universal Credit, for JC at the House address, albeit with a different landlord.

76. The Tribunal noted that the Tenant, SP, had a tenancy agreement from 23rd December 2019 to 23rd January 2020. In his statement, taken on 7th February 2020 he said that he would probably leave in May that year.

77. The Tribunal noted that the tenant, EM, stated on 2nd October 2019 that he had moved into the House on 11th September, and had a monthly contract that would renew every month.

78. The Tribunal noted that the tenant, MI, stated that he had moved into the House on 23rd July 2019, and that he was still there when the statement was taken on 2nd October 2019.

79. Given the dates on which the tenancy agreements commenced, the Tribunal had regard to the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), which came into force on 1st December 2017. Section 1 of the 2016 Act provides that a tenancy is a private residential tenancy where it is let to an individual as a separate dwelling, the tenant occupies the property, or any part of it, as their only or principal home, and the tenancy is not of a type that is excluded in terms of Schedule 1 of the 2016 Act. Paragraph 6 of Schedule 1 states that a tenancy cannot be a private residential tenancy if its purpose is to confer on the tenant the right to occupy the let property for a holiday.

80. The Tribunal took into account the absence of any information or evidence from the Landlord regarding the past or present occupants of the House, and the duration of their tenancies, and the evasive manner in which he answered questions on this matter. While the Tribunal accepted that the Landlord may not have a day to day role in running the business, he is the only director of the company, and it would not have been an onerous task to have ensured he had the relevant information available when attending a Tribunal hearing on this specific point, if, indeed, any evidence was available to show that the tenancy agreements pertained to holiday lets. He had gone to considerable effort to contact a past tenant in an attempt to diminish the evidence given on behalf of the Third Party Applicant. He had also gone to the effort of gaining detailed information regarding repair expenditure to the

House. He had visited the House in or around March 2020, and could not even say if there were any tenants in the House at that time.

81. In all the circumstances of the case, the Tribunal found that the tenants of the House were not occupying the House for the purpose of a holiday. The tenants were living in the House as their principal home, and they occupied the House for periods exceeding 31 days. The tenants of the House were tenants under the 2016 Act and had private residential tenancies. These are tenancies to which the repairing standard as set out in the 2006 Act applies.

Repairing Issues

82. The Tribunal was encouraged to hear that repairs may have been carried out to the House. However, the Tribunal did not have enough information to ascertain whether or not the House currently meets the repairing standard, and whether an inspection of the House is required.

83. Due to unforeseen circumstances, a considerable period of time has passed since the application was made. The Tribunal, therefore, considers that further vigorous inquiries should be made by the Third Party Applicant to ensure that the application is still relevant and necessary, and that access to the House will be provided if an inspection is found to be necessary. Information and documentation will be requested from parties by way of a Direction of the Tribunal, before further procedure is scheduled.

Outcome

84. The Tribunal has found that these are tenancies to which the repairing standard applies and that proper notification was made upon the Landlord of the work required to be carried out.

85. This Decision is not subject to appeal.

H Forbes

Legal Member/Chair
17th May 2021