



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/CV/22/1447

Re: Property at 3/2 3 Westclyffe Street, Glasgow, G41 2EF (“the Property”)

Parties:

Dr Shari Levine, Mr David Gering-Hasthorpe, 0/1 57 Boyd Street, Glasgow, G42 8AG (“the Applicant”)

Mr Stephen Paul Cooper, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Member:

Alan Strain (Legal Member) and Ms Elizabeth Williams (Ordinary Member)

Decision

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

Background

This was an application under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 71(1) of the Act for an order for alleged breach of statutory, contractual and common law duties arising from a tenancy.

The Tribunal had regard to the documents lodged with the application by the Applicants on 16 May 2022 and the written representations and supporting documentation lodged by the Respondent on 7 December 2022.

The case had called for a CMD on 16 December 2022. Both Parties had participated and represented themselves.

The Tribunal had identified the following issues for determination by the Tribunal at a Hearing:

1. Whether the Respondent was in breach of his duties in terms of Section 14 of the **Housing (Scotland) Act 2006** to ensure that the Property met the repairing standard at the start of the tenancy and throughout;
2. Whether the Respondent was in breach of his duties to ensure that the Property met the 'tolerable standard' as defined in section 86 of the **Housing (Scotland) Act 1987** throughout the tenancy;
3. Whether the Respondent was in breach of his contractual obligations under Clause 20 of the Lease to ensure that the Property met the Repairing Standard;
4. Whether the Respondent was in breach of his implied contractual obligations to provide and maintain the Property throughout the tenancy (i) in a tenable and habitable condition and (ii) in a condition which was wind and watertight;
5. Whether the Applicants were in breach of their contractual obligations to permit access for repairs and inspections to be carried out in terms of Clause 22 of the Lease;
6. Whether the Applicants suffered distress and inconvenience as a consequence of any breach by the Respondent of his statutory, contractual or implied obligations;
7. Whether the Applicants were unable to enjoy the benefit of part(s) of the Property and if so for what period(s) of time;
8. If the Respondent is found to have been in breach of any of his statutory, contractual or implied obligations what compensation (if any) are the Applicants entitled to.

The Parties had agreed to an in person Hearing.

Hearing

Both Parties participated and represented themselves.

The Tribunal informed the parties that their respective written representations would be taken as read and accepted into evidence.

The Tribunal then heard evidence from both Applicants and the Respondent. The Respondent also led evidence from Ms Marina Cooper (his sister) who looked after the Property whilst he was in Australia.

The Tribunal questioned the Parties and each was given the opportunity to question the other.

At the conclusion of the evidence both Parties were given the opportunity to make submissions.

Having done so, in so far as material, the Tribunal made the following findings in fact:

1. The Parties entered into a PRTA commencing 27 September 2018;
2. The monthly rent was £825;
3. The Property is a two-bedroom end of terrace, corner flat on the top floor of a traditional three-storey tenement. The Property comprised a living room, kitchen, hall, bathroom and two bedrooms.
4. The Applicants complaints to the Respondent's Letting Agents relating to a number of repair issues including (i) penetrating water, dampness and mould; (ii) insufficient ventilation in the bathroom and kitchen due to defective windows and a lack of extract ventilation; and (iii) extremely cold conditions in the living room and main bedroom caused by draughts from the windows.
5. The Applicants complaints were detailed in emails to the Respondent's Letting Agents dated 15 & 29 October 2018, 18th January 2020 and 10th February 2020. The Applicants also made telephone calls to the Letting Agents;

Windows in bathroom and bedroom

6. The Applicants' complaints on 15 and 29 October 2018 related to alleged defective windows in the bathroom and bedroom. The Respondent rectified these by 18 November 2018. The Respondent's Letting Agents undertook a periodical inspection on 1 November 2019 which confirmed the windows to be in good working order (copy report was produced);

Roof Damage

7. The Applicants' complaints of 18 January 2020 and 10 February 2020 related to damp and water damage in the living room and a leak in the bedroom ceiling. The Respondent's Letting Agents notified the Factors on 11 February 2020 and roofers were engaged on 17 February 2020 to effect repairs. The Roofers inspected the damage to the roof on 24 February 2020 and effected preliminary repairs on 12 May 2020 which prevented further water ingress. Further repairs were delayed due to Covid. During this time the Applicants continued to live in the Property and use all affected rooms.

8. Final roof repairs were delayed due to dispute between the respective Property owners over the cost of repairs and responsibility for the cost;

9. On 18th September 2020 the Applicants contacted the Factors to press for repairs to the roof.

10. Roof repairs were completed by 2 March 2021. Internal staining to the bedroom and living room due to the water ingress was cosmetic.

Further Windows Complaint

11. On 19 August 2020 the Applicants complained that the bathroom window was stiff. The window was inspected by a contractor on 8 September 2020 and was confirmed stiff. All other windows were checked and found to be in satisfactory condition;

12. On 23 September 2020 the contractor was instructed to go ahead with any necessary repairs. The repairs were carried out on 15 December 2020;

13. On 6 January 2020 the Applicants requested the contractor to inspect the repairs. On 22 February 2021 the contractor confirmed the window repairs were effective;

14. On 11th March 2021 the Applicants submitted a complaint to the Letting Agents notifying them of the landlord's legal obligation to replace defective windows;

15. On 12 April 2021 contractors were instructed by the Respondent to reassess the windows.

16. On 5 May 2021 the contractors provided quote to replace windows when the Applicants vacated.

17. ATW Architects report on 29 December 2021 found that the windows were in good working order.

Inspection Reports

Professor Sharpe

18. By email dated 1 June 2021 Living Rent (on behalf of the Applicants) notified the Respondent that the Property fell below the Repairing Standard in terms of the Housing (Scotland) Act 2006 due to (i) windows that could not be properly closed or opened since 2018; (ii) a leak in the roof since January 2020; and (iii) significant water damage and mould since February 2020 resulting from the Respondent's failure to undertake necessary repairs.

19. On 23 October 2021 Professor Tim Sharpe (Architect) visited the Property and thereafter produced a Report regarding the conditions. Professor Sharpe's findings included that (i) there was no mechanical extract ventilation in either the kitchen or the bathroom; (ii) the dwelling was subject to large amounts of heat-loss due to uninsulated surfaces and poor thermal performance; (iii) the dwelling had been and continued to be subject to water penetration from the roof; (iv) the Property was subject to penetrating damp and mould; (v) defective tiling and sealing of the shower had led to further dampness in the hall; (vi) the floorboards were in poor condition and loose; and (vii) the windows were defective and had reached the end of their useful lifespan. Professor Sharpe concluded that the Property was not in a reasonably tenable or habitable condition and set out the remedial works required to bring the Property up to standard.

20. By letter dated 15 November 2021 the Applicants provided a copy of Professor Sharpe's report to the Respondent and intimated a claim for breach of contract.

21. By email dated 15 December 2021 the Respondent's solicitors Jones Whyte LLP, denied liability on behalf of their client.

ATW Architects

22. The Respondent obtained an Architects Report from ATW Architects dated 29 December 2021 which found:

i. There was evidence of water ingress on the cornicing and ceiling in the living room;

ii. All windows opened and were in good working order;

iii. Walls were in fair condition;

iv. There was evidence of water ingress in one bedroom at the bay window. All windows were opened and in good working order. Internal and external walls were dry;

v. The other bedroom. All windows were opened and in good working order. Internal and external walls were dry;

vi. The bathroom. All windows were opened and in good working order;

vii. The kitchen. All windows were opened and in good working order;

viii. There were some loose boards/gaps in the hallway which required attention.

23. ATW Architects concluded that the Property was in “good condition” but immediate attention was required to the roof to prevent water ingress in the living room and bedroom and also internal remedial work was required where water damage had occurred.

Draughts

24. The windows were found to be in good working order and repair at the time of the periodic inspection on 1 November 2019 and at the time of the ATW Architects Report. The Respondent produced an Energy Performance Certificate for the Property.

Decision and Reasons

Observations on the Evidence

The Applicants’ painted a very poor picture of the Property which the Tribunal considered was not supported by the facts.

The Applicants had lived in the Property for 3 years. When questioned about the impact of the claimed defects in the Property by the Tribunal the Applicants’ evidence was that the defects restricted their use and enjoyment of the Property. It did not prevent them using the kitchen, living room, bedroom or bathroom. If anything, it appeared to the Tribunal, these were minor complaints which were being blown out of proportion.

The Tribunal had regard to the conflicting reports from Professor Sharpe and ATW Architects. The Tribunal preferred and accepted the ATW Architects Report which appeared to be more consistent with the supporting evidence and facts. It was consistent with the periodic inspection report, the Respondent’s evidence, Ms Cooper’s evidence and the Applicants’ evidence before the Tribunal as to the extent of the issues and impact upon their use and enjoyment of the Property.

Regarding the specific complaints.

Windows

The Tribunal did not accept there were issues with the windows. The weight of the evidence supported the Respondent’s contention that the windows were in good

working order and repair. This was supported by the Respondent's own evidence, Ms Cooper, the periodic inspection report and the report by ATW Architects.

Roof

Clearly there had been issues with the roof. This was evidenced in the ATW Architects Report and that of Professor Sharpe. It was also accepted by the Respondent.

The impact on the Applicants was minimal as the Respondent took remedial action as soon as reasonably practicable. There were delays for reasons which were out with the control of the Respondent such as covid, disputes with other owners over responsibility for repairs which are common in such Properties.

After the initial repairs the Applicants were left with some cosmetic staining in the living room and bedroom. The Applicants continued to live in the Property and use the affected rooms.

Draught

The Tribunal accepted that there may well have been thermal leakage due to the windows but the fact of the matter was they were in good working order and repair according to the periodic inspection report and the ATW Architects Report. The Property also had an Energy Performance Certificate. The cost of energy depicted in the correspondence between Living Rent and the Respondent's solicitors produced did not appear excessive.

Damp and Mould

The Tribunal did not accept that the Property suffered to any material extent from damp and mould. Some minor issues were identified in the ATW Architects report but nothing material.

Dealing with the specific issues

1. Whether the Respondent was in breach of his duties in terms of Section 14 of the **Housing (Scotland) Act 2006** to ensure that the Property met the repairing standard at the start of the tenancy and throughout.

The onus of proof was on the Applicants. The Tribunal find that there was insufficient evidence to establish that the Property did not meet the repairing standard. The Property appeared, on the evidence, to comply with the repairing standard. Accordingly there was no breach by the Respondent.

2. Whether the Respondent was in breach of his duties to ensure that the Property met the 'tolerable standard' as defined in section 86 of the **Housing (Scotland) Act 1987** throughout the tenancy.

The onus of proof was on the Applicants. The Tribunal find that there was insufficient evidence to establish that the Property did not meet the tolerable standard. The

Property appeared, on the evidence, to comply with the definition within section 86. Accordingly there was no breach by the Respondent.

3. Whether the Respondent was in breach of his contractual obligations under Clause 20 of the Lease to ensure that the Property met the Repairing Standard;

The Tribunal refers to its finding in 1 above. The Tribunal finds no breach.

4. Whether the Respondent was in breach of his implied contractual obligations to provide and maintain the Property throughout the tenancy (i) in a tenantable and habitable condition and (ii) in a condition which was wind and watertight.

The Tribunal finds that at all material times the Property was in a tenantable and habitable condition. There was some slight restriction in use and enjoyment but nothing material.

The Property was, in so far as material, wind and watertight. There had been water ingress in 2 places due to defects in the roof but appropriate and reasonable action was taken to rectify this.

Accordingly there was no breach by the Respondent.

5. Whether the Applicants were in breach of their contractual obligations to permit access for repairs and inspections to be carried out in terms of Clause 22 of the Lease.

The Tribunal does not consider it necessary to make any finding.

6. Whether the Applicants suffered distress and inconvenience as a consequence of any breach by the Respondent of his statutory, contractual or implied obligations.

The Applicants at most suffered minor distress and inconvenience as a consequence of the roof defects and repairs. The Tribunal has found that the Respondent was not in breach of any of his statutory, contractual or implied obligations.

7. Whether the Applicants were unable to enjoy the benefit of part(s) of the Property and if so for what period(s) of time.

The Applicants' enjoyment of the living room and bedroom was impacted in an extremely minor way for a short period of time (from the report of the water ingress to the effecting of the temporary repairs).

8. If the Respondent is found to have been in breach of any of his statutory, contractual or implied obligations what compensation (if any) are the Applicants entitled to.

The Tribunal has found no breach by the Respondent of any of his statutory, contractual or implied obligations. No compensation is due.

The Tribunal accordingly refuse the application.

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.

A Strain

27 June 2023

Legal Member

Date