

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/17/0251

Property Description: Flat 0/1, 16 Great George Street, Glasgow G12 8NA being the subjects registered in the Land Register under title number GLA138299 ("the House")

The Parties:-

Mr Edubiel Arturo Alpizar Sosa, residing at the House ("the Tenant")

Mr Asif Khan, Madina Food Store, 212 Woodlands Road, Glasgow G3 6LN; Mr Sameer Khan, 6 Bernisdale Drive, Glasgow G15 8BB ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Joan Devine (Legal Member) and Kingsley Bruce (Ordinary Member)

DECISION – Flat 0/1, 16 Great George Street, Glasgow G12 8NA

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 House and taking account of all the available evidence determines that the Landlord has not failed to comply with the duty imposed on it by Section 14(1)(b) of the Act. The Tribunal's decision is unanimous.

Background

- By application dated 6 July 2017 the Tenant applied to the First-tier Tribunal for Scotland for a determination that the Landlord had failed to comply with his duties under Section 14(1) of the Act.
- In his application, the Tenant stated that he believed that the Landlord had failed to comply with his duty to ensure that the property met the repairing standard as set out in Sections 13(1)(a),(c),(d),(e) (f) and (g) of the Act. His application stated that the Landlord had failed to ensure that :

- the house is wind and watertight and in all other respects reasonably fit for human habitation
 - 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 proper working order;
 - the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order;
 - the furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;
 - the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health
- The Tenant made the following complaints in his application and in his notification letter to the Landlord :
 - heating inadequate
 - disinfection required to prevent rats
 - window required to be fixed to stop wind currents
- On 18 July 2017, the Convenor of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued a Minute of Decision stating that she considered that in terms of Section 23(3) of the Act, there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the Tenant between 6 July and 12 July 2017 and intimating her decision to refer the application to the Tribunal for determination.
- The Clerk to the Tribunal wrote to the Tenant and the Landlord notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to the Tribunal and that an inspection and a hearing would take place on 1 September 2017.
 - The Tribunal attended the House to carry out an Inspection on 1 September 2017 at 10am. Asif Khan and Sameer Khan were both present. Sameer Khan was represented by Michael Ross, Solicitor. Asif Khan told the Tribunal that the tenancy had been terminated and the Tenant had vacated the House. Mr Khan was not able to provide the Tribunal with evidence that the tenancy had been terminated. The Tribunal attempted to gain access to the House. As the Tenant was not present and there was no evidence of the tenancy having been ended, the Tribunal did not enter the property as to have done so could have been unauthorised. The Tribunal proceeded to the Hearing at 11am. The Tenant did not attend the Hearing and was not represented. In the circumstances the Tribunal adjourned the Hearing in terms of section 47(5) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 in order that the Tribunal can issue a direction seeking clarification as to whether or not the Tenant remains entitled to occupy the House and whether the Tenant wishes to proceed with the application.
 - The Tenant sent an email to the Tribunal dated 27 September 2017 stating that he wished to continue with his application.

- The Landlord sent an email to the Tribunal dated 28 September 2017 in which he stated that the House had been sold.
- The Tenant sent an email to the Tribunal dated 26 October 2017 stating that he was living in Brazil and did not plan to continue living in the House
- The Tribunal noted that title to the House had transferred to Ali Soofi and Siama Syed Gill. The date of registration was 1 November 2017.
- The Tribunal notified the new owner of the House of the Tenant's Application. The new owners, Messrs Soofi and Gill, were told that an inspection and hearing would take place on 26 March 2018.

The Inspection

- The Tribunal inspected the House on the morning of 26 March 2018. The weather conditions at the time of the inspection were cold and clear. The Tenant was not present at the House during the inspection. The new owner, Ali Soofi was present at the inspection as was Mohammed Gill. Photographs were taken during the inspection and are attached as a Schedule to this decision.

The House

- The house is a ground floor flat in a four storey and attic, end terraced, traditional tenement building in excess of 125 years old. The subjects would originally have comprised two rooms, kitchen and bathroom, undergoing conversion to three rooms, internal kitchen and bathroom. It is located in a predominantly residential area within the Hillhead district of Glasgow approximately 1 ½ miles west of the city centre. At the time of the inspection the House was undergoing renovation. The House was not furnished, occupied or in habitable condition. There was no evidence to suggest that a tenancy was ongoing.

The Hearing

- Following the inspection, the Tribunal held a hearing at Teachers Building, 14 St Enoch Square, Glasgow G1 4DB. The Tenant was not present. The Landlord was not present.

The Evidence

- The evidence before the Tribunal consisted of:
 - the application form completed by the Tenant;
 - Registers Direct print for title number GLA138299 relating to the House;
 - email of notification from the Tenant to the Landlord notifying him of the various issues complained about in his application dated 11 July 2017;
 - representations received from the Landlord dated 8 and 23 August 2017
 - the Tribunal's inspection of the property..

Summary of the Issues

- The issue to be determined was whether the House meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on it by Section 14(1)(b) of the Act. The duty arises in respect of a tenancy to which chapter 4 of the Act applies.

Findings in Fact

- The Tribunal made the following findings in fact :
 - at the inspection there was no evidence of an ongoing tenancy
 - the House was not occupied
 - the House was undergoing a substantial renovation
 - The Tribunal observed the following:
 - (a) the windows had recently been replaced
 - (b) the central heating system was being replaced as part of the renovation
 - (c) there was no boiler in the House
 - (d) there was no evidence of vermin

Reasons for Decision

- Following its inspection and the hearing, the Tribunal determined that the House is not currently let or fit for human habitation. In those circumstances there is no tenancy in existence to which chapter 4 of the Act applies.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

Joan Devine

Signed

Joan Devine, Chairing Member

Date

11 April 2018.

In witness whereof these presents type written on this and the three preceding pages are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Chairing Member of the Tribunal at Glasgow on 11 April 2018 before this witness:-

Laura Smith

witness :

name in full : LAURA SMITH

Address : Cornerstone, 107 West Regent Street, Glasgow G2 2BA

Schedule of photographs taken during the inspection of Flat 0/1, 16 Great George Street,
Glasgow, G12 8NA on 26 March 2018

Reference: FTS/HPC/RP/17/0251



This is the schedule
of photographs
referred to in
the foregoing
determination
Glasgow 11 April
2018

Joan Devine





