

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/17/0356

**Flat 14, Sutherland Court, 15 Bruce Road, Glasgow, G41 5EN
("the Property")**

The Parties:-

**Mrs Suzanne Oz, residing at the property
("the Tenant") (represented by Ms Lorna Walker, Solicitor, Govan Law
Centre, Orkney Street Enterprise Centre, Units 4 & 6, 18-20 Orkney Street,
Glasgow, G51 2BX)**

**Ms Julie Edwards, 16 Alder Grove, Dunfermline, KY11 8RP
("the Landlord")**

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) in relation to the house concerned, and taking account of the evidence led by the Tenant's agent at the hearing, determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:-

Patricia Anne Pryce	-	Legal Chairing Member
Debbie Scott	-	Ordinary Member (Surveyor)

Background

1. By application comprising documents received on 15 September 2017, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and that the failure was established as follows: -

- (a) Penetrating dampness: high dampness reading and the growth of mould fungal spores throughout the property at external floor/wall junction.
- (b) Concrete slab is crossing the cavity and allowing the rainwater to bridge.
- (c) Basic construction defect allowing wind driven rain water to cross the cavity and saturate the inner brick leaf.
- (d) The extent of the dampness renders the property untenable.

The Tenant considered that the Landlord is in breach of her duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- (iii) 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.

- 3. By Minute dated 26 September 2017 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.
- 4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant.
- 5. The Landlord, by email of 26 October 2017, requested a postponement of the hearing and inspection as she was due to be abroad on 24 November 2017. The tribunal refused this request given the nature of the complaints raised within the application and advised the Landlord that she could instruct an agent to represent her at the inspection and hearing.
- 6. The tribunal received written representations from both the Tenant and the Landlord and took account of these when considering its decision.

The Inspection

7. An inspection and hearing were arranged for 24 November 2017 at 10 am and 11.30 am respectively. The tribunal attended at the property. The Tenant provided access to the property. The Tenant's agent also attended at the property. The Landlord did not attend the inspection nor was she represented at the inspection. The tribunal noted the following at inspection:-

- There was some historical black spot mould located on the side elevation wall within the living room but there was no dampness.
- There was no dampness located within any of the three bedrooms within the property.
- There was no dampness located within the bathroom of the property.
- There was no dampness located in the kitchen of the property.
- There was a hard-wired smoke alarm in the hallway.
- There was a hard-wired smoke alarm in the living room.
- There was no hard-wired heat detection device in the kitchen.
- There was carbon monoxide detector located in the kitchen.

The schedule of photographs prepared by the ordinary member is attached to this decision.

The Hearing

8. Ms Walker appeared on behalf of the Tenant and submitted as follows: -

- The Tenant had required to flee her owned property in Ayrshire due to a racist assault taking place in her property by her neighbour as a result of the ethnicity of the Tenant's husband.
- The Tenant is now separated from her husband and resides at the property with her three children.
- The Tenant has experienced issues with dampness at the property since she moved there in 2014.
- The Tenant was of the opinion that the state of the property had adversely affected her health.

9. The Tenant did not appear at the hearing due to childcare issues.

10. The Landlord did not appear at the hearing nor was she represented at the hearing.

Summary of the issues

11. The issue to be determined is whether the repairing standard has been met in light of the submissions made by the Landlord and the Tenant.

Findings of fact

12. The tribunal finds the following facts to be established: -

- The Landlord is the registered owner of the property.
- The property is a three-bedroomed top floor flat located in a building constructed in the 1960s.
- The property consists of three bedrooms, a bathroom, kitchen, living room, balcony and hallway.
- The Landlord had carried out a number of repairs to the property in the last couple of years including installing replacement UPVC windows and replaced the roof of the building along with the other common owners of the building.
- Readings throughout the property showed that there was no live dampness within the property at the time of inspection.

Reasons for the decision

13. At the hearing, the agent for the Tenant accepted that the tribunal had taken readings with a damp meter throughout the property at the inspection and had found no evidence of live dampness.

Given all of the circumstances, the tribunal is satisfied that the house is 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 in a reasonable state of repair and in proper working order and 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.

Decision

14. The tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.
15. The decision of the tribunal was unanimous.

Observation

The tribunal could not locate a heat detector within the kitchen of the property. Although this did not form part of the present application, the tribunal would strongly urge the Landlord to check this issue and, if necessary, to install a heat detector as a matter of urgency.

Right of Appeal

16. In terms of section 46 of the Tribunals (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 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.

P Pryce

Signed

Date 24 November 2017



Chairing and Legal Member

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Bathroom



Vent in bedroom

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Carbon Monoxide monitor located in Kitchen



Gas boiler located within the kitchen

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Kitchen



Historical black spot mould in Living room.

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Damp meter reading within Living Room - green



Replacement double glazed windows with trickle vents.

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Flat roof – taken from Balcony