

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 22(1)

Chamber Ref: FTS/HPC/RP/18/1277

Title number: GLA53105

**Re: Flat 0/1, 12 Raithburn Road, Castlemilk, Glasgow, G45 9RP
("The House")**

The Parties:

**Eamon Lafferty, Glendevon House, Carlisle Road, Lesmahagow, Lanark ML1
OHU and 35 Glendale Avenue, Airdrie ML6 8DA
("the Landlord")**

Tribunal Members:

Susan Christie (Chairing /Legal Member);

Lori Charles (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purpose 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 of the available evidence, determined that the Landlord has not failed to comply with the duty imposed by Section 14(1) (b) of the Act. The Tribunal's decision is unanimous.

Background

1. By application received on 30 May 2018, the Former Tenant applied to the Housing and Property Chamber under section 22(1) of the Housing (Scotland) Act 2006 for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
2. The application specifically stated that the Former Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and that the Landlord had failed to ensure that the House is wind and watertight and in all other respects reasonably fit for human habitation and that any fixtures, fittings and

appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

3. The detail of the complaint being that the House was not wind and watertight as there was mould and damp in the house, the toilet seat was broken, and the bathtub tiles were not properly fixed.
4. The Former Tenant stated that work required to be carried out at the House following upon the issues being reported to the letting agent for the landlord and that he had incurred expense himself in attempting to treat the mould, paying £115 for a mould specialist.
5. By Minute dated 10 July 2018, a Convenor of the Tribunal, with delegated powers, decided to refer the application to a Tribunal.
6. By virtue of a Minute of Continuation dated 10 July 2018, the Convenor with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 23A of the Act decided to continue to refer the Application for a Determination.
7. This was relayed in writing to the Landlord on 12 July 2018 when intimation of Notice of Referral, Inspection and Hearing was issued to him at both addresses. He was advised the Inspection of the House was to take place on 22 August 2018 at 10am when he must ensure access is provided.
8. A response was received with a written representation from the Landlord dated 14 July 2018 when it became clear that the joint owner and joint Landlord, Eleanor Lafferty was deceased.
9. A Direction (first) dated 29 July 2018 was issued on 16 August 2018 to the Landlord which included a request for information and confirmation around access being given and by whom.
10. The Landlord was advised on 14, 20 & 21 August 2018 that the Tribunal expected access to be given. Following further correspondence from the Landlord intimating that the Landlord did not have the keys, the Tribunal decided to adjourn the Inspection and the Landlord was advised on 22 August 2018 at 9.16 a.m.
11. Intimation of a further date arranged for Inspection and Hearing for 10 October 2018 at 10 a.m. and 11.30 a.m. respectively was intimated on the Landlord on 23 August 2018 at both addresses.
12. A Direction (second) was issued to him on 23 August 2018 which required the Landlord to provide the Tribunal with written confirmation that he had secured access to the House and had possession of the keys and clarification as to who would provide access to the Tribunal, all to be given by close of business on 20 September 2018. The Landlord did not comply with the Direction by the specified date.

13. The Landlord was written to further on 25 September 2018 to hasten his response. He emailed the Tribunal office on 25 September 2018. He was e-mailed in response on 26 September 2018 with copies of all relevant communications and again hastened to respond to confirm who was to provide access a response required by return.
14. On 8 October 2018 the Landlord e-mailed the Tribunal office but did not confirm access would be given. He indicated his solicitor had requested the keys. No evidence of this was produced. He was advised by e mail on 9 October 2018 at 12.14 that the Tribunal would attend on 10th and expected access to be given.
15. The Tribunal Members and Clerk attended outside the House on 10 October 2018 at 9.45 a.m. No other person was in attendance. At 10am access was sought by operating the secure access buzzer for the House. There was no response. Entry to the common close was facilitated by use of the service option. Access was sought again this time by use of the letterbox on the front door of the House. There was no response and access was not given. Inspection of the exterior of the House suggested it was empty and unoccupied. The Tribunal waited outside the House for a further time before leaving.
16. Further Notice of a new date for Inspection and Hearing was issued to the Landlord with a Notice of Required Entry.
17. On 10 October 2018, the Tribunal found that the Landlord had failed to facilitate access to the House for Inspection and issued a Decision of Non-Entry.
18. By e-mail dated 15 October 2018, received by the Tribunal on the same date, the Landlord applied in writing to the Tribunal for permission to appeal the said Decision asserting that he was not the Landlord for the House.
19. A Direction dated 24 October 2018 was issued to the Private Landlord Registration Unit of Glasgow City Council requiring information and documentation pertaining to the House and the Landlord. On 9 November 2018 a response was received which showed the said Eamon Lafferty and Eleanor Lafferty to be each Registered Landlords for the House, with the registered Agent named as Countrylet Limited, 33 Abbeygreen, Lesmahagow, Lanark, ML11 0EQ.
20. The said Eamon Lafferty is and was a registered Landlord for the House and has an appointed registered Agent. He is registered on the Scottish Landlord Register with Glasgow City Council under Landlord Registration number 157407/260/26061, contact address 35 Glendale Avenue, Airdrie ML6 8DA with his Agent's details as Countrylet Limited, 33 Abbeygreen, Lesmahagow, Lanark, ML11 0EQ. Countrylet, Letting & Estate Agency, 33 Abbeygreen, Lesmahagow acted as the letting agent

when the Former Tenant took a Private Residential Tenancy Agreement over the House on 19 January 2018 under Landlord Registration number 157407/380/30210.

21. The said Eamon Lafferty was the joint owner of the House along with Eleanor Lafferty under Land Certificate GLA53105 from 12 December 2007 (the date of entry). Following the death of Eleanor Lafferty as aforesaid, he acquired full ownership of the House by reason of a survivorship clause in the title.
22. The Antisocial Behaviour etc (Scotland) Act 2004 ("the 2004 Act"), Part 8 requires registration of Landlords. It appeared, based on the preliminary information before the Tribunal, that the said Eamon Lafferty was and is a registered Landlord for the House.
23. The House was let for human habitation to the Former Tenant and was a tenancy to which the repairing standard applies: Chapter 4 of the Housing (Scotland) Act 2006, when the Application was made and proceeded under a Minute of Continuation.
24. The Decision of 10 October 2018 which was appealed related only to a Decision of Non-Entry on that date. The Landlord did not dispute that access was not given to the Tribunal that day. The fact of non-entry was undisputed.
25. Given that an Inspection and Hearing had not yet taken place due to non-entry at that time and a final Decision has not yet been made in respect of the Application, the ground of appeal raised no immediate point of law and leave to appeal was refused on 12 November 2018.
26. An Inspection was assigned for 5 December 2018 at the House at 10am and a Hearing for 11.30 am in Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow G2 8GT.

The Inspection

27. On the morning of 5 December 2018, the Tribunal attended at the House. The Tribunal inspected the House in the presence of the Landlord. The weather conditions at the time of the Inspection were wet. Photographs were taken during the Inspection and these are attached as a Schedule to this Decision.
28. The House is a two bedroomed flatted dwelling house on the ground floor of a tenement block.

The Hearing

29. Following upon the Inspection of the House, the Tribunal held a Hearing at 11.30 am in Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow G2 8GT.

30. The Landlord was present.

31. The Tribunal's preliminary findings of the Inspection were relayed to the Landlord, that is: that whilst there is likely to have been a condensation issue in the House which had caused mould found on wallpaper in the back bedroom (since dried out) the damp meter readings taken in the lounge, and two bedrooms were all within the normal range, currently. Within the bathroom the toilet seat was secure and in a reasonable state of repair and in proper working order. The tiles that had appeared to have been absent from the bath area in the photographs lodged by the Former Tenant in the supporting documents, were now securely re-fixed to their position and were sound.

32. The Landlord provided background information explaining that he had been unaware of the lease with the Former Tenant and the complaints made then, as he had not dealt with the actual letting out of the House. Following upon the death of his late wife, the ownership had passed fully to him. He had great difficulty in recovering the keys to the House from the letting agent until now. He had noticed that the windows had been taped up from the inside when he had gone to the House prior to the Tribunal Inspection. He had asked for information from the Landlord Registration Section of Glasgow City Council as he wished clarification around the registration of the House and the named Landlords registered but had not yet obtained the information he sought. He understood the Tribunal position as explained to him now regarding the need to determine the Application.

The Evidence

33. The evidence before the Tribunal consisted of written evidence in the form of the Application form with the supporting documentation and all communication exchanges with the Tribunal along with the oral evidence of the Landlord.

34. The findings of the Inspection of the House that informed the Tribunal are as follows. It appeared likely that there had been a condensation issue in the House which had caused mould on wallpaper in the back bedroom (since dried out). Nevertheless, damp meter readings taken in the lounge and bedrooms were all within the normal range, currently. Within the bathroom the toilet seat was secure and in a reasonable state of repair and in proper working order. The tiles that had appeared to have been absent from the bath area, as shown in the photographs lodged by the Former Tenant in the supporting documents, were now securely re-fixed to their position and were sound.

Summary of the issue

35. The issue to be determined was whether the House meets the repairing standard as set out in section 13 (1) (a) and (d) of the Act, and whether

Landlord had complied with the duty imposed on him by section 14(1) (b) of the Act.

Findings in fact

36. The Tribunal finds the following facts to be established:

- I. The Landlord is the registered owner and registered Landlord of the House.
- II. The tenancy between the Landlord and the Former Tenant was a tenancy to which the repairing standard applies.
- III. The Tribunal carefully inspected the House on 5 December 2018 and found that the House does meet the repairing standard required under section 13 (1) (a) of the Act in respect of the matters complained of in the Application as at the date of Inspection.

Reasons for Decision

37. It was evident to the Tribunal that whilst there is likely to have been a condensation issue within the House when the Former Tenant occupied it, as at the date of Inspection there were no dampness readings taken that were any cause for concern (13(1)(a)). Within the bathroom the toilet seat was now secure and in a reasonable state of repair and in proper working order (13(1)(d)). The tiles that had appeared to have been absent from the bath area, as shown in the photographs lodged by the Former Tenant in the supporting documents, were now securely re-fixed to their position and were sound (13(1)(d)). The Landlord has therefore complied with the duty imposed by section 14 (1) (b) of the Act and has ensured that the House meets the repairing standard under sections 13(1) (a) of the Act in respect of the matters complained of in the Application. The decision of the Tribunal is unanimous.

Observations

38. The Tribunal made the following additional observations during the Inspection of the House:

- The windows of the House have a finite life and regular inspection and maintenance is needed on an ongoing basis to ensure the repairing standard is met.
- The Heat Detector in the kitchen should be re-fitted to its' casing.
- All vents should be cleared to ensure air flow. In particular, the wallpaper over the vent on the outside wall of the back bedroom should be removed and a vent should be installed in the chimney breast panel.
- The back bedroom external wall should be regularly inspected to avoid moisture build up there. This is the only wall where the moisture reading was slightly higher but still within the normal range.
- The bathroom of the House may benefit from the installation of a mechanical extractor fan.

A landlord, tenant or third-party applicant 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.

In witness whereof, these presents type written on this and the preceding six pages are executed by Susan Christie, Legal Member and Chair of the Tribunal at Glasgow on 17 December 2018 before this witness: -

G H Christie

_____witness

S Christie

_____Legal Member and Chair

_____name in full

5 Albert Drive, Glasgow G733RT Address

Glasgow, 17th December 2018
This is the Schedule of Photographs referred to in the Statement
of Decision of even date hereto, Chamber Reference: FTS/HPC/RP/18/127
S Christie

Legal member

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of Photographs



Flat 0/1 12 Raithburn Rd Glasgow

FTS/HPC/RP/18/1277

Inspection date – 5th December 2018

Weather – Wet

Bedroom 1 front facing



Moisture reading within normal range

Lounge



Moisture readings within normal range

Bedroom 2 rear facing



Slightly higher readings noted within back bedroom. Vent to outside air papered over

Bathroom



Toilet seat repaired



Tiles replaced and no evidence of dampness

Comments

Rear facing bedroom



Internal vent has been papered over within rear bedroom, External vent at rear elevation is visible.

Kitchen



Heat detector unit in kitchen requires to be fitted to ceiling



Window handle broken