

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Section 24 (1) of the Housing (Scotland) Act 2006, as amended

Chamber Ref: FTS/HPC/RP/19/2226

Title no: DMB11674

36 Craigton Avenue, Milngavie G62 7SX (“The Property”)

The Parties:-

Judy McKay, previously residing at 36 Craigton Avenue, Milngavie G62 7SX (“the former Tenant”)

Mr Barrie John McKirdy and Mrs Debbie McKirdy, residing at 49 Dumbrock Road, Milngavie G62 7RB (“the Landlords”)

Tribunal Members: Richard Mill (Legal Member) and Carol Jones (Ordinary Member)

Decision

The Property does meet the Repairing Standard. The Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is not necessary.

Background

1. By way of application received dated 16 July 2019, the former Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 24(1)(b) of the Act in respect of the property.
2. In the application the former Tenant stated that the house does not meet the tolerable standard. This is the standard specified in Section 13(h) of the Act (as amended). Specific reference was made to the Landlord having failed to address an ongoing damp problem in the property. It was stated that the former Tenant had first notified the Landlords of the problem on 15 October 2017.

3. The former Tenant moved out of the property on 12 August 2019. She is no longer a party to these proceedings. Under Schedule 2 paragraph 7(1) of the Act, the Tenant is to be treated as having withdrawn the application under Section 22 of the Act in these circumstances. A convener acting with delegated powers determined whether or not the application should be abandoned in terms of Schedule 2 paragraph 7(2) of the Act. The convener considered that the application raised health and safety issues for any future tenants and accordingly a decision was made to continue to determine the application.
4. A notice of referral was issued to the Landlords on 22 August 2019.

Inspection

5. The Tribunal inspected the property on 27 September 2019 at 10.00 am. Mr McKirdy attended at the inspection for the Landlords and directed the Tribunal Members around.

Hearing

6. Following the inspection of the Property, the Tribunal convened a hearing at 11.30 am in Glasgow Tribunals Centre, Room 112, 20 York Street, Glasgow G2 8GT. There was no attendance by the Landlords.

Summary of Issues

7. The issues to be determined by the Tribunal are whether or not the Property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
8. The Landlords do not deny that there have been issues in relation to damp at the Property. Specialist surveys and quotations had been obtained in respect of the problem. Necessary damp treatment works have now been carried out by Alliance Timber and Damp Specialists Ltd as evidenced by documents lodged by the Landlords.

Findings in Fact

9. The Tribunal makes the following findings in fact:-
 1. The Title to the subjects known as 36 Craigton Avenue, Milngavie G62 7SX is held by the Landlords. Their interest is registered on 17 April 2007 in the Land Register of Scotland under Title number DMB11674.

2. The Landlords are registered landlords with East Dunbartonshire Council.
3. The Property which is the subject of this application is an ex local authority lower 2 bedroom flat within a block of 4.
4. The parties entered into a Short Assured Tenancy Agreement commencing on 28 July 2015. The rent was specified at £700 per calendar month.
5. The inspection of the Property by the Tribunal revealed:-
 - i. There was evidence of fresh works having been carried out which were commensurate with the damp proof works described in the documents by Alliance and which the Landlords advise have been carried out.
 - ii. No visible signs of damp was found in the property. The affected areas in the living room and two bedrooms have been treated, re-plastered and freshly decorated. Limited damp meter readings were taken and some moderate levels of moisture were found at the base of the external walls in the above rooms.
 - iii. There were hard wired smoke detectors and a hard wired heat detector in the kitchen. There was a mobile battery operated carbon monoxide detector in the kitchen.
6. The Landlords have arranged for an up-to-date Gas Safety Certificate to be obtained prior to re-letting the property. There is an Electrical Installation Condition Report (EICR) from 2016 which is satisfactory.

Reference is made to the schedule of photographs taken at the time of the Tribunal's inspection which are attached herewith and referred to for their terms.

Reasons for Decision

10. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal by Mr McKirdy at the inspection.

11. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing.
12. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
13. Reference is made to the Tribunal's earlier Findings in Fact upon which the decision is based.
14. The Tribunal was satisfied that the Property meets the Repairing Standard. The levels of moisture identified at the inspection are considered to be acceptable and reflect a degree of drying out to be expected following the recent re-plastering and decoration.
15. By way of observations the Tribunal would point out to the Landlords that they should ensure that the carbon monoxide detector in the kitchen is installed in accordance with the installation guidelines on the wall or ceiling (and in accordance with the Scottish Government's statutory guidance) and that a gas safety certificate is obtained prior to any new tenant taking up occupation.

Decision

16. The Tribunal, having made enquiries 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 Property, determines that the Landlord has complied with their duty imposed by Section 14(1)(b) of the Act.

Right of Appeal

17. 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.
18. 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 page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 2 October 2019 before this witness:-

R Mill

Legal Member

M Murray

Witness

MARGARET JOHNSTONE MURRAY Name

69-71 Dalry Road Address

Edinburgh

EH11 2AA

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 36 Craighton Avenue, Milngavie
G62 7SX by the First-tier Tribunal for Scotland (Housing and Property Chamber)
on Friday 27 September 2019

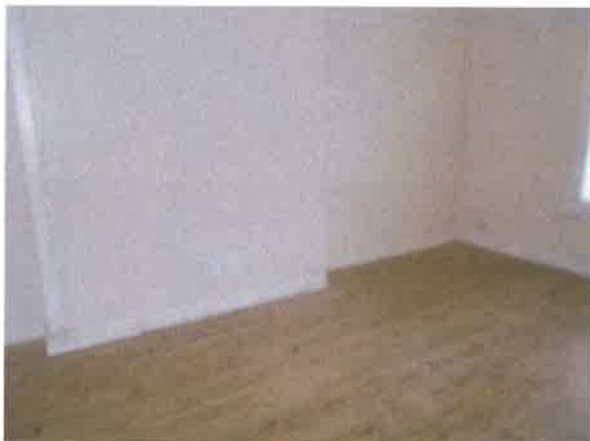
Reference Number : FTS/HPC/RP/19/2226



Front Elevation



Living Room to rear



Living Room to rear



Large Bedroom to front



Small Bedroom to front



Small Bedroom to front



Rear Elevation showing base of external wall



Front Elevation showing base of external wall