

# Housing and Property Chamber First-tier Tribunal for Scotland

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## **Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

**Case Reference Number: FTS/HPC/RP/19/2974**

**Re: Flat 51, 5 Shrubhill Walk Edinburgh EH7 4FG (“the house”)**

**Land Register Title No: MID205972**

### **The Parties:-**

**Ms Michelle Dawson, formerly residing at the house (“the former tenant”)**

**Shrubhill NHT LLP, having its registered office at 1 Hay Avenue, Edinburgh EH16 4RW (“the landlord”)**

**Tribunal Members – Sarah O’Neill (Chairperson); Geraldine Wooley (Ordinary (Surveyor) Member)**

### **Decision**

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed on it 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 said duty. The tribunal’s decision is unanimous.

### **Background**

1. By application received on 24 September 2019, the former tenant applied to the tribunal for a determination that the landlord had failed to comply with its duties under Section 14(1) of the Act.
2. In her application, which was submitted on her behalf by her then solicitor, the former tenant stated that she believed the landlord had failed to comply with its duty to ensure that the property met the repairing standard as set out

in section 13(1) (a) (b) (d) and (h) of the Act. Her application stated that the landlord had failed to ensure that:

- the house is wind and watertight and in all other respects reasonably fit for 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
  - any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
  - the house meets the tolerable standard.
3. The former tenant made a number of complaints in her application, as set out in more detail below.

1. En-suite to master bedroom:

- the en-suite had numerous defects at the beginning of the tenancy. The shower door did not close fully; the shelf unit was defective; and there was extensive damage to the walls. These issues were not remedied until July 2019.
- there is water damage in the ceiling of the en-suite which has been painted over rather than being fully repaired.
- there had been numerous holes cut in the floor which remained in this condition from 10 May 2019 until late July 2019.
- there has been a constant smell of sewage and dampness in the en-suite since the tenant took occupancy of the property. The tenant has not been able to use the en-suite due to this smell and dampness.

2. Front door- the damage to the front door was not fixed despite notice having been given to the landlord. The door has not been replaced and still has dents in it despite the landlord having carried out some remedial work in or around late July 2019.

3. Patio doors:

- the 'tilt and open' function of the doors did not operate correctly from the start of the tenancy. When the tenant attempted to tilt or open the doors, they would hang at an awkward and incorrect fashion. They were fixed in July 2019, but the doors are again beginning to drop.
- when the doors were being installed, the metal latch was bent out of shape, which resulted in a poor connection that burst the seam of the door. This was repaired in or around late July 2019 and has once again begun to come loose. The property is not wind and watertight, as a draught and water leak through the damaged seal.

4. Kitchen:
  - A noxious smell is coming from the kitchen sink and drains, which has not been remedied despite being reported to the landlord.
  - The cooker provided by the landlord is malfunctioning. The cooker fails to heat to the selected temperature and [heat] appears to be escaping from the top surface of the oven.
  - The extractor fan provided by the landlord is malfunctioning in that it intermittently activates.
  
5. Guttering: the external guttering to the property is not fit for purpose throughout the building. When it rains, the guttering overflows and penetrates through the tenant's window area.
  
4. On 9 October 2019, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. On 23 October 2019, the tribunal administration issued a notice of referral and hearing to both parties, advising that an inspection and hearing would be held on 10 December 2019, and requesting written representations by 13 November 2019. Detailed written representations were received from the landlord's agent, Touchstone Corporate Property Services Ltd, on 12 November 2019. Written representations were received from the former tenant on 19 November 2019.
  
5. The hearing and inspection fixed for 10 December 2019. That hearing and inspection were postponed at the request of the former tenant due to health reasons until 17 February 2020. The inspection and hearing were again postponed at the former tenant's request until 22 April 2020. That inspection and hearing again had to be postponed due to the Covid-19 pandemic.
  
6. The tribunal was unable to carry out an inspection due to the Covid-19 restrictions throughout the remainder of 2020. A case management discussion (CMD) was fixed for 13 January 2021, to explore whether an inspection was necessary or whether the matter could be resolved in any other way. The former tenant confirmed to the tribunal by email dated 9 December 2020 that she had vacated the house in March 2020. In her email, she stated that there were still mould and dampness issues within the house when she moved out and that it was not habitable due to these. She also stated that the house was not fireproof as the frame around it was not coated in the correct fire-retardant material. She stated that she had ended her tenancy due to concerns over these issues.
  
7. The tribunal issued a Minute of Continuation on 17 December 2020, confirming its intention to continue with the application, on the basis that it should be determined on public interest grounds due to the nature of the

alleged repairs issues and the potential effects of any future tenants/occupiers if the allegations were substantiated.

8. The tribunal issued a direction to the landlord on 17 December 2020, inviting it to submit to the tribunal in advance of the CMD any additional written representations which it wished the tribunal to consider at the said CMD, in relation to the issues raised in: 1) the tenant's original application, and/or 2) her email to the tribunal dated 9 December 2020. Further written representations were received from the landlord's agent on 6 January 2021.

### **The house**

9. While the tribunal was unable to carry out an inspection of the house, it was able to ascertain from the title deed and the information provided by the landlord's agent that it is a fifth-floor flat within a new build development, developed for the mid-market rent sector by Places for People, which is a partner in Shrubhill LLP. The contractor is Allenbuild Ltd, part of the Places for People Group.

### **The case management discussion**

10. A CMD was held on 13 January 2021 by telephone conference call. The landlord was represented by Ms Lynne Morris of Touchstone Corporate Property Services Ltd, its managing agent.
11. Ms Morris confirmed that the former tenant had left the house. She said that the landlord's agent had not become aware of this until November 2020, as the tenant had not contacted them to tell her she had moved out. The landlord had had to force entry to the house on 30 November 2020. She confirmed that there was now a new tenant living in the house.
12. Ms Morris told the tribunal that she believed the issues raised by the former tenant had now been addressed, as evidenced in the landlord's written representations of 12 November 2019 and 6 January 2021, both of which included extensive photographs and detailed inventories of the house.
13. The tribunal noted that on the basis of the evidence before it, most of the outstanding issues did appear to have been addressed. The ordinary member asked Ms Morris about three specific issues which it appeared may not have been addressed, however. These were:
  1. The alleged smell of dampness and sewage in the en-suite.
  2. Issues with the guttering, which was alleged not to be fit for purpose and to overflow when it rains, penetrating the windows in the house.
  3. The allegation that the frame around the house was not coated in the correct fire-retardant material and was therefore not fireproof.

14. While the fireproofing issue was not specifically mentioned in the former tenant's original application, the tribunal noted that she had complained that the structure and exterior of the house was not in a reasonable state of repair and in proper working order. This was a vital health and safety issue, and the tribunal therefore wished to satisfy itself that this issue had been addressed.
15. Ms Morris told the tribunal that once the landlord gained access to the property and checked for any smell of dampness and sewage in the en-suite, no problem had been found.
16. Ms Morris said that she believed that the guttering issue had been resolved. She also told the tribunal that the former tenant's particular flat had not been affected by the fire-proofing issue. She was unable to produce documentary evidence regarding these two issues immediately, but said she was confident that she could obtain these within a day or two. The tribunal directed Ms Morris to provide the documentary evidence regarding these two outstanding issues within 7 days. Once the tribunal had received this information, it would decide whether a further CMD was required to resolve the matter, or whether it was in a position to reach a decision on the basis of the evidence before it.
17. Further documentary evidence regarding these issues was received from Ms Morris on 18 January 2021. The tribunal issued a further direction to the landlord on 3 February 2021, stating that having considered this further information, the tribunal considered that it was now in a position to make sufficient findings to determine the application without the need for an inspection, a further CMD or a hearing. The direction stated that the tribunal therefore considered that it was able to make a decision on the application without a hearing in terms of rule 18 (1) of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules'). It invited the landlord to make written representations regarding the tribunal's proposal to make a decision without the need for a hearing, and to indicate whether or not it agreed to this proposal.
18. An email was received from Ms Morris on 14 February 2021, confirming that the landlord was happy for the tribunal to proceed without a hearing. The tribunal noted that the former tenant has left the house, and there is accordingly no dispute between parties as to the facts, as the landlord is now the only party to the case. The tribunal also considered that in light of the evidence before it, it would not be contrary to the interests of the landlord for it to make a decision without a hearing. The tribunal therefore proceeded to make a decision without a hearing in terms of rule 18(1) of the 2017 rules.

## **The evidence**

19. The evidence before the tribunal consisted of:
  - The application form completed by the former tenant, together with accompanying documents.

- Registers Direct copy of Land Register title MID205972, which confirmed that the house is owned by Shrubhill NHT LLP.
- Private residential tenancy between the landlord and the former tenant in respect of the house signed by the parties on 19 and 21 February 2019.
- Copy email correspondence between the tenant's former solicitor and the landlord's solicitor regarding the alleged repairs issues dated 24 June and 28 August 2019.
- The written representations received from the landlord's agent on 12 November 2019 and 6 and 18 January 2021.
- The written representations received from the former tenant on 9 December 2019.
- The oral representations of the landlord's representative at the CMD.

### **Summary of the issues**

20. 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 has complied with the duty imposed on it by section 14 (1) (b).

### **Findings of fact**

21. The tribunal made the following findings in fact:

- The house is owned by Shrubhill NHT LLP, which is the registered landlord for the house.
- The parties entered into a private residential tenancy agreement which commenced on 25 February 2019.
- The tenancy of the house is managed on behalf of the landlord by Touchstone Corporate Property Services Ltd, 1 Hay Avenue, Edinburgh EH16 4RW.
- The tenant vacated the house at some point between May and November 2020.

### **Reasons for decision**

22. The tribunal noted that the house is part of a new build block and that many of the former tenant's complaints appeared to be 'snagging' issues. The tribunal noted that in its written representations of 12 November 2019, the landlord's agent had stated in relation to several of the complaints that they had been unable to access the property to inspect these matters as the tenant had refused access to the house. The tribunal is aware that the landlord's representative made a separate application to the tribunal to exercise the landlord's right of entry to the house (Ref:

FTS/HPC/RE/20/0862), which was disposed of on 26 November 2020 because the tenant had confirmed that she had left the property.

23. As part of the landlord's written representations of 6 January 2020, Ms Morris had submitted a detailed inventory report of the house dated 8 December 2020. This had been prepared for the landlord's agent by EAS Limited once the landlord had gained access to the house following the former tenant's departure. This report contained numerous photographs of the house which showed it to be in good order throughout.
24. Ms Morris told the tribunal at the CMD that she believed the repairs issues raised by the former tenant had now been addressed. In her written representations of 6 January 2021, she pointed to photographs which she had taken on 27 November 2020 following a forced entry, and to the inventory dated 8 December 2020. She stated that the house was in good condition and that there had been no sign of dampness or other repairs issues. She also stated that prior to re-letting the house, it required no repairs and only a standard clean, and said that the current tenant had not reported any repairs or maintenance issues. The tribunal found Ms Morris to be credible in both her oral evidence and her written evidence to the tribunal.
25. It was clear from the former tenant's initial application that some of the issues with the en-suite had in fact already been resolved by the time she made her application. The tribunal did not therefore consider these issues - namely the shower door; the shelf unit; the damage to the walls; and the holes in the en-suite floor. The tribunal's findings regarding the former tenant's remaining complaints are set out below.
26. En-suite: the photographs provided by Ms Morris, together with the inventory dated 8 December 2020, showed the en-suite to be in good condition. The inventory noted no repairs issues with the ceiling, stating only that it had been newly decorated prior to the previous tenancy. The tribunal therefore determines that on the balance of probabilities, the en-suite ceiling was in a satisfactory repair and proper working order.
27. With regard to the alleged smell of sewage and dampness in the en-suite, the tribunal accepted Ms Morris's evidence that there were no signs of dampness or a smell of sewage when the landlord had obtained access to the house.
28. Front door- it appeared from the photograph provided by the former tenant with her application that this referred to the main door to the block, rather than the front door of the flat. In its written representations of 12 November 2019, the landlord's agent stated that the main door had been subject to

vandalism and had been repaired several times. It was stated that the door was now secure and did not require to be replaced. The tribunal therefore determined that on the balance of probabilities, the front door was in a satisfactory repair and proper working order.

29. Patio doors -there was no mention of any issues with these doors in the inventory of 8 December 2020. In its written representations of 12 November 2019, the landlord's agent confirmed that the doors had been repaired. It stated that the tenant had since reported further issues with the door but had been unable to obtain access to inspect the doors to ascertain whether the property was wind and watertight. Ms Morris confirmed to the tribunal at the CMD and in her written representations of 6 January 2021 that no repairs issues had been identified. The tribunal therefore determined that on the balance of probabilities, the patio doors were wind and watertight.
30. Kitchen: In relation to the three issues raised by the tenant, namely 1) a noxious smell coming from the kitchen sink and drains; 2) a malfunctioning cooker; and 3) a malfunctioning extractor fan, the tribunal notes that the landlord's agent stated in its written representations of 12 November 2019 that it had been unable to gain access to inspect these matters. There is no mention of any issues with any of these in the inventory of 8 December 2020. Ms Morris told the tribunal that there were no repairs required, and that the current tenant had not reported any issues. The tribunal therefore determined that on the balance of probabilities, there was no issue with any smell coming from the sink and drains, and that the cooker and extractor fans were in a reasonable state of repair and in proper working order.
31. Guttering: in its initial written representations of 12 November 2019, the landlord's agent stated that the developer had identified that the rainwater goods were not of a satisfactory specification and was in the process of replacing them throughout the building. In her written representations to the tribunal dated 18 January 2021. Ms Morris included an email from the project manager at Allenbuild, the builder, dated 29 January 2020, which stated that the gutters had been repaired and inspected on that date following heavy rainfall and there were no leaks. She told the tribunal that there was no evidence of water ingress to the house, and that the issue had been pooling of water on the common walkways of the building, which had now been addressed. The tribunal therefore determined that the window below the gutters was wind and watertight.
32. Finally, in relation to the former tenant's complaint about the lack of fireproofing, Ms Morris included within her written representations of 6 January 2021 a copy of a report on retrospective fire protection works within the block (Block A) at 5 Shrubhill Walk. She also provided a copy of a



standard letter to tenants in the block from the developer, Places for People, advising that it had been informed that some of the steel work forming the structure of the building needed to be coated with additional fire-retardant material, and would therefore need to inspect their home to confirm whether works were required.

33. With her written representations of 18 January 2021, Ms Morris enclosed copies of letters dated 1 August 2019 from Places for People to tenants within the block, including the former tenant, advising them that it would be carrying out fire inspections in neighbouring properties but that their flats were not affected. The tribunal was satisfied on the basis of this evidence that there was no issue with fireproofing within the particular flat which had been occupied by the former tenant.

### **Summary of decision**

34. On the basis of all the evidence before it, the tribunal determined that the landlord had not failed to comply with its duty under section 14(1) (b) of the Act. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the former tenant's application.

### **Rights of Appeal**

35. 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.
36. 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.

# S O'Neill

Signed.....  
Sarah O'Neill, Chairperson

Date...23 February 2021