



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

Statement of a Decision of the First Tier Tribunal Housing and Property Chamber regarding the Landlords' compliance with a Repairing Standard Enforcement Order in terms of Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/20/2488

468 1f2 Lanark Road, Edinburgh EH14 5BQ ("the property")

The Parties:-

Ms Margaret O'Brien, 468 1f2 Lanark Road, Edinburgh EH14 5BQ ("the Tenant")

Mr Alexander Lawrie, 111 Lower Richmond Road, London SW15 1EU ("the Landlord")

Tribunal Members:

Richard Mill (Legal Member) and Andrew McFarlane (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. The application is Dismissed.

Introduction

By application dated 2 December 2020, the Tenant applied to the First-tier Tribunal for Scotland, Housing and Property Chamber for determination of whether her Landlord had failed to comply with the duties imposed by section 14 of the Housing (Scotland) Act 2006 in respect of the property.

Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an inspection to assist in the determination by the Tribunal of the application. Unfortunately, this has not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, this Case Management Discussion (CMD) was arranged, in order to discuss further procedure in the case and to ascertain if an inspection is required or if other evidence is available or can be agreed.

A Case Management Discussion (CMD) was fixed to take place on 23 March 2021 at 10.00 am. Notices of Referral were issued to both parties on

16 February 2021.

Upon consideration of the application and accompanying documents the Tribunal issued a Direction on 19 February 2021. This required the Tenant to produce a selection of colour photographs to support the issues raised within the written application. This also required the Respondent to produce a copy of the current Gas Safety Certificate and a copy of the most recent Electrical Installation Condition Report (EICR). Such documents were required to be produced to the Tribunal by 16 March 2021.

In mid-February 2021 the Tribunal received correspondence from the Tenant indicating that she did not wish to continue with her application. The Tribunal considered whether or not the application should be determined or whether or not it should be abandoned, all in terms of Schedule 2, paragraph 7(3) of the Act. The Tribunal considered that the application raises issues of health and safety concern for the existing Tenant, but also for future occupiers. In the circumstances, the Tribunal determined to continue with consideration of the application and the earlier requirements for the Landlord to produce a copy of the current Gas Safety Certificate and a copy of the most recent EICR was insisted upon.

On 16 March 2021 the Landlord lodged written submissions addressing the areas of concern initially raised in the application and produced the relevant Gas Safety Certificate and EICR.

The Landlord joined the teleconference hearing personally and represented his own interests. The Tenant did not participate which was unsurprising given her earlier indication that she did not wish to insist upon her application.

Discussion

In the application it is stated that the conditions contained within subparagraphs (a), (c), (d), (e), (g) and (h) of Section 13(1) of the Act were applicable which are in the following terms:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (c) 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.
- (d) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (h) The house does not meet the tolerable standard.

There is a lack of consistency in the statements and other submissions lodged by the tenant. Photographs requested by the Tribunal from the Tenant were not produced. She chose not to pursue the application despite continuing to occupy the property. The Tribunal approached the Tenant's statements with caution in all these circumstances.

The Landlord has cooperated fully with the process. Numerous items of documentary evidence have been provided by him to support the condition of the property and the extent to which he has serviced the property using a bank of qualified tradesmen.

The Gas Safety Certificate produced by the Landlord is dated 18 June 2020 and was produced by a Scottish Gas engineer. The only gas appliance in the property is the gas central heating boiler. The Gas Safety Certificate is valid and raises no concerns.

The most recent EICR which the Landlord has in respect of the property was prepared on 10 January 2019. This raises no concerns in respect of the electrical installations. The overall condition of the installation, in terms of electrical safety is certified as 'Very Good'. The report makes reference to the hard wired smoke detectors.

The Landlord advised that a carbon monoxide detector had been installed in the property some time ago and was present at the time of the Tenant's let commencing. The suggestion made to him that it was not present caused him concern. He instructed an electrician to attend to inspect the issue. The Tenant had produced the carbon monoxide detector to him in her hand. She had removed it which seems very peculiar. Upon discussion, the electrician had then been reportedly threatened by the Tenant's son and had to leave. The Landlord ordered and had delivered a further carbon monoxide detector (evidenced) and this has been provided to the Tenant. The Tribunal accepted this detailed account and was satisfied that there is ample provision for the detection of carbon monoxide in the property.

The Landlord otherwise spoke in detail regarding the general condition of the property, including the furnishings contained therein. He explained that a previous sofa, (which did have a relevant fire label at the time of the let commencing), had been removed at the Tenant's insistence and was replaced with a new sofa. A receipt has been produced to evidence this. Due to reports of damp and moisture the matter was fully investigated and it was identified that a small water leak was ongoing in the property which was repaired. Again receipts have been produced for the investigations and work undertaken. Advice was also given to the Tenant regarding adequate ventilation. The windows are double glazed and there is no genuine basis for

the suggestion that they are not wind and watertight. Kitchen units and other such items have all been repaired on request from time to time, again which is evidenced by relevant receipts. The Tenant's complaint about no bedroom door is unfounded – the property has not had a bedroom door for many years and did not have one at the time of the let commencing.

The Tribunal was satisfied that on the basis of the documentary evidence and the oral evidence of the Landlord, that the property does meet the Repairing Standard. There were no issues or other concerns outstanding which required the Tribunal to consider that an on-site inspection was necessary.

Reasons for Decision

The Tribunal determined the application having regard to the original bundle of papers issued to parties together with the additional documents produced by the Landlord.

The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the reference at the teleconference hearing.

The Tribunal was satisfied that all components of the Repairing Standard are met. The Tribunal attached weight to the extensive documentary evidence together with the Landlord's submissions which were all unchallenged and found to be both credible and reliable. The Tribunal formed a positive impression of the Landlord and his diligent approach to satisfying his responsibilities and obligations.

Right of Appeal

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.

Effect of section 63 of the Act

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.

Signed : 
Legal Member

Date : 23 March 2021