

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/21/2415

Gin House, Callander, FK17 8LR (“the property”)

The Parties:-

Mr Dale McQueen and Mrs Veronica McQueen, Gin House, Callander, FK17 8LR (“the Applicants”)

Cambusmore Estate Trust Trustees, Cambusmore Estate Office, Callander, FK17 8LJ (“the Respondents”)

Managed Estates, The Old Laundry, Touch Road, Stirling FK8 3AQ (“the Respondents’ representatives”)

Tribunal Members:

Graham Harding (Chairman) and Andrew McFarlane (Ordinary Member)

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 Respondents have 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 Respondents’ representative at the hearing together with the written representations, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 6 October 2021 the Applicants applied to the 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 stated that the Applicants considered that the Respondents had failed to comply with their duty to ensure that the property meets the repairing standard and in particular that the Respondents had failed to ensure that: -

(a) The property was wind and watertight and in all other respects reasonably fit for human habitation.

Specifically, the Applicants complained that: -

The fence around the garden required to be replaced;
There was water ingress above the double doors in the living room.

3. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 9 November 2021.
4. Following service of the Notice of Referral the Applicants and the Respondents' representatives made written representations to the Tribunal.
5. A Case Management Discussion ("CMD") was held by teleconference on 21 December 2021. The Applicants did not attend nor were they represented. The Respondents were represented by Mr William Anderson of Managed Estates. It was confirmed at the CMD that the garden fence had been replaced. The Tribunal noted that remedial work to prevent further water ingress at the double doors was planned for early 2022 and the Tribunal determined to carry out an inspection of the property towards the end of February or beginning of March 2022.
6. The Applicants submitted further written representations to the Tribunal by emails dated 9 and 24 February 2022.
7. The Tribunal inspected the Property on the morning of 1 March 2022. Mr McQueen was present during the inspection. The Respondents' representatives did not attend. The Ordinary Member of the Tribunal took photographs of the property and prepared a report which is attached as a schedule to this decision.
8. The Respondents' representatives submitted further written representations by email dated 4 March 2022.
9. The Applicants submitted further written representations by email dated 7 March 2022
10. Following the inspection of the Property the Tribunal held a hearing by teleconference on 8 March 2022 and heard from Mr William Anderson the Respondents' representative. The Applicants did not attend nor were they represented.

The Hearing

11. By way of a preliminary matter the legal member of the Tribunal explained that although the Tribunal had taken photographs of additional areas at the property that had suffered some recent water ingress these could not form part of the Tribunal's determination of the application. The Tribunal could only consider the issues raised in the application of 6 October 2021. These were restricted to the issues relating to the garden fence and the water ingress above the double doors in the living room. The Tribunal hoped that any other issues with the property could be resolved amicably between the parties but if they could not then it would be open to the parties to seek a remedy through further applications to the Housing and Property Chamber.
12. Mr Anderson advised the Tribunal that he hoped the various issues had been resolved. He went on to say that where the new cladding had been installed above the double doors in the living room a structural beam had been fitted behind the board three up from the bottom that would allow the Applicants to re-install their electric awning without breaching the waterproof membrane. It remained the Respondents' position that the cause of the water ingress had been the installation of the awning. Mr Anderson noted from the inspection report that following the remedial work that had been carried out there were no high moisture readings in the areas that had previously been affected by water ingress. He went on to say that he had tried to send decorators round to the property to re-decorate the areas affected but that Mr McQueen had not wanted this work done until the awning had been reinstalled. Mr Anderson said that it was now his intention to deal with the other stains that had appeared at the property at the same time.
13. It was Mr Anderson's position that the repairs having been carried out the issue was now resolved.

Summary of the issues

14. The issues to be determined are whether the property is wind and watertight and in all other respects reasonably fit for human habitation and specifically whether there is water ingress above the double doors in the living room.

Findings in fact

15. The Tribunal finds the following facts to be established:-
 - The tenancy is a Private Residential Tenancy that commenced on 1 September 2019 at a rent of £1200.00 per calendar month.
 - There was water ingress above the double doors in the living room of the property prior to June 2020.
 - The Applicants contacted the building contractors, Dunsire, who applied a silicone sealant to remedy the problem.

- The Applicants installed an electric awning attached to the fascia board above the double doors in December 2020.
- The property suffered from further water ingress above the double doors in the Spring of 2021.
- The Applicants complained of livestock entering their garden due to inadequate fencing.
- The Respondents replaced the fencing in October 2021.
- The Respondents instructed a report into the likely cause of the water ingress from their building consultants, W D Harley, Callander.
- The awning was removed and repairs recommended by W D Harley carried out at the property in February 2022.
- The awning has still to be reinstalled.
- At the time of the inspection on 1 March 2022 there were no damp meter readings in the areas previously affected by water ingress above the double doors in the living room.
- The areas previously affected have still to be redecorated.

Reasons for the decision

16. The Tribunal was satisfied from the written representations submitted by the Applicants that there had been water ingress to the property above the double doors in the living room prior to the installation of the electric awning by the Applicants. The cause of this is not known nor is it certain that the application of silicone sealant remedied the issue.
17. The Applicants installed an electric awning at the property without first obtaining consent and according to the report prepared by the Respondents' building consultants, W D Harley, the silicone sealant allowed water to sit above the doors and was unable to escape. Furthermore, they suggested that the installation of the awning had contributed to the water ingress by trapping water and by piercing the waterproof membrane. Although these findings were disputed by the Applicants, they did not submit any expert evidence themselves to contradict the professional opinion provided by W D Harley. Therefore, on balance the Tribunal was satisfied that whilst the installation of the awning may well not have been the sole cause of the water ingress it may well have contributed to the problem.
18. The Tribunal acknowledges that identifying the root cause of water ingress can in some cases be difficult to ascertain. However, given the recent severe weather conditions experienced in the area that indeed apparently resulted in some water ingress elsewhere in the property it does appear to the Tribunal that the recent remedial works carried out have been successful given that no damp meter readings were recorded at the time of the inspection.
19. Although minor redecoration is still required to the area above the double doors it would seem that the Respondents are quite willing to complete this work as soon as permitted by the Applicants.

20. The Tribunal does not consider it should become involved in any dispute between the parties with regards to the reinstallation of the awning as that is clearly not a fixture of the tenancy and was apparently erected without consent. As indicated above the Tribunal would hope that any remaining issues can be resolved amicably between the parties but if they cannot then the parties can seek a remedy by way of applications to the Housing and Property Chamber but this Tribunal does not have jurisdiction to deal with them.
21. The Tribunal was satisfied that the garden fence had been replaced and that this was no longer an issue.

Decision

22. The Tribunal accordingly determined that the Respondents had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
23. The decision of the tribunal was unanimous.

Right of Appeal

- 24. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

25. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Graham Harding
Legal Member

9 March 2022
Date