

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

Property: 57 Gair Crescent, Carluke, ML8 4BX

Case Reference FTS/HPC/RP/21/2462

Ms Jacqueline Rough and Miss Sarah Ferguson, Over Whitlaw Bungalow, Selkirk, TD7 4QN (“The Landlord”)

Tribunal Members – Karen Moore (Legal Member) and Andrew Taylor (Ordinary Member)

Decision of the Tribunal

The Tribunal determined that the Landlord has not failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13(1)(a), 13(1)(b), 13(1)(d) and 13(1) (h) of the Act. The Tribunal dismissed the Application.

Background

1. By written application (“the Application”), the then tenant, Ms Wendy Gillespie, formerly 57 Gair Crescent, Carluke, ML8 4BX, applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on them by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1)(d) and 13(1) (h) of the Act.
2. The Application complained that there were holes in the kitchen and bathroom flooring, the bathroom wall was damp, the kitchen/rear door required to be repaired or replaced, there were leaks to the porch roof and the in the soffit boards, guttering and fascia of the main roof and that there were defects in the heating system and the electric shower.

Case Management Discussion (CMD)

3. In terms of the Tribunal's Covid-19 procedures, a CMD was arranged for 13 December 2021 by telephone conference call, in order to discuss further procedure in the case.
4. The CMD was intimated to the Parties. Both Parties submitted written representations in terms of the CMD intimation.
5. On the morning of the CMD, Ms. Rough on behalf of the Landlord intimated to the Tribunal that the then tenant had removed from the Property. The Tribunal had regard to the Application and the subsequent written representations and determined to continue the Application in terms of Schedule 2 Paragraph 7(3) of the Act.
6. The CMD took place on 13 December 2021 by telephone conference call. The Landlord did not take part and was not represented. Ms. Rough of the Landlord later explained that the reason for non-attendance was the ill-health of her mother.
7. The Tribunal had regard to the serious nature of the complaints as outlined in the Application and to the disputed facts as set out in the written representations. The Tribunal took the view that the appropriate course of action was to adjourn the CMD to an Inspection and Hearing and to issue the following Direction to the Landlord:-

"The Landlord is directed to submit:

- i) A current Gas Safety Certificate;*
- ii) A current Electrical Installation Condition Report (EICR) and Portable Appliance Testing (PAT) on appliances provided by the Landlord;*
- iii) Evidence that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings;*
- iv) Evidence that a heat alarm is installed in the kitchen.;*
- v) Evidence that a carbon monoxide detector is installed where there is a fixed carbon-fuelled appliance (excluding an appliance used solely for cooking)*
- vi) A current Energy Performance Certificate (EPC):The said documentation should be lodged in hard copy or by email attachment with the Chamber no later than close of business on **31 JANUARY 2022.**"*

8. The Landlord complied with the Direction in full.

Inspection and Hearing

9. The Inspection of the matters complained of in the Application took place at the Property on 15 February 2022 in accordance with the tribunal chamber's Covid-19 protocol. Following the Inspection and before the date of the Hearing, the Inspection Schedule of Photographs was issued to the Landlord.
10. The Inspection Summary and Schedule of Photographs noted the following in respect of each of the heads of complaint listed in the Application:
 - i) the kitchen and bathroom flooring appeared to have been repaired or replaced and was in good order;
 - ii) the bathroom wall appeared to be free of damp;
 - iii) the kitchen/rear door had been replaced;
 - iv) the porch roof appeared to have been repaired and was in good order;
 - v) the soffit boards, fascia and guttering of the main roof appeared to have been repaired or replaced and were in good order;
 - vi) the heating system and the electric shower appeared to be in good order
11. The Hearing took place on 22 February 2022 at 10.00 by telephone conference call. Ms. Rough of the Landlord took part.
12. The Tribunal advised Ms. Rough that it was satisfied that, at the date of inspection, the Property met the Repairing Standard.

Findings of Fact

13. The Tribunal's findings in fact were made from the Application, the written submissions and the Inspection and Hearing.
14. The Tribunal found the following matters established: -
 - a. there is a tenancy of the Property between the Parties;
 - b. the soffits, fascias and guttering to the main part of the Property are in good repair;
 - c. the roof of the porch to the Property is in good condition;
 - d. the kitchen and bathroom flooring is in good order;
 - e. the bathroom wall is free of damp;
 - f. the kitchen/rear door has been replaced;
 - g. the heating system and the electric shower are in good order

Summary of the Issues

15. The Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the

Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d) and 13(1) (h) of the Act at the date of the Inspection.

Decision of the Tribunal and reasons for the decision.

16. Having made the Findings in Fact as narrated above, the Tribunal determined that the Landlord has not failed to comply with the duty imposed on them by Section 14(1)(b) of the Act. The Tribunal dismissed the Application. The decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Signed

Karen Moore, Chairperson

22 February 2022