

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/18/0700

Property at 8B Polbeth Road, Polbery, West Calder EH55 8SR

("The Property")

The Parties:-

Michael O'Neil, formerly of 8B Polbeth Road, Polbery, West Calder EH55 8SR

("the Former Tenant")

Five Sisters Zoo Limited, Argyll House, Quarrywood Court, Livingston EH54 6AX

("the Landlords")

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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the written representations of the Former Tenant and the Landlord and the evidence led by the Landlord at the hearing, determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Debbie Scott – Surveyor/Ordinary Member

Background

1. By application received on 26th March 2018 the Former Tenant applied to the First-tier Tribunal: Housing and Property Chamber (the Tribunal) for a determination of whether the Landlords had failed to comply with their duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. In the application the Former Tenant detailed alleged deficiencies with the Property that he stated failed to meet the repairing standard, some of which did not form part of the formal notification to the Landlord. The Tribunal therefore could only consider matters contained in the application and that had been notified to the Landlord. In particular, the Former Tenant stated that he considered that the Landlord had failed to ensure that:-
 - (a) the Property is wind and water tight and in all other respects reasonably fit for human habitation.
3. By letter dated 4th May 2018 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Former Tenant.
5. Following service of the Notice of Referral, by email of 29th May 2018 the Former Tenant indicated that he would be leaving the Property on 6th June 2018. On 14th May 2018 the Landlords, through their agents sought to postpone the original inspection and hearing and that request was granted. On 13th June 2018, the Landlords' written representations were received by the tribunal. Further representations were received from the Landlords on 28th August 2018
6. The Former Tenant thereafter vacated the Property. Under schedule 7(1) of the Act, the Former Tenant is therefore treated as having abandoned the application.
7. By minute of continuation dated 12th June 2018, the tribunal decided to continue to determine the application. At the same date, the tribunal resolved to issue a direction under Schedule 1 Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 requiring the Landlords to provide the tribunal with a copy of their registered title to the Property.
8. The tribunal inspected the Property on the morning of 31st August 2018. The Landlords were present along with their representative a Fiona Stephens from Homes 4 U (Scotland) Limited during the inspection. The Former Tenant was not present at the inspection.
9. Following the inspection of the Property, the tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH. The Landlords were in attendance

along with their representative. The Former Tenant did not attend, nor could they have taken part in the proceedings.

Preliminary Issue

10 The tribunal asked the Landlords why they had not provided the tribunal with a copy of their registered title for the Property as required by the Direction dated 12th June 2018. A failure to comply with a direction issued by the tribunal is a criminal offence in terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016. In response the Landlords' representative indicated that they thought they had responded and pointed to the email they had sent to the tribunal dated 14th May 2018. In this email, the Landlords' representatives had stated whom they believed were the landlords under the tenancy agreement, but no titles were produced. The representative then explained that they had not fully understood what was being sought by the direction and had not understood that the Property was owned by the Landlords rather than some other entity. In any event, the Tribunal took the view that this was not a deliberate refusal to comply with the terms of the Direction and that the Landlords and their representatives had thought they had responded. As such no further action would be taken.

11 The Landlord submitted as follows:

- a) That the windows in the Bedroom and Living room of the Property were wind and water tight. That following complaint by the Former Tenant, the windows had been inspected by contractors and by the Landlords' representatives. That this had revealed that the Former Tenant had not been adequately ventilating the Property and had closed the "trickle vents" in the windows. That on 6th June 2018 at an inspection it had been noted that the Former Tenant was drying clothes in front of radiators whilst the vents were closed.
- b) That the windows in the Property were all relatively new having been installed in August or September of 2017.
- c) That any condensation was caused as a result of the Former Tenant's lifestyle and a failure to adequately ventilate the Property.
- d) That the new tenant for the Property had reported no issues of condensation and that other tenants within the building that the Property forms part (and had been converted at the same time) had not complained of any issues of dampness or condensation.

Summary of the issues

12. The issue to be determined is whether:

- a) the Property is wind and water tight and in all other respects reasonably fit for human habitation.

Findings In Fact

13. The tribunal finds the following facts to be established:-

- The tenancy was a short-assured tenancy that commenced on or around 6th October 2017 and ended on or around 6th June 2018.
- The Property is a ground floor flatted dwelling within a two-storey former commercial building. The roof structure is pitched hipped and overlaid with slates. It was converted to residential use on or around August 2017. The Property has new UPVC double glazing throughout. All windows were fitted with trickle vents. The accommodation comprises of one bedroom, one bathroom, a living room and separate kitchen with all rooms accessed off each other or an internal hall space.
- The Property is served by electric central heating and radiators in each room.
- That damp meter readings taken in all apartments showed no evidence of penetrating or rising damp.
- That the windows were wind and watertight and there was no evidence of any leaks.
- There was no evidence of mould growth within the Property.
- Any previous reported condensation or dampness within the Property would likely have been as a result of the Former Tenant failing to adequately heat and ventilate the Property.

Reasons for the decision

14. Given the tribunal's findings on inspection and taking into account the application form, written submissions from the Landlord as well as their submissions at the hearing, the tribunal was satisfied that the Property is wind and water tight and in all other respects reasonably fit for human habitation for the following reason:

- By using a damp meter and taking readings from each from each apartment within the Property the tribunal could find no evidence of any dampness or condensation

- On inspection of the windows in the Property, there was no evidence of any leaks and the windows appeared to function properly and were fitted with trickle vents.

Decision

15. The tribunal accordingly determined that the Landlords have complied with the duty imposed by Section 14 (1)(b) of the Act.
16. The tribunal therefore declined to make a Repairing Standard Enforcement Order (RSEO) under section 24(1).
17. The decision of the tribunal was unanimous.
18. The Ordinary Surveyor Member of the tribunal took several photographs which form the schedule attached to this decision.

Right of Appeal

- 19 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.
- 20 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.

R Cowan

Signed

Date 14th September 2018.....

Chairperson