

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 following a decision in terms of Rule 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Case Reference FTS/HPC/RP/21/1919

Property: 1 /2, 12, Ritchie Street, Millport, Isle of Cumbrae, North Ayrshire, KA28 0AL (“the Property”)

Douglas Murray CCMS(1984) Ltd., Crossford Mill Business Centre, Beith Road, Kilbarchan, Johnstone, Renfrewshire, PA10 2NS (“The Landlord”)

Tribunal Members – Karen Moore (Legal Member) and Kingsley Bruce (Ordinary Member)

Background

1. By written application (“the Application”), the then tenant, Jason Neil, formerly residing at the Property, 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)(c), 13(1)(f) and 13(1) (h) of the Act.
2. Under normal circumstances, the Tribunal would carry out an Inspection and hold a Hearing to ascertain the condition of the Property. This has not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a CMD was arranged for 17 December 2021 by telephone conference call, in order to discuss further procedure in the case.
3. Prior to the CMD, 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.

4. The Tribunal invited the Landlord to submit photographs of the Property to assist at the CMD, which the Landlord did.

Case Management Discussion (CMD)

5. The CMD took place on 17 December 2021 by telephone conference call. The Landlord took part and was not represented.
6. The Landlord explained to the Tribunal that the Property is a first floor flat in a block of a total of seven flats in a building which had been converted to flats in the mid -twentieth century. The Property is accessed by a common stair, both external and internal. The common part share is thirteenth and the Landlord, who owns another flatted property in the building, has a three-thirteenth share. He explained that the building had undergone a significant refurbishment including reroofing and rewiring around ten years ago. He confirmed that the building comprises a ground, first and attic floors and is of stone construction with a tile roof.
7. With regard to the Application, the Landlord explained that the Property is undergoing an upgrade and redecoration at present and referred to one of the photographs which he had lodged.

Outcome of CMD and Issue of Directions

8. The Tribunal, having discussed the appropriate actions with the Landlord, took the view that the appropriate course of action was to adjourn the CMD to a further CMD to allow the Landlord to complete the works to the Property and to evidence this to the Tribunal.
9. The Tribunal took the view that the issue of a Direction would assist its consideration of the Application and so issued the following Direction:

“The Landlord is directed to submit:

1. *A current Gas Safety Certificate;*
2. *A current Electrical Installation Condition Report (EICR) and Portable Appliance Testing (PAT) on appliances provided by the Landlord;*
3. *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;*
4. *Evidence that a heat alarm is installed in the kitchen.;*
5. *Evidence that a carbon monoxide detector is installed where there is a fixed carbon-fuelled appliance (excluding an appliance used solely for cooking)*
6. *A photographic schedule dated to show the dates on which the photographs are taken of the following:*

- i) *The Kitchen, including the kitchen sink area, the plumbing under the sink and the power points in the kitchen;*
- ii) *The Shower Room, including the wall and flooring areas surrounding the shower cubicle and the shower cubicle itself;*
- iii) *The ceilings throughout the Property to indicate if there are signs of dampness and*
- iv) *The Common Stairway to show the treatment and finish of the treads and the thresholds at the doors*

*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.***

- 10. By email received on 3 February 2022, the Landlord complied with the Direction save for submission of a current EICR and PAT on appliances provided by the Landlord and evidence of completion of the plumbing at the kitchen sink. Therefore, the Tribunal issued a further Direction extending the time limit for compliance to 21 March 2022.
- 11. By email dated 18 March 2022, the Landlord complied with the further Direction and, in addition, provided documentary evidence that the Property is being marketed for sale.

Issue for the Tribunal

- 12. In these proceedings, 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 Section of the Act, if the Tribunal is able to make that determination without the need for an Inspection and if the Tribunal is able to make that determination without the need for a Hearing.
- 13. From the information before it, the Tribunal was satisfied that it could make the determination without the need for an Inspection. The Tribunal then had regard to Rule 18 of the Rules which states: "*(1) Subject to paragraph (2), the First-tier Tribunal(a) may make a decision without a hearing if the First-tier Tribunal considers that (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and (ii) to do so will not be contrary to the interests of the parties;(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*"
- 14. The Tribunal took the view that, there being no tenant applicant to the proceedings, the facts of the case are not in dispute and that the Tribunal is able to make sufficient findings to determine the case. The Tribunal then considered the position of the Landlord and his written representations that he intends to sell the Property and took the view that making a decision without a Hearing will not be contrary to the interests of the Landlord.

15. Accordingly, the Tribunal proceeded to determine the Application without a Hearing.

Findings of Fact

16. The Tribunal's findings in fact were made from the Application, the CMD and the Landlord's compliance with the Directions.
17. The Tribunal found the following matters established: -
 - a. There had been a private residential tenancy of the Property;
 - b. The matters complained of in the Application in respect of the kitchen being leaks at the kitchen sink, issues with the electrical points and the microwave being situated under the kitchen sink have been remedied and a new kitchen has been fitted;
 - c. The leak at the shower as complained of in the Application has been repaired;
 - d. The Application complained of the poor condition of the common stairways, the lighting and the lack of a handrail as complained of in the Application have been repaired, replaced or remedied;
 - e. There is a current Gas Safety Certificate;
 - f. There is a current EICR for the Property and a PAT is not required;
 - g. There are compliant smoke alarms in the Property;
 - h. There is a compliant heat alarm installed in the kitchen of the Property and
 - i. There is a compliant carbon monoxide detector installed in the kitchen of the Property.

Decision of the Tribunal and reasons for the decision.

18. In respect of the complaint that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1)(c), 13(1)(f) and 13(1) (h) of the Act, the Tribunal, having made the foregoing Findings in Fact found that the Property meets the Repairing Standard and so found that the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
19. The decision is unanimous.

Appeal

20. 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.

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.

Karen Moore, Chairperson

31 March 2022