

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision: Housing (Scotland) Act 2006 Section 24 (1)**

**HOUSE AT: Flat 3 102 Willowbrae Road, Edinburgh EH8 7HW**

**Case Reference FTS/HPC/RP/18/148**

Miss Stacey Lynch formerly residing at Flat 3 102 Willowbrae Road, Edinburgh EH8 7HW ("The Tenant")

Mr Walter Milne, Newmilne House, Dundee DD3 0RW ("The Landlord")

### **The Tribunal comprised:-**

Ms Gabrielle Miller	-	Legal Member
Mr 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 Landlord has complied with the duty imposed by Section 14(1)(b) in relation to the Property, determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.**

### **Background**

1. By application received on 17<sup>th</sup> January 2018, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that he considered that the Landlord had failed to comply with his duty to ensure that the House met the repairing standard in that the house is not wind and watertight and in all

other respects reasonably fit for human habitation. In particular, the complaints consisted of:-

- a) Leaks which are permeating the main bedroom meaning that the tenant was not able to occupy the room and had to share with her son; and
  - b) Cracks allowing leaks to seep through which prevented the Tenant enjoying full use of the Property.
3. By minute dated 19<sup>th</sup> February 2018 the President intimated a decision to refer the application under Section 23(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 the Landlord, the Tenant and the Landlord's Agents dated 8<sup>th</sup> March 2018.
5. A date was set for both the inspection and hearing on 19<sup>th</sup> April 2018.
6. On 19<sup>th</sup> March 2018, the Tenant's agent withdrew from acting. The Tenant was contacted to confirm her position. The Tenant did not have other representation and had not been aware of the withdrawal of representation. She advised that on that 19<sup>th</sup> April 2018 and would not be present to allow access to the House for the inspection.
7. A further date was set for the hearing on 7<sup>th</sup> June 2018. The Tribunal attended for the inspection along with Ms Jennifer Caldwell, solicitor for the Landlord. The Tribunal gave several audible knocks but there was no response at the door of the House. The Tribunal then left for the hearing. The Tenant did not attend the hearing. Ms Caldwell attended the hearing and advised of a Case Management Discussion for a Private Rented Sector case that was due to call on 27<sup>th</sup> June 2018. The purpose of this case was to remove the Tenant from the House. A motion for expenses was made and refused.
8. On 11<sup>th</sup> December 2018, the Landlord's solicitor confirmed that the Tenant had left the property in August.
9. A further inspection was set for 20<sup>th</sup> September 2018. On 19<sup>th</sup> September 2018, the Landlord's solicitor was contacted to confirm access to the property. It was confirmed that the Landlord was on holiday abroad and would not be able to give access to the property. The inspection and hearing was postponed to allow the Tribunal to gain access to the House.
10. A further inspection and hearing was set for 13<sup>th</sup> December 2018.

## **The Inspection**

11. The Tribunal attended the property on the morning of 13<sup>th</sup> December 2018. Ms Caldwell was present to allow entry to the House and act on behalf of the Landlord. It was a cold dry day during the inspection.
12. The House is a first floor flat in a two-storey villa now subdivided to provide a number of self contained flats. The Property is located in the residential district of Willowbrae. It is about 2 miles east of Edinburgh City Centre. It is in an urban setting. The accommodation comprises of a sitting room, two bedrooms (one with en suite), a kitchen, a bathroom and hall. Access to the House is via a carpeted entrance vestibule. There are six other similar flats in the block.
13. The House was unoccupied and unfurnished with new carpeting. The gas central heating was not operating and the property was cold. The windows were of a traditional style and single glazed.
14. The master bedroom was inspected first. It had a new carpet with newly decorated walls and ceiling. There were no signs of damp or any other issues. The en suite was in a clean and good condition, it looked new and modern. There was no smoke alarm in this room
15. The second bedroom was inspected next. It had a new carpet with newly decorated walls and ceiling. There were no signs of damp or any other issues. There was no smoke alarm in this room
16. The kitchen was inspected next. It had new flooring with newly decorated walls and ceiling. Kitchen units looked new and it was in a clean and good condition. There was no smoke or heat alarm in the kitchen. There was no carbon monoxide detector. The boiler was located in this room. It appeared to be in good condition.
17. The bathroom was inspected next. It had new flooring with newly decorated walls and ceiling. The bathroom suite looked new and it was in a clean and good condition.
18. The living room was inspected next. It had new a new carpet with newly decorated walls and ceiling. There was no smoke alarm in the living room.
19. The hall was inspected next. The main entrance door opens directly onto the stair from the shared entrance hall. It had a new carpet and with newly decorated walls and ceiling. It was noted that there were wires appearing to be from a hard wired smoke alarm but the smoke alarm unit had been taken off.
20. Damp readings were taken and were within the normal range.
21. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.

22. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

### **The Hearing**

23. The hearing took place at George House, George Street, Edinburgh. Only the Landlord's Agents were present.

24. The Landlord's Agents confirmed that all the work pertaining to the application had been completed but noted that there were still tools in the kitchen so the smoke alarm in the hall may be due to be reinstalled. She was able to show the Tribunal a picture of damp on the ceiling and walls of the property. None of this was apparent at the inspection as work had been carried out to correct this.

### **Summary of the issues**

25. The issues to be determined are:-

- a) Whether leaks are permeating the main bedroom meaning that the Tenant was not able to occupy the room and had to share with her son; and
- b) Whether cracks are allowing leaks to seep through which prevented the Tenant enjoying full use of the Property.

### **Findings of fact**

26. Having considered all the evidence, the Tribunal found the following facts to be established:-

- a) The tenancy is a short assured tenancy between the Landlord and the Tenant. The tenancy commenced on 2<sup>nd</sup> November 2009.
- b) The Tenant moved out of the House in August 2018.
- c) The walls and ceiling were in a good condition having been recently being decorated. There was no dampness and no cracks apparent.

### **Reasons for the decision**

27. The Tribunal determined the application having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the evidence of the Tenant and Landlord's Agents.

28. 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 application.

29. The Tribunal was satisfied that all the points raised in the application had been dealt with by the Landlord and that there were no outstanding issues. The Tribunal was satisfied that the Repairing Standard was met and that no further orders were necessary.

#### **Decision**

- (a) The Tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal did not need to issue any further orders.
- (c) The Tribunal did not need to take any further action.
- (d) The decision of the Tribunal was unanimous.

#### **Observations**

It was observed by the Tribunal that there were no smoke, heat or carbon monoxide alarms in the House.

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.

G Miller

G Miller, Chairperson and Legal Member

24th January 2019