



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.

Chamber Ref: FTS/HPC/RP/20/0323

66 Cables Drive, Alexandria, G83 9EN (“the Property”)

The Parties:-

Michelle Carmichael (“the former Tenant”)

Tadeusz Bartosewicz and Aleksandra Bak- Bartosewicz residing at 16 Dalskeith Avenue, Paisley, PA3 1AF (“the Landlords”)

Tribunal Members:

Jacqui Taylor (Chairman) and Nick Allan (Ordinary Member)

Background

1. The Tenant leased the Property from the Landlords in terms of the lease between the parties, which had been produced. The Tenant applied to the Tribunal for a determination of whether the Landlords has 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 she considered that the Landlords has failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order; the fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and proper working order; any furnishings provided by the Landlords under the tenancy are not capable of being used safely for the purpose for which they are designed and the Property does not meet the tolerable standard.

In particular the application stated :-

- 2.1 gutter repairs
- 2.2 laminate flooring
- 2.3 Living room window does not open
- 2.4 Kitchen renewal and defective lighting

- 2.5 Bathroom repairs or renewals
- 2.6 Fence renewal
- 2.7 Trees cut for safety reasons
- 2.8 Wall repaired for safety
- 2.9 Windows repaired cracked rotten

3. On 7th February 2020, Maurice O'Carroll, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received between 30th January 2020 and 4th February 2020 and he referred the application under Section 22 (1) of the Act to a Tribunal.

4. On 14th December 2020 the Applicant sent the Tribunal Administration an email advising that she no longer resided in the Property.

5. The First Case Management Discussion

5.1 This case called for a conference call Case management Discussion (CMD) at 10.00am on 21st January 2021.

The Tenant did not attend but as she was no longer a Tenant of the Property she was no longer a party to the application.

The Landlords did not attend. The Tribunal Administration had sent them an email on 9th December 2020 advising them of the CMD. Accordingly the Tribunal was satisfied that the terms of Tribunal Rule 29 had been met and proceeded with the Case Management Discussion.

5.2 The Tribunal had received confirmation from the Tenant that the tenancy of the Property has been terminated, and accordingly the Tribunal acknowledged that under Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 ("The Act"), the Tenant is to be treated as having withdrawn the application under Section 22(1) of the Act. The Tribunal then considered the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act;

The Tribunal noted that the Tenant had sent the Tribunal email correspondence which referred to lights in the kitchen flickering (email dated 6th July 2020). As the application concerned health and safety considerations the Tribunal decided to continue to determine the application.

5.3 The Tribunal also acknowledged that under normal circumstances, they would arrange for the Ordinary Member to carry out an inspection to assist in the determination by the Tribunal of the application. Unfortunately, by the time of the First Case Management Discussion (CMD) this has not been possible, due to the continuing effects of the COVID-19 pandemic. Consequently the First CMD was arranged in order to discuss further procedure in the case and

to ascertain if an inspection is required or if other evidence is available or can be agreed.

5.4 In the circumstances, and given the Tribunal's statutory role, and as the Landlords had not attended the CMD the Tribunal decided that it was necessary to arrange an inspection in order for the Tribunal to decide if the Property complies with the Repairing Standard, in respect of the matters detailed in the application.

6. Inspection

The Tribunal attended at the Property at 11.30 am on 22nd June 2021. The Landlords were present at the inspection.

The Property 66 Cables Drive, Alexandria, G83 9EN is a two storey semi - detached villa. The accommodation comprises 2 bedrooms, open plan living /dining kitchen, study and bathroom.

The Tribunal inspected the alleged defects and found:-

(i) Gutter repairs.

The gutters were in a reasonable state of repair. There was no evidence of leaking gutters or staining on the roughcasting/ paint work below the gutters which indicates that they are in proper working order.

(ii) Laminate flooring.

The laminate flooring in the living area is in a reasonable state of repair. However, whilst the Tribunal noted that the condition of the kitchen lino is not part of the application they noted that a small section of lino had become detached, could be a tripping hazard and should be secured.

(iii) Living room window does not open.

The living room window opened, closed and operated correctly and was in proper working order.

(iv) Kitchen renewal and defective lighting.

The kitchen units had been recently installed and were in a good condition. The kitchen lighting had been reconfigured and was in working order.

(v) Bathroom repairs or renewals

The bathroom was in good condition.

(vi) Fence renewal

The garden fencing was secure.

(vii) Trees cut for safety reasons

The trees in the garden had been pruned.

(vii) Wall repaired for safety

The driveway garden wall to the front of the Property had been demolished.

(viii) Windows repaired cracked rotten.

The windows were not cracked and did not appear to be rotten. The windows appeared to be in a reasonable state of repair with no apparent defects.

Photographs were taken during the inspection and are attached as a Schedule to this Decision.

7.Second Case Management Discussion

7.1 This case called for a conference call Case management Discussion (CMD) at 10.00am on 29th June 2021.

The Tenant did not attend but as she was no longer a Tenant of the Property she was no longer a party to the application.

The Landlords attended.

In relation to the items in the application Mr Allan and Mrs Bartosewicz made the following representations:

(i) Gutter repairs

Mr Allan confirmed that there was one section of the front gutter that is running away off-the-level but overall they appear to be in a satisfactory condition.

Mrs Bartosewicz explained that she considered the gutters to be in working order. She explained that they had recently lifted one section of the gutter as there was a birds nest, she suggested that this may be the reason that part of the gutter was off line.

(ii) Laminate flooring

Mr Allan advised that he had no issues with the condition of the laminate flooring. He pointed out that there was a section of the lino in the kitchen that may be a tripping hazard

Mrs Bartosewicz explained that they are in the middle of refurbishing the kitchen and the lino is temporary.

(iii) Living room window does not open

Mr Allan confirmed that the window operated correctly at the inspection.

Mrs Bartosewicz made no comments.

(iv) Kitchen renewal and defective lighting

Mr Allan advised that the kitchen has been reconfigured and refurbished. The lighting has also been reconfigured and was operational.

Mrs Bartosewicz made no comments.

(v) Bathroom repairs or renewals

Mr Allan advised that the bathroom is in reasonable working order.

Mrs Bartosewicz made no comments.

(vi) Fence renewal

Mr Allan advised that the fence was in reasonable order and there was no evidence of any damage to the fence.

Mrs Bartosewicz made no comments.

(vii) Trees cut for safety reasons

Mr Allan advised that the trees had been loped and pruned and there was no evidence of them being otherwise unsafe.

Mrs Bartosewicz explained that the trees had been pruned to allow more light into the garden not because they considered them to be unsafe.

(viii) Wall repaired for safety

Mr Allan advised that the wall had been demolished and no longer exists, but noted that the demolition rubble remained.

Mrs Bartosewicz explained that they had removed the wall to create more space.

(ix) Windows repaired cracked rotten

Mr Allan advised that the windows operated correctly and appear to be in reasonable order.

Mrs Bartosewicz explained that she is happy with the condition of the windows.

8. Decision

In relation to the items detailed in the application, namely:

- (i) Gutter repairs
- (ii) Laminate flooring
- (iii) Living room window does not open
- (iv) Kitchen renewal and defective lighting
- (v) Bathroom repairs or renewals
- (vi) Fence renewal
- (vii) Trees cut for safety reasons
- (viii) Wall repaired for safety
- (ix) Windows repaired cracked rotten

the Tribunal determined that none of the items breached the repairing standard and the Landlords had complied with the duties imposed by Sections 13(1) and 14 of the Housing (Scotland) Act 2006, in respect of the matters detailed in the application.

9. The decision of the Committee was unanimous.

10. Appeal

A landlord, tenant or third party applicant 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.

J Taylor

Signed

Chairperson

29 June 2021