

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/18/0479**

**Title no: MID64736**

**25/14 Fowler Terrace, Edinburgh EH11 1DP (“The Property”)**

**The Parties:-**

**Mr Sandeep Chowdhry, residing at 25/14 Fowler Terrace, Edinburgh EH11 1DP (“the former Tenant”)**

**Mr Shaun Byrne and Mrs Audrey Byrne, 98 Whitehaugh Park, Peebles (“the Landlords”)**

**Tribunal Members: Richard Mill (Legal Member) and Robert Buchan (Ordinary Member)**

### **Decision**

The Property does meet the Repairing Standard. The Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

### **Background**

1. The former Tenant lodged application with the Tribunal complaining that the Property did not meet the repairing standard. The initial application form referred to issues in terms of Section 13(a) and (d) of the Housing (Scotland) Act 2006 (“the Act”). It was clear from the accompanying information that complaints were also raised in respect of Section 13(1)(b) and an amended version of the former Tenant’s application was thereafter received making this clear. Accordingly the issues put at issue in the application are:-
  - Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.

- Whether the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
  - Whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
2. The former Tenant who brought the application had subsequently terminated the tenancy and vacated the Property in mid-March 2018. Notwithstanding this the Tribunal considered consideration of the application given the issues which it raised and having regard to the potential adverse impact upon any future tenants occupying the Property.

### **Notices of Referral, Inspection and Hearing**

3. Notices of Referral, Inspection and Hearing were issued to parties on 20 April 2018.

### **Inspection**

4. The Tribunal inspected the property on 30 May 2018 at 10.00 am. The new tenant in the Property had given permission to the Landlord's agent to allow the Tribunal Members to carry out the inspection. Mr Derek Rowland of Braemore Lettings showed the Tribunal Members around the Property.

### **Hearing**

5. Following the inspection of the property, the Tribunal convened a hearing later the same day at 11.30 am within Room D8, George House, 126 George Street, Edinburgh EH2 4HH. The only attender was Mr Derek Rowland.

### **Summary of Issues**

6. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
7. The former Tenant reports that upon taking up occupation he highlighted issues with the repair of the Property. He recorded these within the inventory checklist though had been assured that remedial repairs would be undertaken. This included re-decoration due to what he understood to be historical water ingress from the roof. In the application the former Tenant raised:-

- The bedroom window was stated not to be wind and watertight and following complaints certain repairs have been undertaken but these have not been successful.
- Re-decoration still requires to be undertaken to former water ingress from the roof. The former Tenant also questioned whether or not water ingress continues.
- The fixtures in the bathroom were complained about due to rusting.
- Mould around the wooden frames of the windows was complained about.
- The window lock mechanism in the open plan lounge/kitchen was stated to be broken.

### **Findings in Fact**

8. The Tribunal makes the following findings in fact:-

1. The Title to the subjects occupied by the former Tenant is held by the Landlords whose interest is registered in the Land Register for the County of Midlothian, Title number MID64737 on 22 October 2012.
2. The Property which is the subject of this Application is a top floor one bedroom flat within a traditional tenement in central Edinburgh.
3. The parties entered into a Short Assured Tenancy for an initial period of 6 months commencing 18 April 2016. At that time the Landlords' agent was Click-let Ltd. The Landlords' agent is now Braemore Lettings.
4. The Tribunal's inspection revealed:-
  - i. All of the fixtures and fittings within the bathroom of the Property were serviceable, in working order and fit for purpose. Some residual rusting was found to a small number of components - the shower curtain rail, the toilet holder and the towel rail. This was within normal parameters typically seen within internal bathroom areas which are not being kept moisture free. The extent of the rusting is not adversely affecting the enjoyment of any tenant and although unsightly meets the requirements of the Act.

- ii. All of the windows in the Property (a double window in the living room and a single window in the bedroom) were double glazed despite the former Tenant's suggestion that the bedroom window was a single glazed unit only. All the window units were found to be airtight. All the windows were lockable. No mould was found surrounding the windows. The lower window unit on the north side living room window was found to have moisture within it, but this was not a subject of complaint.
  - iii. Evidence of historical water ingress was found to the front elevation of the Property in both the living room and bedroom within the adjoining corners. There was also evidence of historical water ingress on the ceiling above the kitchen area of the open plan living room/kitchen. Damp meter readings indicated no moisture. The areas were found to be dry.
  - iv. The gutterings and stonework externally were found to be dry with no obvious signs of defects.
  - v. The Property was found to have fully compliant detectors for fire and carbon monoxide.
5. Reference is made to the Schedule of Photographs taken at the time of the Tribunal's inspection which is attached herewith and referred to for their terms.

### **Reasons for Decision**

- 9. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal at the hearing.
- 10. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing on 30 May 2018.
- 11. The Tribunal was satisfied having regard to all of the available evidence and having sufficient information and material with which to reach a fair determination of the reference.
- 12. Reference is made to the Tribunal's findings in fact upon which this decision is based.

13. The presentation of the components in the bathroom which had been complained of speak for themselves. Their condition does not breach the Repairing Standard.
14. The former Tenant's complaints in respect of the windows were found to be unfounded. Notwithstanding this, the Landlord's agent produced documentation confirming that a window report had been undertaken and certain remedial works recommended to improve their condition. Those works are to be carried out and authorisation has already been obtained from the Landlord.
15. A specialist report on the former water ingress had been made available in the original bundle bearing a date of 19 April 2016, now some 2 years of age. This indicated at the time that the water damage was likely to be historical and issues remedied as a consequence of roof works having been carried out, including the clearing of common gutters, which work was carried out in February 2016. The Landlord's representative produced an up-to-date specialist report dated 16 May 2018 which confirmed the same findings, but recommended that remedial work be undertaken to treat any adverse consequences of the former water ingress, including the treatment and replacement of any rotten timbers.
16. The Landlord's representative indicated that he had not obtained clear approval by the Landlord to carry out the recommended specialist works. He had however been authorised to have re-decoration work carried out, which again was the subject of a clear specification from a qualified decorator.
17. The Tribunal found that the Property in its current condition does not breach the Repairing Standard. The Property is wind and watertight. The structure and exterior of the Property is in a reasonable state of repair and in proper working order.
18. Whilst the Tribunal is satisfied that the re-decoration works will be carried out which will improve the aesthetic condition of the Property, the Tribunal would recommend that the specialist work recommended most recently by Kuritol Preservation Ltd be carried out. This ultimately is a matter for the Landlord, but by not carrying out the specialist works this may lead to further additional expense by requiring to re-decorate more than once.

### **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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the Tribunal at Edinburgh on 31 May 2018 before this witness:-

R Mill

\_\_\_\_\_ Legal Member

M J Murray

\_\_\_\_\_ Witness

MARGARET JOHNSTONE MURRAY Name

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