

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/18/0640

31/3 Parkside Terrace, Edinburgh, EH16 5XP
("the Property")

The Parties:-

Mr Jack Watson and Ms Georgina Cornes, formerly residing at 31/3 Parkside Terrace, Edinburgh, EH16 5XP ("The Tenants")

Jason James Welsh, care of The Flat Company, 61A Queen Street, Edinburgh, EH2 4ES ("the Landlord")

Tribunal Members:

Adrian Stalker (Chairman) and Debbie Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made such enquiries as it saw fit, determined that the Property complies with the repairing standard under section 13 of the Housing (Scotland) Act 2006, and therefore made no order under section 24 of the Act.

Background

1. By an application to the Housing and Property Chamber received on 20 March 2018, the Tenants sought a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application contended that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard under section 13 of the 2006 Act, and in particular, that the Landlord had failed to ensure, at all times during the tenancy, that the house is wind and watertight and in all other respects reasonably fit for human habitation (section 13(1)(a)).

3. In particular, in completing the part of the application form headed: "Please list details of how you consider the landlord has failed to meet the Repairing Standard", the Tenant had entered:

Continuance of damp/mould issues in the flat first advised to the rental company in September 17 and at March 18 remain unresolved...

New issue of leak in bathroom rendering a temporary repair, making showering very difficult, leak from bathroom is going into the property below.

4. In completing the part of the application form headed: "Please list details of the work needed...", the Tenant entered:

Urgent resolution of: (a) mould/damp issues...(b) restore bathroom to a 'fit for purpose' rental standard.

These complaints were further specified in a two-page summary attached to the application.

5. On 2 May 2018, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier Tribunal.
6. The Tribunal served Notice of Referral under and in terms of schedule 2, paragraph 1 of the Act upon the Landlord and the Tenants by letter dated 26 July 2018.
7. Following service of the Notice of Referral the Landlord's agents sent written representations to the Tribunal as to the history of the case, and the work undertaken by the Landlord, and his agents, to address the issues raised by the Tenants. The Landlord's agents also advised that both Tenants had left the Property at the end of May 2018.
8. The Tribunal members inspected the Property at 10am on the morning of 3 September 2018. The Landlord's agent, Mr Chris Blair, of The Flat Company, was in attendance, together with Mr Andrew Carlyle, a Surveyor, of Robb Reinstatement Ltd. The Tenants were not present, or represented.
9. At 11:30am that day, the Tribunal held a hearing at the George House Room D10, 126 George Street, Edinburgh EH2 4HH. The Landlord's agent, Mr Chris Blair, was again in attendance, with his colleague, Sidonie Lawrie. Again, the Tenants were not present, or represented.

Inspection and hearing

10. The Property is comprises a first floor flat within a four storey end-terraced block. There are eight units in total within the stairwell. The construction is traditional cavity brick overlaid with a pitched tiled roof. It was constructed

around 1987. It had the appearance of being currently unoccupied. It has recently been marketed for sale. It is heated by electric heaters. Photographs taken of the Property by the Ordinary Member are attached to this decision.

11. The Tribunal members inspected each room, and the windows. The members saw no evidence of continuing damp or mould at the property. They were advised by Mr Blair that a complaint of dampness and mould had been made around November 2017 by the tenants. He had been out to the property on several occasions. There was visible evidence of mould on the wall of the front bedroom. He had advised Ms Cornes (the tenant using that bedroom) to move her bed. He had also given advice on ventilating and heating the property.
12. The windows at the Property are the original windows. They are reaching the end of their useful life. However, they are still wind and watertight. The trickle vents were difficult to operate in certain of the windows. The windows will require continuing maintenance.
13. As regards the bathroom, there was evidence of a recent repair. In particular, it was clear that the seal around the bath had been replaced. The members of the Tribunal were advised by Mr Blair and Mr Carlyle that a complaint had been made, by the occupiers of the flat below the property, of water ingress through the ceiling. That was in March 2018. It transpired that there was a leak from the bath and shower of the Property. The seal around the bath had failed. This caused water to leak onto the floor under the bath, when the shower was being used. Mr Blair indicated his understanding that this problem had existed for some time, perhaps originating prior to the commencement of the Tenants' tenancy in September 2017. Mr Carlyle confirmed that it had been necessary to replace the floor under the bath, and part of the floor in the adjacent kitchen, which had been damaged by the leak.
14. At the hearing, Mr Blair was able to elaborate further on the history of the problems at the tenancy. The dampness and mould problem was such that the Landlord supplied a dehumidifier in January 2018. A couple of pints of water was taken from the dehumidifier daily, indicating a high level of moisture. The Tenants were advised to reduce activities which produced high levels of moist air, such as boiling pasta and taking long showers.
15. When the bathroom leak was identified in March 2018, the Landlord's agents immediately arranged a temporary repair, using plastic sheeting. This stopped the leak, and enabled the Tenants to continue using the shower.
16. On further investigation, it was apparent that the floor of the bathroom and kitchen had been damaged by the leak, and would need to be replaced. The Landlord then made a claim on the buildings insurance policy, through the factors of the building, Charles White Ltd. By arrangement with the

insurers, the factors instructed Robb Reinstatement to carry out the work. That work was effected after the Tenants left the property.

17. After March 2018, the dampness and mould problem ceased. Mr Blair suggested that this was due to the onset of warmer weather in Spring, and the Tenants following his advice on heating and ventilation. It was put to him that the dampness may have been due to the bathroom leak, as a result of which water had been lying under the bath for some time prior to the problem being discovered in March 2018. He accepted that that may have been the case.

Findings in fact

18. The Tribunal finds the following facts to be established:-

- i. The Tenants took up occupation of the Property on or about 6 September, under a short assured tenancy.
- ii. A problem with dampness and mould became apparent at the property in November 2017, particularly on one of the walls of the front bedroom.
- iii. Efforts were made to address the dampness problem by the use of a dehumidifier supplied by the landlord.
- iv. In March 2018, a leak from the bath was discovered.
- v. This was addressed by a temporary repair in March 2018.
- vi. After the Tenants left the Property at the end of May, a more substantial repair was carried out, involving replacement of part of the bathroom and kitchen floor, and resealing of the bath.
- vii. The bathroom leak has been addressed.
- viii. After the leak was addressed, there was no continuing problem with dampness and mould. There was no evidence of such a problem existing, as at the date of the inspection.

Reasons for the decision

19. The Tribunal was satisfied that the issues raised by the Tenants in the application had been addressed.

Decision

20. The Tribunal accordingly determined the Property complies with the repairing standard under section 13 of the Housing (Scotland) Act 2006, and therefore made no order under section 24 of the Act.

21. The decision of the Tribunal was unanimous.

22. 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.

23. 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.

Adrian Stalker

Signed

Date 11 September 2018

Chairperson

31/3 Parkside Terrace, Edinburgh, EH16 5XP

FTS/HPC/RP/18/0640



Front Elevation



Rear View of building



Rotten facing board within bathroom



Window bedroom number 2.



Bathroom



Windows weathered and mastic spalling. Maintenance required.



Window bedroom 1



Trickle vents



Weathered windows