

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/1742

**Property at 2C South Victoria Dock Road, Dundee, DD1 3BQ
("The Property")**

The Parties:-

Dr Scott Gregory and Dr Claire Gregory, formerly residing at 2C South Victoria Dock Road, Dundee, DD1 3BQ ("the former Tenants")

Mr Robert Dunn, c/o Pavillion Properties, 122 Liff Road, Dundee, DD2 2TL ("the Landlord")

Pavillion Properties, 86 Bell Street, Dundee, DD1 1HN ("the Landlord's Agent")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Greig Adams - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had complied with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") and therefore determined to make no order.

Background

1. By application received 15 March 2018 the former Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation; and
 - (b) 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.
3. In summary, the former Tenants submitted that rainwater had been flowing outside of the down pipe and had caused significant damage to the walls and ceilings of the property. Further, there was mould growth as a result of penetrating damp. The former Tenants advised that this had been an ongoing issue since 2015.
 4. By Minute dated 14 August 2018 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 96 of the Housing (Scotland) Act 2014, intimated his decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Landlord's Agent and the former Tenants.
 5. Following submission of the application, the former Tenants intimated to the Tribunal by email dated 23 August 2018 that they taken steps to terminate the tenancy. By Minute of Continuation dated 16 September 2018, the Tribunal determined to continue with the application given the nature of the disrepair complained of and potential impact on future occupants.
 6. The inspection took place on 5th October 2018. Conditions were dry and bright following a period of wet weather. Mr Billy Baxter on behalf of the Landlords' Agent was present and gave access. The Tribunal examined the rooms in the property and undertook damp readings and thermal imaging to ascertain whether there was evidence of water ingress. Damp readings throughout the property were found to be zero, with no high moisture levels present in any room.
 7. Following the inspection a hearing took place at Dundee Carers Centre. Mr Baxter was in attendance on behalf of the Landlord's Agent. He advised the Tribunal that the Landlord had completed repairs to the roof of the property recently in an attempt to address the cause of water ingress. It was conceded that there had been historic issues at the property. However Mr Baxter explained that the Landlord had arranged the repairs himself and Mr Baxter therefore had no information to submit to the Tribunal as to what works had been carried out and when.
 8. The Tribunal noted that the issue of water ingress was a fundamental part of the application and it was clear that the issue had persisted in recent years. Whilst the Tribunal had failed to find any evidence of water ingress at the time of the inspection, it considered it was unable to make a final determination on the application without information regarding the nature of the repairs that had been undertaken by the Landlord and the timescales in which they had been carried out. Accordingly by Minute of Adjournment dated 17th October 2018 the Tribunal determined to adjourn the hearing and issued a direction to the Landlord to submit details of the works that had been carried out to the roof to include corresponding invoices and receipts from the contractors.

9. On 24th October 2018 the Tribunal received email correspondence from the Landlord's Agent with copy invoice from JJ Roofing Services dated 26th September 2017 detailing the works carried out to the roof. The Landlord's Agent further advised that they were no longer acting for the Landlord. The Tribunal subsequently queried the date on the invoice with the Landlord as it significantly predated the date of the inspection and hearing. By email dated 20 November 2018 the Landlord advised that the date of the invoice was wrong and the works had in fact been carried out in early 2018 after a period of further monitoring. The Landlord further advised that it was his intention to sell the property.

Findings in fact

10. Having considered all the evidence the Tribunal found the following facts to be established:-
- The Property consists of a three storey dwelling-house with a garage, three bedrooms with two ensuite, a kitchen, living room and bathroom.
 - There is presently no evidence of water ingress at the property.
 - There is presently no evidence of penetrating damp at the property.
 - The house is wind and watertight and in all respects reasonably fit for human habitation.

Reasons for the decision

11. The Tribunal determined the application having regard to the terms of the application, the findings of their inspection and the submissions of the Landlord's Agent at the hearing.
12. 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.
13. The Tribunal had undertaken damp readings throughout the property during the inspection and had found no evidence of water ingress. Whilst it accepted from the evidence that there had been historic issues, it appeared from the Tribunal's inspection and the evidence presented by the Landlord and the Landlord's Agent that the repairs carried out to the roof had remedied the problem. The Tribunal was therefore satisfied that the property was wind and watertight and the Landlord had complied with the Repairing Standard in that respect.
14. The Tribunal therefore determined that there were no grounds on which to make a Repairing Standard Enforcement Order against the Landlord in respect of the matters raised in the application.
15. The Tribunal would however wish to highlight serious concerns regarding the expansion vessel in the cupboard on the ground floor and would urge the Landlord to ensure that this is secured by a fixed bracket, as opposed to a bandon clamp. There is presently a real risk of the vessel becoming dislodged as a result of insufficient fittings and this will require to be addressed by the Landlord as a matter

of urgency. The Tribunal notes that the Landlord plans to sell the property, rather than re-let, however the Tribunal is of the view that this is an issue that will require to be resolved regardless of the Landlord's intentions going forward.

Decision

16. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act as the house is presently wind, watertight and in all respects reasonably fit for human habitation.
17. In respect of section 13(1)(b) of the Act, the Tribunal determined that the Landlord had complied with the duty imposed by Section 14(1)(c) of the Act as the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and not in proper working order
18. The decision of the Tribunal was unanimous.

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.

Ms Ruth O'Hare

Signed

Ruth O'Hare
Legal Member

7 December 2018