

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/21/0444

RE: Property known as ALL and WHOLE the subjects known as and forming 3 McQuade Street, Bonnyrigg EH19 3QG being (First) that area or piece of ground together with the dwellinghouse erected thereon known as and forming Three McQuade Street, Bonnyrigg in the County of Midlothian being the subjects more particularly described in Feu Disposition by George Wimpy & Co Ltd in favour of John Temple Cowan and Mrs Florence Cowan dated Seventh September Nineteen Hundred and Seventy Six and recorded in the Division of the General Register of Sasines for the County of Midlothian on Fifteenth February Nineteen Hundred and Seventy Seven and; (Second) that plot or area of ground extending to thirty seven decimal or ten thousandth parts of a hectare or thereby at McQuade Street, Bonnyrigg in the County of Midlothian, aforesaid and being the subjects described and disposed by and delineated in red and coloured pink on the plan subscribed and annexed as relative to Disposition by Midlothian District Council in favour of George Andrew Montgomery and Others dated Twenty Fourth May and recorded in the said Division of the General Register of Sasines on Twenty Fifth July both months in the year Nineteen Hundred and Eighty Five.

(“The Property”)

The Parties:-

Mrs Brenda Cuthill, 3 McQuade Street, Bonny Rigg, EH19 3QG (“the Tenant”)

Key Contracts Letting Solutions, Summerside, Old Dalkeith Road, Danderhall, Dalkeith, EH22 1RT (“the Landlords”)

(“the Landlord”)

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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the

Application dated 22 February 2021 along with supporting documents, further written submissions on behalf of the Tenant, written and oral representations on behalf of the Landlords, determined that the Landlords have not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Andrew Murray – Surveyor/Ordinary Member

Background

- 1) By application dated 22 February 2021 the Tenant applied to the First-tier tribunal: Housing and Property Chamber for a determination on whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) and Section 19B(4) of the Housing (Scotland) Act 2006 (“the Act”).
- 2) By letter dated 23 March 2021 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
- 3) The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords and the Tenant.
- 4) Due to the restrictions caused by the COVID-19 pandemic, the Application called by way of Case Management Discussion (CMD) and was dealt with by way of conference call on 29 April 2021. A Mr Klan of KCLS Property Management appeared on behalf of the Landlords. The Tenant did not appear, nor was she represented however, prior to the CMD the Tenant’s representative Laura Beveridge did email the Tribunal on 28 April 2021 indicating that she could not attend, but that she was content that the CMD proceeded in her absence.
- 5) At the CMD, Mr Klan made submissions to the effect that the various matters complained of had been remedied and that vouching was available to confirm that. The Tribunal was of the view that the appropriate course of action was to continue the matter to another CMD to allow the Landlords to produce the various emails and vouching for the repairs that it was claimed had been carried out.
- 6) A further CMD was assigned for 3 June 2021 again to be dealt with by way of conference call to allow the Landlords to produce the vouching they stated they had to confirm that all claimed works had been carried out and that the Property met the repairing standard.
- 7) On 27 May 2021 the tribunal received confirmation from the Tenant that the tenancy of the house has been terminated, and accordingly, 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. Notwithstanding, by minute of continuation dated 1 June 2021, the Tribunal resolved to continue with the Application.

- 8) On 3 June 2021 a further CMD was held by way of conference call. Prior to that the Tribunal received 2 emails on 2 June 2021 from the Landlords' representatives, which were in addition to the emails sent previously on 28 and 29 April 2021 which could not be considered in time for the CMD on 29 April 2021.
- 9) The Application by the Tenant stated that she considered the Landlords had failed to comply with her duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - a) The Conservatory door of the Property was not secure;
 - b) The Property had an inadequate supply of hot water;
 - c) There had been a leak from the upstairs shower;
 - d) The leak from the bathroom had caused damage to the kitchen ceiling;
 - e) The kitchen within the Property was beyond repair; and
 - f) The window in the downstairs hall was not wind and watertight.

The Case Management Discussion 3 June 2021

- 10) As the Tenant was no longer a party to the Application, she did not appear nor was she represented at the CMD on 3 June 2021. Mr Klan again appeared for the Landlords. He referred to the terms of the documents sent to the Tribunal by way of email on 28 April, 29 April and by 2 emails on 2 June all 2021. Whilst the email dated 2 June 2021 was technically received late, the Tribunal resolved to consider same and its attachments. Mr Klan's submissions on behalf of the Landlords was that all matters complained of were now remedied. He explained that there had been some delays initially in assessing matters relative to the leaks and the hot water because there had been a miscommunication between Scottish Gas and Celsius the plumbers that had been contacted by the Tenant. Mr Klan explained that there was a maintenance contract in place for the Property with Scottish Gas, but notwithstanding that, the Tenant continued to contact Celsius regarding any issues and there had been a failure to communicate matters to Scottish Gas in relation to repairs that had been done and any findings. In relation to the specific issues raised:

- a) Conservatory Door

Mr Klan referred to the invoice dated 23 April 2021 from Alan Dobbie Glazing which had been produced.

- b) Hot Water

He referred to the invoice from Andy Grieve Plumbing & Heating dated 21 April 2021.

- c) Upstairs Bathroom Leak

He referred to the invoice from Andy Grieve Plumbing & Heating dated 21 April 2021.

d) Kitchen Ceiling

He referred to the invoice from James Paris Property Maintenance Services dated 12 April 2021 as well as various photographs.

e) Kitchen Beyond Repair

Mr Klan indicated that the kitchen was due to be replaced on 11 June 2021, but he referred to the invoice and report of James Paris Property Maintenance Services and photographs lodged.

f) Leaking Hall Window

Mr Klan referred to the invoice and report by Alan Dobbie Glazing dated 23 April 2021.

Summary of the Issues

- 11) Based on the submissions by Mr Klan and the documents and photographs produced, the Tribunal was of the view they could determine matters without an inspection of the Property. The issues to be determined are whether:
- a) The Property is wind and watertight and in all other respects reasonably fit for human habitation.
 - b) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in a proper working order.
 - c) That any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order.

Findings of facts and law

- 12) The Tribunal finds the following to be established:-
- a) That there was a tenancy for the purposes of section 14(1) of the Act.
 - b) That the Property is wind and watertight and in all other respects reasonably fit for human habitation.
 - c) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in a proper working order.
 - d) That any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order.

Reasons for the decision

- 13) The Tribunal was satisfied that the Property was wind and watertight and in all other respects fit for human habitation for the following reason:
- a) Whatever the position had been prior to the lodging of the Application, it was clear that the Landlords had carried out work to the Property which had resolved any of the issues complained of. These repairs were vouched by invoices and reports by appropriate contractors and it appeared that the correct measures had been taken by the Landlords.
- 14) The Tribunal was satisfied that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in a proper working order for the following reason:
- a) Whilst there had clearly been an issue that had affected the Property in relation to the showers, it was clear that the Landlords had carried out work to the Property which would resolve any of the issues complained of. These repairs were vouched by invoices and reports by appropriate contractors and the correct measures had been taken by the Landlords
- 15) The Tribunal was satisfied that any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order for the following reason:
- a) Mr Klan accepted the kitchen was dated but was functional. This was vouched with the photographs and the report from James Paris Property Maintenance. Even though there were minor repairs carried out (replacement of missing door handle), these had been remedied. Whilst it was noted the kitchen was to be replaced, that is a matter for the Landlords. It is not for the Tribunal to order an upgrade.

Decision

- 16) The Tribunal accordingly determined that the Landlords have not failed to comply with her duties imposed by Section 14 (1)(b) of the Act.
- 17) The Tribunal therefore decided not to make a Repairing Standard Enforcement Order (RSEO) under section 24(1).
- 18) The decision of the Tribunal was unanimous.

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.

R Cowan

Signed

Date 17 June 2021.....

Chairperson