

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION of the Housing and Property Tribunal under Section 24 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/16/1026

**Flat 2, 49 Upper Craigs, Stirling, FK8 2DT
("The House")**

The Parties:-

**Mr Pavlos Khetab, residing at Flat 2, 49 Upper Craigs, Stirling,
Stirlingshire, FK8 2DT
(hereinafter referred to as "the Tenant")**

**Mr Giuseppe Constantini, residing at 11 Mayne Avenue, Bridge of
Allan, Stirling, FK9 4RA
(hereinafter referred to as "the Landlord")**

Decision

The Tribunal having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by the parties at the hearing, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 19 December 2016 the Tenant applied to the Housing and Property Chamber First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenants 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 the House is wind and water tight and in all other respects reasonably fit for human habitation. The applicant stated:-

"The Landlord has refused to repair the windows of my flat. The windows are single glazed and are letting in cold air. Every room in the house is cold unless I keep the heating on for every room. Therefore the house is not in a wind tight condition so violating a condition in the repairing standard."

3. The Tenant intimated the alleged defects to the Landlord by text messages.
4. By minute dated 24 January 2017 the President of the Housing and Property Chamber First-tier Tribunal for Scotland referred the application to the Housing and Property Tribunal.
5. By letter dated 24 January 2017 the Landlord was given Notice of Referral, inspection and hearing in terms of Schedule 2, Paragraph 1 of the Act.
6. By letter dated 31 January 2017 the Landlord issued written representations to the Tribunal. The Landlord stated that the Tenant was not switching on the heating and therefore there was a build up of condensation. The Landlord said that he highlighted to the Tenant that it was important that the heating was utilised regularly to permit airflow throughout the property in turn eliminating any condensation. According to the Landlord's written representations, condensation had never been an issue in the property previously.
7. The Tribunal consisted of Graham Harding (Legal Member) and Nick Allan (Ordinary Member).
8. The Tribunal inspected the property on the morning of 27 February 2017. The Tenant, the Landlord and the Landlord's representative, Mr Martin Turner, were present during the inspection. The weather conditions on the day of the inspection were sunny and dry. The house comprises a ground floor flat in a four story flatted development constructed in the 1980s. The internal accommodation extends to three apartments, kitchen and bathroom (two bedrooms). There was condensation present in the lounge window and also on both bedroom windows. The integrity of the windows appeared to be intact and there was no obvious sign of cold air entering the windows when closed. The windows were all single glazed. There was mould growth around the window frame in bedroom 2. The Tribunal noted during their inspection that the house had working heat and smoke detectors in the kitchen and hallway. The Tribunal also noted that the bathroom ceiling light may not be compliant with regulations.
9. Following the inspection of the property the Tribunal held a Hearing at Stirling and heard from the Tenant, the Landlord and the Landlord's representative.

10. The Tenant stated that cold air was coming from the windows. He said that when there was more rain the house was colder. The Tenant said that the air was coming in through the window below the handle. The Tenant spoke of there being black mould around the windows but that he had not tried to remove this. There was water collecting on the windows. The Tenant said that he had been using heating in the property since November last year and that the hallway and lounge storage heaters were on all the time and that he put on the bedroom electric wall heaters about 30 minutes before retiring to warm the bedroom up. The Tenant said that in November last year he advised the Landlord that cold was coming in and the Landlord had inspected the property. He had also been visited by the Landlord's representative, Martin Turner, a few days before the hearing.

The Tenant said that the Landlord had noticed the condensation and told him that this was normal and on a subsequent visit had said that the heating was not on. The Tenant said that the heating had to be fixed. The Tenant said that when he was cooking, he opened the windows in the kitchen and lounge and also opened the window in the bedroom in the morning. The Tenant confirmed that all of the windows opened other than the small window in the living room. The Tenant said that he wanted better windows fitted to the house and that they should be double glazed.

11. The Landlord said that he visited the property in October 2016 and that there had been some water coming through a trickle vent and that this had been replaced. On a subsequent visit in November the Landlord said that he attended with the intention of attaching draft excluders to the windows, particularly the sitting room window. The Landlord said that he could not feel any cold air and did not apply the draft excluder. The Landlord said that he noticed that there was no heating on in the house and had advised the Tenant that the house required to have the heating on. The Landlord said that following this meeting the Tenant had requested by a message on his phone that double glazing be fitted. The Landlord said that he went to see the Tenant and explained that he could not afford double glazing in the house and that all of the other flats in the building were single glazed. He believed that the flat was in good order. According to the Landlord he had an independent surveyor and a builder look at the windows and they have both confirmed that there was nothing wrong with them. The Landlord believed that mould was caused by condensation and that if the windows were not being opened, there would be condensation and this would lead to mould forming. The Landlord said that he parked his car behind the house most days and he never saw that the windows were being opened other than the sitting room window which was sometimes open.

12. The Landlord's representative, Mr Turner, confirmed that he had inspected the house and that he could not find any fault with the windows. The seals were not defective and that the condensation was

being caused by lack of ventilation. He had noted that the trickle vents had been closed. The Landlord's representative also noted that there was a clothes drier in the sitting room and that drying clothes would exacerbate the problem with condensation. The Landlord's representative had said that he had provide the Tenant with a leaflet explaining the issues around condensation and ventilation.

Summary of the issues

13. The issues to be determined are whether or not the property is wind and water tight and in all other respects reasonably fit for human habitation in terms of Section 13 (1)(a) of the Housing (Scotland) Act 2006; whether the condensation and mould on the windows result in the property not being wind and water tight and in all other respects reasonably fit for human habitation.

Findings of fact

14. The tribunal finds the following facts to be established:-
- The property is wind and water tight and in all other respects reasonably fit for human habitation. Although the property is showing signs of mould and condensation, the most likely cause of this was a lack of ventilation. The property was adequately heated at the time of the inspection and the windows were closed.
 - The Tribunal noted that the light fitting in the bathroom may not comply with building regulations.

Reasons for the decision

15. The Tribunal was satisfied that the problem with condensation and mould was resulting from a lack of ventilation and the Tenant probably did not open the windows sufficiently.

Decision

16. The tribunal accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
17. The decision of the Tribunal was unanimous.
18. Whilst the Tribunal were unable to make an Order with respect to the light fitting in the bathroom, as this did not form part of the Tenant's application, they recommend that the Landlord has the light fitting checked for compliance with building regulations.

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.**

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by upholding the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed G Harding

Date 13 March / 2017

Graham Harding
Legal Member

Photograph Schedule

Inspection of

49, Flat 2, Upper Craigs, Stirling, FK8 2DT

Case Ref: FTS/HPC/RP/16/1026 27th Feb 2017

WEATHER CONDITIONS – Sunny and dry.

PHOTOGRAPHS – All photographs were taken at the time of the inspection.

DESCRIPTION OF SUBJECTS – The subjects comprise a ground floor flat in a 4-storey flatted development constructed in the 1980's. The internal accommodation extends to 3 apartments, kitchen and bathroom (2 bedrooms).



(Ph1) Front elevation



(Ph2) Side elevation



(Ph3) Kitchen



(Ph4) Kitchen window



(Ph5) Kitchen heat sensor



(Ph6) Lounge view from Kitchen



(Ph7) Kitchen view from Lounge



(Ph8) Lounge – 1 of 2 elec. wall heaters



(Ph9) Lounge – Condensation on window



(Ph10) Bedroom 1 – From Hall



(Ph11) Bedroom 1 - Condensation



(Ph12) Bedroom 2 – Condensation



(Ph13) Bedroom 2 – Mould



(Ph14) Hallway – Smoke detector



(Ph15) Bathroom – Ceiling light

Nick Allan - Surveyor member

27th February 2017