

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 Reference Number: FTS/HPC/RP/20/2531

68 Inchview Terrace, Edinburgh EH7 6TH (“the Property”)

Parties:

Iwona Nowak, 68 Inchview Terrace, Edinburgh EH7 6TH (“the former Tenant”)

Sandra Felton Edkins, 2 Craiglieth Hill Grove, Edinburgh EH4 2JY (“the Landlord”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Andrew McFarlane (Ordinary Member)

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 Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

Background

1. On 7 December 2020, the former Tenant lodged an application with the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Applicant stated that the Landlord had failed to meet the repairing standard in relation to the property. In particular, the application stated that the property is affected by mould, penetrating

and/or rising damp, the boiler is not working (limited hot water and sometimes no heat), and that there are holes in the floorboards in the hall. Documents, including emails and photographs, were submitted in support of the application. On 22 January 2021, the former Tenant notified the Tribunal that she had vacated the property and terminated the tenancy. The Tribunal considered the application and decided to continue consideration of same in terms of Paragraph 7(3) of Schedule 2 of the Housing (Scotland) Act 2006. A Minute of Continuation was issued to the Landlord.

2. Under normal circumstances the Tribunal would have arranged an inspection of the property to assist in the determination by the Tribunal of the application. This was not possible, because of the COVID 19 pandemic. In the circumstances, a case management discussion (“CMD”) was arranged, to discuss procedure in the case and to ascertain if an inspection was required or if other evidence was available. A CMD took place by telephone conference call on 10 February 2021 at 2pm. The Landlord was represented by Ms Harkness and Ms Keenan of Murray and Currie. Ms Harkness advised the Tribunal that Mr McGovern of Reflection Property Care had inspected the property and concluded that the property was not affected by dampness. A gas engineer had inspected the boiler and it was the Landlord’s intention to have any defects repaired before the property was re-let. Reflection Property Care had been instructed to look at the floor in the hall and carry out any necessary remedial work. She confirmed if the case were continued to a further CMD she would take instructions from the landlord and arrange to submit further evidence in relation to the complaints. She also advised that the property has been re-let but that the new tenant is not yet in occupation.
3. The Tribunal noted that if the Landlord lodged satisfactory evidence that all defects have been repaired, and that the property is not affected by dampness or mould, it might be possible for the Tribunal to determine the application without an inspection. The Tribunal decided that the application should be continued to a further CMD for the Landlord to submit additional evidence.
4. Following the CMD the Landlord’s agent submitted a short report and invoice from Greenstone Energy Solutions Ltd dated 15 February 2021 which confirmed that a new fan assembly had been fitted and that the boiler was in working order. Some photographs of the floor of the property were also submitted. A report from ADPC Property Care dated 11 February 2021 was lodged. This report relates to an inspection of the property by Nigel Foster CTIS CSRT. The report indicated that he had taken moisture readings of the walls at the property and made a number of observations and recommendations in relation to the damp proof course, high meter readings (>25%) at

the blocked up fireplace and skirting in the dining room, extractor fan in the kitchen had been switched off at the spur point, high readings and break down of grout in the bathroom indicating an escape of water into the timber floor, mould on ceiling of bathroom, dampness from bathroom leak visible on wall to Bedroom 1 and 50% moisture content in skirting, and high readings (22%) in timbers surrounding the blocked up fireplace in that bedroom. The surveyor concluded by recommending that the Bedroom 1, bathroom, and dining room floor timbers are inspected in detail as there is a possibility of wood decay and that any necessary repairs are carried out. Lastly, the landlord's agent submitted several quotes from Reflection Property Care for repair work at the property.

5. A further CMD took place by telephone conference on 19 March 2021 by telephone conference call. The Landlord was again represented by Ms Harkness and Ms Keenan. The Legal Member advised the agents that the Tribunal had considered the report and invoice for the boiler repair and was satisfied that this matter appeared to have resolved. The Tribunal proceeded to discuss the complaint of dampness and mould at the property. It was noted that the survey report which had been lodged had confirmed high damp meter readings and other evidence of dampness affecting the property. The Tribunal also noted that the agents had submitted several quotes for repair work but that these did not appear to address all the issues identified in the report. Ms Harkness advised that several other quotes had been obtained by the agents. The quotes which have been lodged relate to work authorised by the Landlord. This work had started. She did not know how long the work will take as the number of contractors who could be at the property at any one time was limited due to COVID restrictions. She confirmed that other quotes obtained had not yet been authorised. In the meantime, the property has not been re-let and will not be let until the required work is complete.
6. The Tribunal determined that the application should be considered at a further CMD. This took place on 6 July 2021 at 10am. The Landlord was again represented by Ms Harkness. Prior to the CMD the Landlord submitted a number of photographs of the property, further reports from ADPC dated 25 May 2021 and 30 June 2021, a report/invoice from Greenstone dated 6 May 2021 and four invoices from Reflection Property Care.

The CMD

7. The Tribunal noted that the invoice from Greenstone relates to a further repair to the boiler. Ms Harkness advised that they had installed a new bypass pipe and had also checked the boiler to confirm it was in full working order, as stated in their report. She also confirmed that the Landlord and Reflection Property Care had

checked the fan in the kitchen and had confirmed that it is working, although she did not have confirmation of this in writing. She referred the Tribunal to the reports from ADPC and invited the Tribunal to conclude that the dampness and mould had been addressed. She said that some areas are still drying out and that this will progress more quickly when the property is occupied and is being properly heated and ventilated. She confirmed that the property has not yet been marketed for let and will not be re-let until the Tribunal has made a decision on the application.

Findings in Fact

8. The boiler at the property is in working order.
9. The Landlord has carried out remedial work to the property which has addressed dampness affecting the dining room, first bedroom and bathroom.
10. The Landlord has carried out remedial work to repair and replace defective flooring at the property.

Reason for decision

11. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the Landlord.
12. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 3 of the 2006 Act “The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it” The Tribunal is satisfied that the former Tenant notified the Landlord of the repairs issues at the property prior to lodging the application.
13. Although the Tribunal has not inspected the property, it is satisfied that the Landlord has provided sufficient evidence of the condition of the property for a decision on the application to be made without an inspection taking place.
- 22. The boiler.** The Tribunal noted that the Landlord has now submitted two reports from Greenstone Energy Solutions Ltd (15 February

2021 and 6 May 2021). These relate to two different repairs which have been carried out and confirm that the boiler has been tested and found to be in working order. The Tribunal is satisfied that any issues with the boiler have been addressed and no breach of the repairing standard has been established.

23. Kitchen Fan. Although the former Tenant had not specifically mentioned the fan in the kitchen in the application, the surveyor from ADPC mentioned it in the first report which was submitted. He stated that the fan had been switched off and recommended that it be tested and replaced, if necessary. He also commented that no high damp meter readings had been detected in the kitchen although there were signs of past mould in a cupboard and at the skirting by the back door. The Tribunal notes that the Landlord has checked the fan and confirmed that it is in working order and is satisfied that no breach of the repairing standard has been established in relation to the kitchen.

24. Holes In floor. The Landlord has submitted photographs of the floors in the property, both prior to and following completion of remedial work. The second set show the floors to be in good condition. The Tribunal has also been provided with a copy of an invoice from Reflection Property Care for repairs and replacement flooring. The Tribunal is satisfied that the no breach of the repairing standard has been established in relation to the floors at the property.

25. Dampness. As well as invoices for remedial work and photographs, the Tribunal has been provided with three surveyor's reports from ADPC Property care. These provide the following information: -

- (a) Damp Proof Course: The outer brick leaf DPC had been bridged by garden and paths around the property and the surveyor recommended that it should be lowered to 150mm below the external DPC level. The ground was lowered by Reflection Property Care in May 2021 (invoice number 12268 provided).
- (b) Dining Room: High readings were noted at the blocked-up fireplace and skirting (>25%). The surveyor suggested that the fireplace should be exposed and cleaned out, then made good; the hearth should be removed and the solum repaired; the plaster stripped, and a Cavity Drain Lath fitted to isolate the area in accordance with manufacturer's instructions; new treated flooring to be laid over the area. This work was carried out by Reflection Property Care in May 2021 (invoice number 12267 provided).
- (c) Bathroom: The surveyor noted that the pattern of high readings and breakdown of grout indicated that there had been an escape of water into the timber floor. He stated that this area must be exposed to find the extent of treatments and repairs. There was a slight sign of mould on the ceiling, and he suggested that a Nuair Cyfan or

equivalent be fitted. The readings were still high on 27 May 2021. Lower (but still above "normal") readings were noted on 30 June 2021. Tiles were removed and replaced by Reflection Property Care, after a period of time for drying out, in March/April (invoice number 12133 provided). A new bath was fitted by Reflection Property Care in March/April 2021 (invoice number 12145 provided).

- (d) Bedroom 1: The dampness from the bathroom leak could be seen on the bedroom wall. The surveyor initially recorded 50% moisture content in the skirting. He recommended that the floor be exposed to ascertain the extent of remedial work required to the floor joists and surrounding timbers. Readings were at "normal" levels by 30 June 2021. High readings (>22%) were noted in the timbers surrounding the blocked-up fireplace. He recommended that the fireplace be exposed and cleaned out; the hearth should be removed and the solum repaired; the plaster stripped, and a Cavity Drain Lath fitted to isolate the area in accordance with manufacturer's instructions; new treated flooring should be laid over the area. This work was carried out by Reflection Property Care in May 2021 (invoice number 12267 provided).

26. Having considered the photographs, invoices, reports from ADPC with damp meter readings, and the information provided by the Landlord's representative at the CMDs, the Tribunal is satisfied that the Landlord has carried out remedial work at the property which has addressed the dampness and mould identified by the surveyor in February 2021. No breach of the repairing standard has therefore been established.

27. The Tribunal is therefore satisfied that the Landlord has not failed to comply with the duties imposed by section 14(1)(b) of the 2006 Act and that the Tribunal does not require to issue a repairing standard enforcement order in relation to the property.

Decision

28. The Tribunal determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

29. The decision of the Tribunal is unanimous.

Right of Appeal.

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.

In terms of Section 63 of the Act, 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.

J Bonnar

Josephine Bonnar, Legal Member:

12 July 2021