

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/20/2045

Title Number: STG 36630

4 Burnbank Terrace, Kilsyth, Glasgow, G65 0AE (“the Property”)

Parties:

Christopher Venditozzi, 4 Burnbank Terrace, Kilsyth, Glasgow (“the former Tenant”)

Andrew Alexander c/o R and G Estate Agents, 57 Townhead, Kirkintilloch (“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 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.

The Tribunal comprised: -

Josephine Bonnar, Legal Member

Mike Links, Ordinary Member

Background

1. By application received on 29 September 2020, the former Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) 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 stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlord has failed to;- (i) ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, and also stated that (ii) the house does not meet the tolerable standard. Specifically, the Tenant complained that the kitchen window has water ingress and is not watertight, the wall in the living room has dampness and all window units have blown/failed seals making the house cold and causing condensation and mildew. Photographs were lodged in support of the application.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 19 October 2020. The parties were notified that a case management discussion (“CMD”) would take place on 19 January 2021 at 10am by telephone conference call.
4. The CMD took place on the 19 January 2021. The former Tenant participated. The Landlord was represented by Mr McNulty. The former Tenant advised the Tribunal that all the issues listed in his application were still outstanding. He stated that he first made complaints about the damp in the living room following an inspection six weeks after the tenancy started. He was subsequently told that re-pointing was required to resolve this and then that this had been carried out, although he saw no evidence of this. The dampness did not resolve. In November 2020, work to the roof was carried out which again did not resolve the dampness.
5. Mr McNulty advised the Tribunal that the Landlord attempted to resolve the “small damp patch” by repointing the wall at the front of the property. This course of action had been recommended by a specialist. Following this work, the wall inside was re-decorated, but the damp patch reappeared. Efforts to address this have been hampered by the pandemic. However, the whole roof has now been replaced and it is hoped that this will be effective in addressing the matter. He said that it might be necessary to remove the plasterboard over the affected area in the living room and decorate. Mr McNulty further advised the Tribunal that the Landlord intends to get the

windows repaired or replaced, depending on what is needed.

6. In response to Mr McNulty's submission, the former Tenant advised the Tribunal that no internal redecoration has been carried out, that the damp patch did not disappear and then re-appear, that there has been no re-pointing and that the Landlord only carried out a partial repair to the roof.
7. Following the CMD, the Tribunal concluded that an inspection of the property was required. The Tribunal also issued a direction for the production of invoices relating to the re-pointing and the new roof and for photographs.
8. The parties were notified that an inspection would take place on 8 June 2021 at 11.30 am and that a hearing would take place by telephone conference call on 15 June 2021 at 10am. Prior to the date of the inspection the Landlord submitted photographs of the outside of the property and an invoice dated 11 March 2020 from David Finlay Building Roofing Landscapes. The former Tenant also lodged a number of photographs of the inside of the property and written representations. On 24 May 2021, the Landlord notified the Tribunal that the tenant had now vacated the property. On the 25 May 2021 the Tenant confirmed that the tenancy had terminated and that he had vacated the property. On 2 June 2021, the Tribunal determined that it would continue to consider the application and issued a Minute of Continuation to the Landlord. The former Tenant was notified that he was no longer a party to the application.
9. The Tribunal inspected the property on 8 June 2021 at 11.30 am. Following the inspection, a schedule of photographs taken at the inspection was issued to the Landlord. Thereafter the Tribunal held a hearing by telephone conference call on 15 June 2021 at 10am. The Landlord was represented by Mr McNulty.

The Inspection

10. At the time of the inspection the weather was dry and overcast. The Tribunal inspected the property, which is a first floor two-bedroom flat comprising a hallway, kitchen, bathroom, living room and two bedrooms. The property is accessed via a stairway to the rear of the property. The Tribunal noted the following: - a new double glazed upvc window unit installed in the kitchen, new double glazed units installed into the living room and back bedroom window frames, no evidence of condensation or defective seals in any of the windows, no marks on the living room wall indicative of dampness, damp meter readings within normal ranges. The Landlord advised that new

window units had been installed in all rooms except the front bedroom and that work had been carried out to the chimney which had resolved the dampness in the living room. A schedule of photographs taken at the inspection was issued to the Landlord and is attached to this decision. Following the inspection, the Landlord lodged a copy of an invoice from Miller and Blain dated 24 November 2020 which relates to roof, chimney and gutter repairs.

The Hearing

11. Mr McNulty advised the Tribunal that the Landlord was unable to participate in the hearing due to a family member being admitted to hospital. He confirmed that the former tenant had vacated the property on 22 May 2021 and that the Landlord had moved into the property after that date.
12. **The Windows.** Mr McNulty advised that the glazed units in all rooms except the front bedroom were installed in March 2021, while the tenancy was ongoing. He confirmed that he has the invoice for this work and would send to the Tribunal. He acknowledged that the photographs submitted by the former tenant suggest that the windows were in an extremely poor state prior to the replacements being fitted and conceded that the Landlord first approached the former tenant about inspecting the windows in January 2021, shortly prior to the CMD. He explained that action regarding the windows was delayed because of COVID restrictions and uncertainty about who was allowed to enter houses and for what purposes.
13. **Dampness.** Mr McNulty advised the Tribunal that there had been an element of trial and error in the attempts to by the Landlord to address the dampness. Re-pointing in March 2020 had been unsuccessful. The repairs to the roof and chimney in November 2020 appear to have resolved matters. He confirmed that, contrary to his statement at the CMD, the roof covering had not been replaced. This was a misunderstanding on his part. However, the extensive roof and chimney works appear to have been successful.
14. Mr McNulty concluded by stating that the Landlord is of the view that the property currently meets the repairing standard. Following the hearing the Landlord submitted copies of invoices from C&A Sash Windows for the replacement windows.

Findings in Fact

15. The property is two-bedroom first floor flat.
15. The former Tenant vacated the property on 22 May 2021.
16. The windows in the property are not affected by water ingress, condensation, or defective seals.
17. The wall around the living room window is not affected by dampness.

Reason for decision

20. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
21. 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 Tenant notified the Landlord of the repairs issues at the property.
- 22. The windows.** The Tribunal noted that all windows at the property appear to be in working order. There is no evidence of condensation between the panes, water ingress or defective seals. The Tribunal also noted that new glazed panes were installed in all but the front bedroom window in March 2021, although this was some five or six months after the application was lodged by the former tenant with photographs showing windows to be in a very poor state of repair. The Landlord has also provided copies of the invoices for the replacement windows. The Tribunal is satisfied that none of the windows are currently defective and that no failure to comply with the repairing standard has therefore been established.
- 23. Dampness.** The former tenant lodged a photograph of the living room wall showing staining which could be indicative of dampness. At the inspection, the Tribunal noted that the wall is now unmarked, and no dampness was detected when damp meter readings were

taken. The Landlord conceded that work has been carried out since the application (and photograph) were lodged to the gutters, roof, and chimney. This appears to have addressed any water ingress issues and any resultant dampness has resolved. The Tribunal is satisfied that no failure to comply with the repairing standard has been established.

24. 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 therefore does not require to issue a repairing standard enforcement order in relation to the property.

Decision

25. The Tribunal determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.
26. 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.

Signed: 21 June 2021

Josephine Bonnar, Legal Member