



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

Determination: Housing (Scotland) Act 2006: Section 24 (2)

FTS/HPC/RP/21/1915

Mr Murray Smith, Mrs Hannah Smith, formerly Horseshoe Cottage, Pettens Farm, Balmedie, Aberdeen, AB23 8YB (“the Former Tenants”)

Mrs Lynda Evans, 27 Arnage Avenue, Ellon, AB41 9GL (“the Landlord”)

DJP Solicitors, 226 Holburn Street, Aberdeen, AB10 6DB (“The Landlord’s Representative”)

Tribunal Members: Martin McAllister (Legal Member) and Mike Links (Ordinary Member) (“the tribunal”)

Decision

The tribunal determined that, in respect of the matters raised in the application, the Property meets the repairing standard set out in Section 13 of the Housing (Scotland) Act 2006.

Background

1. This is an application by the Tenant of the Property. It is under Section 22 (1) of the Housing (Scotland) Act 2006 (“the Act.”). The application is dated 7th August 2021 and was accepted for determination by the Tribunal on 16th September 2021.
2. The application stated that the Property is not wind and watertight and in all other respects fit for human habitation, that the structure and exterior of the Property is not in a reasonable state of repair and in proper working order, that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the Property does not meet the tolerable standard.
3. The application makes specific reference to “we had one year with no working fire alarms or back door being able to open.” It also refers to windows not being up to standard, to the soakaway from the septic tank not functioning properly causing effluent coming into the garden and for a new door lock being required.
4. The tenancy was terminated and, on 13th October 2021, the tribunal decided to continue to determine the application in terms of Schedule 2,

Paragraph 7(3) of the Act.

5. A case management discussion was held by audio conference on 3rd November 2021.

Case management discussion

6. Prior to the case management discussion, the Landlord's Representative submitted information to the tribunal indicating that the Landlord had carried out certain works to the Property.
7. At the case management discussion, the Landlord's Representative produced evidence with regard to some work which had been carried out to the Property.
8. The tribunal had been referred to an invoice from All Round Property Maintenance Services Ltd for a total of £251.88. Mr Purdie said that the invoice showed that work had been done to the front door to replace the lock. He acknowledged that the invoice did not confirm that the letter box was repaired and he accepted that an issue with the letter box had been raised in the application.
9. Mr Purdie said that all the windows in the Property had been replaced and he referred to the photographs which he had lodged. He said that these showed that the windows in the Property are new. He also referred the tribunal to the invoice from BE Joinery for a total sum of £3,528 and to the wording of the invoice which stated "replace all the windows in the cottage at Balmedie."
10. Mr Purdie referred the tribunal to an invoice from DGI Construction Ltd for the sum of £1,580 for "soakaway works as agreed." He did not know the detail of such works and was unaware if works were also done to the septic tank.
11. At the case management discussion, the tribunal recognised that significant works had been completed to the Property and that it was possible that the Property meets the repairing standard.
12. The tribunal accepted that the windows had been replaced and that the lock in the front door had been replaced.
13. The tribunal noted two matters in the application which it did not have sufficient evidence on to make a determination.
14. The applicant had complained about the letter box.
15. The application stated that waste from the septic tank was overflowing onto the lawn and had produced photographs. This is a significant health and safety issue and the tribunal required to be satisfied that this has been dealt with. Mr Purdie was not able to provide any detail on

what work had been done in connection with the soakaway and whether or not any issues with the septic tank had been resolved.

16. Mr Purdie said that it would be his submission that the works which had recently been done to the Property meant that it meets the repairing standard in terms of the Act.

Outcome of the case management discussion

17. The tribunal recognised that significant works have been completed to the Property and that it was possible that the Property meets the repairing standard.
18. The tribunal accepted that the windows had been replaced and that the lock in the front door had been replaced.
19. The tribunal accepted that, from the emails lodged by the Applicant and the terminology of reference to the smoke detectors in the application, the issue of smoke and heat detection in the Property was no longer live.
20. The tribunal noted two matters in the application which it did not have sufficient evidence on to make a determination.
21. The applicant had complained about the letter box.
22. The application stated that waste from the septic tank was overflowing onto the lawn and photographs had been produced. This is a significant health and safety issue and the tribunal required to be satisfied that this has been dealt with. Mr Purdie was not able to provide any detail on what work had been done in connection with the soakaway and whether or not any issues with the septic tank had been resolved.
23. The tribunal considered that it would be premature to arrange an inspection of the Property and that it may be possible to determine the application if further satisfactory information was provided with regard to the letter box and the septic tank. The tribunal considered that it would be helpful if the Landlord provided a report from the contractor who had carried out work to the soakaway which addressed the detail of the work carried out and whether or not it considered the septic tank to be operating in an efficient and safe manner.
24. The tribunal determined that, if satisfactory evidence was received from the Landlord, it may be possible to determine the application without a Hearing in terms of Rule 18 of The first-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
25. The tribunal required further evidence to be provided to it by 29th November 2021.

Submission by Landlord's Representative

1. On 29th November 2021, Mr Purdie of the Landlord's Representative submitted photographic and documentary evidence to the Tribunal.
2. The tribunal had photographs of a door and what appeared to be a functioning letter box. Mr Purdie said that this evidenced that the letterbox had been replaced.
3. The tribunal had a report and a series of photographs from Drain Surgeon (North East) Limited dated 18th November 2021. The report stated that the septic tank at the Property was sitting at a normal level and working as it should be. It also stated that the soakaway was working: "Overall the soakaway and septic tank are working the way they should be and there's no problem with it."

Determination

4. The members of the tribunal convened on 6th December 2021 to consider whether or not it could deal with the matter without an inspection of the Property and a Hearing.

The Law

Housing (Scotland) Act 2006

S. 13 The repairing standard

(1) A house meets the repairing standard if—

(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,

(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,

(c) the installations in the house 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 proper working order,

(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,

(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,

(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and

(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

(h) the house meets the tolerable standard.

S.24 Determination by the First-tier Tribunal

(1) The First-tier Tribunal, must in relation to an application under section 22(1) or (1A) decide whether the landlord has complied with the duty imposed by section 14(1)(b).

(2) Where the First-tier Tribunal decides that the landlord has failed to comply with that duty, it must by order (a “repairing standard enforcement order”) require the landlord to carry out such work as is necessary for the purposes of ensuring—

(a) that the house concerned meets the repairing standard, and

(b) that any damage caused by the carrying out of any work in pursuance of that duty or the order is made good.

*The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017
Power to determine the proceedings without a hearing*

18.— (1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

36. The tribunal saw no point in either inspecting the Property or having a Hearing and determined the application in terms of Rule 18.

37. The tribunal considered that it was satisfied that it had been provided with adequate information that the matters raised in the application had been dealt with and that the Property met the repairing standard in connection with the matters raised.

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 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.

M McAllister

Martin J. McAllister
Legal Member
6th December 2021