



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/18/0848

**Property at 1 Oswald Court, Ayr, KA8 8NL
("the Property")**

The Parties:-

Mr Ian Watson, 1 Oswald Court, Ayr, KA8 8NL ("The Tenant")

**Mrs Jill McNaught, Ayr Housing Aid, 7 York Street, Ayr KA8 8AN
("The Tenant's Representative")**

**Mr John McLaughlan, c/o Vos Curo Lettings, 272 Bath Street, Glasgow G2 4JR
("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 had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Tribunal consisted of-

**Morag Leck (Legal Member and Chair)
Donald Wooley (Ordinary member)**

Background

1. By application comprising documents received between 12th April and 16th May 2018, the Tenant applied to 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 Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - i) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order
3. The Third Party Applicant attached details of the his complaints in the following terms :-

“The Landlord has failed to carry out repairs to all 5 internal doors and 3 windows within a reasonable time. He was first notified around 6/9/17 by myself and subsequently by Ayr Housing Aid Centre and South Ayrshire Council. The doors have no fittings/catches to close them. I cannot keep heat in and there is an increased risk of smoke or fire spreading in event of fire. The windows are permanently steamed up between the double glazing panels.”
4. By Minute dated 21st May 2018, a Convener of the Tribunal with delegated powers under section 23A of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal for a determination.
5. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Tenant’s representative on 5th July 1 2018. An inspection of the house and a hearing were fixed for 15th August 2018.
6. Following service of the Notice of Referral, representations were submitted by email by the Landlord on 24th July 2018. These included reference to repair work already undertaken, work to be carried out and the Landlord’s views on the categorisation of work required at the property. The emails also set out his position on difficulties both in relation to communications with the tenant and gaining access to the property.
7. On 13th August 2018, the Tribunal were contacted by the Tenant’s representative who advised that almost all repair work had been undertaken and repair work had been scheduled for the day of the hearing. The Tenant’s representative requested the hearing be postponed given the proposed dated for repair work as if completed, this could allow the application to be withdrawn. The Tribunal considered the request but given all the circumstances of the case, decided that the inspection and hearing fixed for 15th August 2018 should proceed.

The Inspection

8. The Tribunal inspected the Property on the morning of 15^h August 2018. The Tenant, Mr Watson was present along with Mrs McNaught his representative. Mr McLaughlan, the Landlord was also in attendance.
9. The inspection of the property was undertaken following a lengthy period of predominantly dry and warm weather although immediately before the inspection there was a short heavy shower of rain. Photographs were taken and are attached as a Schedule to this decision. The Schedule of photographs, and in particular numbers 2, 4 and 6, illustrate evidence of recent rainwater on the external panes of the double glazed fittings of the windows.
10. The Property is a first floor self-contained cottage flat within a two storey terrace of similar style properties dating from around the mid-1980s. It is of traditional construction with brick outer walls rendered externally with rough cast, under pitched roof clad with concrete interlocking tiles. There is a main door ground floor entrance to the property with internal stair leading to accommodation comprising inner hallway, living room, bedroom, kitchen and bathroom.
11. The Tribunal observed the following at the inspection:-
 - i) The Tribunal noted that the living room window was in two main sections. The lower, deadlight fitting had recently been renewed. There was no evidence of misting or condensation between the panes or of condensation / misting defects in the main section of the window (Photographs 2 & 3). The Tenant advised at the inspection that in relation to this and the other two windows detailed below, he was satisfied the windows had been repaired and the difficulty with seeing out of them remedied.
 - ii) The Tribunal noted that double glazed window fittings in the bedroom (photographs 4 & 5) and kitchen (photographs 6 & 7) had also recently been repaired / replaced and again at the time of the inspection there was no evidence of any misting or condensation between the panes.
 - iii) The Tribunal noted that the internal doors were of modern moulded wood construction. They were generally operated by means of "door knob" handles. The Tenant advised that the repair work to the doors had been undertaken recently with the final door to the bathroom repaired just before the inspection had commenced that morning. He explained that he had previously fitted a latch to the hall cupboard himself whilst awaiting repairs to be undertaken and he was satisfied that the problem with closing all the other doors had now been remedied. The Tribunal noted that the bathroom door had been fitted with a traditional closing mechanism (photograph 9) and the other internal doors now remained closed by means of a "retractable ball" mechanism, set into the edge of the doors, received and secured to an appropriately placed opening in the

surrounding frames. (Photographs 8, 10 & 11). The recently installed fittings were functioning satisfactorily at the time of inspection.

The Hearing

12. Following the inspection of the Property, the Tribunal held a hearing at Ayr Town Hall, New Bridge Street, Ayr. The Tenant did not attend as he had indicated at the end of the inspection that he was satisfied that all repairs had been completed. The Tenant's Representative and the Landlord both attended.
13. The Tribunal Convener explained the procedure to be followed at the outset of the hearing and also indicated the Tribunal had formed an initial view from the inspection which was that the issues raised in the application now appeared to have been addressed. She explained however that the hearing afforded an opportunity for parties to make any representations, if they so wished, in relation to the application.
14. The Tenant's Representative submitted that both she and the Tenant were happy that the repairs required to the property had been carried out. She indicated that the request had been made to postpone the hearing very late on when it appeared that the repair works might be completed. She referred to the initial notice given to the Landlord of the required repairs and the time taken to complete these.
15. The Landlord's indicated that whilst he did not intend to contest the application, he would wish to make a number of comments. His submissions included reference to his lengthy involvement in the industry and that the industry relied heavily on standards. He referred to the provisions of the repairing standard set out at section 13(1) of the Act and queried in particular the terms used at section 13(1)(a). He indicated that he had categorised the requested repairs as low priority as in his view the property did not appear to fail the repairing standard as regards this sub section and referred in particular to the statutory term "...and in all other respects reasonably for human habitation ...". In his view, a clearer definition was necessary as there was difficulty complying with the standard as presently defined. He referred to information on the Scottish Government's website in relation to the repairing standard which information included reference to a landlord's rights of access. He referred to difficulties with communication due to the Tenant refusing calls and only communicating by text. He submitted that the present case highlighted as regards one party's apparent failure, it should first be established that all routes have been facilitated by the party bringing the case via the tenancy agreement. He referred also to the terms of his written representations in relation to his position.
16. The Tenant's Representative in response to the above submissions pointed out that the doors and windows were not in proper working order. She disagreed that access had not been given by the Tenant or that there had been communication difficulties. She submitted that the application to the Tribunal had been made as a last resort because the repairs issues had not been addressed. The Landlord himself had indicated in correspondence that the repairs were considered as non-urgent. Whilst she also would not have considered these urgent, the Tenant had

first reported the repairs in September of last year and sought assistance from Ayr Housing Aid in April as the work had still not been carried out. Her understanding was that no real effort had been made to carry out the repairs so the Tenant was not hindering the work being carried out.

17. The Landlord again referred to his previous submissions and the need for standards to be clearly defined. He reiterated that in his view the Tenant's failure to accept calls had hindered progress. He advised that when an issue was reported his first course of action was to discuss it with a tenant and thereafter there could be a further inspection and repair as agreed.
18. The Tribunal, in the course of the hearing, explained the role of the Tribunal in determining whether the repairing standard was met and pointed out that any changes to legislation were a matter for the Scottish Government. The Tribunal also highlighted that it was open to any tenant to make application to the Tribunal and an initial decision was taken on each application as to whether the Tribunal considered the application should proceed. The Tribunal also assisted landlords by means of a separate application process where landlords were experiencing difficulties with access.
19. The hearing concluded with the Tribunal thanking parties for their contributions and indicating in terms of an outcome, that with further repairs undertaken at the property earlier that day and the Tenant satisfied that repairs were complete, the Tribunal would have regard to this in their decision.

Summary of the issues

20. The issue to be determined is whether the Property meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1) (b)

Findings of fact

21. The Tribunal finds the following facts to be established:-

- a) The Tenant entered into a Short Assured Tenancy Agreement with the Landlord with a start date of 1st September 2018. The Tenant continues to reside at the property.
- b) The Landlord is recorded on the lease as John McLaughlan, c/o Vos Curo, 272 Bath Street Glasgow G2 4 JR
- c) The landlord is the registered owner of the house.
- d) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- g) The Tenant notified the Landlord of all the repair issues detailed in the application including by letter dated 10th May 2018.

- h) That with regard to the repairs issues required by the Tenant, the Landlord has fully addressed these.

Reasons for the decision

22. The Tenant had complained that Landlord has failed to carry out repairs to all 5 internal doors and 3 windows within a reasonable time. Specifically he complained that the doors had no fittings/catches to close them. He could not keep heat in and there was an increased risk of smoke or fire spreading in event of fire. The windows were permanently steamed up between the double glazing panels.
23. There were clearly contrary views stated by the Landlord and the Tenant and his representative as to communications regarding repairs and the position with access. The Tribunal notwithstanding, did note with concern, the timescale which had elapsed prior to repair works being undertaken and indeed that the final repair had just been completed on the same day as the inspection. In the circumstances however, the Tribunal considered it appropriate to base its decision on the factual condition of the property observed during its inspection on 15th August 2018.
24. The Tribunal noted during their inspection that the living room window was in two main sections. The lower, deadlight fitting had been renewed by the Landlord. There was no evidence of misting or condensation between the panes or of condensation / misting defects in the main section of the window at the time of inspection. The Tribunal further noted that double glazed window fittings in the bedroom and kitchen had recently been repaired / replaced and again there was no evidence of any misting or condensation between the panes. These repairs were all accepted as satisfactory by the Tenant.
25. The Tenant advised at the inspection that repair work to the doors had been undertaken with the final door to the bathroom repaired just before the inspection had commenced. He explained that he had previously fitted a latch to the hall cupboard himself whilst awaiting repairs to be undertaken. The Tribunal noted that the bathroom door had been fitted with a traditional closing mechanism and the other internal doors now remained closed by means of a "retractable ball" mechanism, set into the edge of the doors, received and secured to an appropriately placed opening in the surrounding frames. The recently installed fittings were functioning satisfactorily at the time of inspection. These repairs were all accepted as satisfactory by the Tenant.
26. Given all the circumstances as set out above, the Tribunal is satisfied that (i) the house is wind and watertight and in all other respects reasonably fit for human habitation; and (ii) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

Decision

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

28. The decision of the Tribunal was 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.

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 Leck

Signed

—

.....

Date 22/8/18

Chair and Legal Member

This is the Schedule of
Photographs referred to in
the foregoing Decision

M Leck

1 Oswald Court Ayr KA8 8NL

Schedule of Photographs taken at the inspection on 15th August 2018



1:- Entrance & External View



2&3:- Living room window



4&5:- Bedroom window



6&7 :- Kitchen window



8.



9.



10.



11.

Photographs 8, 9, 10, 11 :- Internal doors closing mechanisms.