

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 Ref: FTS/HPC/RP/21/0797

23/6 South Elixia Place, Edinburgh EH8 7PG (“the Property”)

Parties:

Suvin Gulati, 23/6 South Elixia Place, Edinburgh EH8 7PG (“the Tenant”)

Gareth David Green, c/o Braemore, 92 Morningside Road, Edinburgh EH10 4BY (“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 30 March 2021, the Tenant submitted an application to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Tenant stated that the Landlord had failed to meet the repairing standard in relation to the property. In particular, the application states that there is a leak from the toilet which has damaged the floor and caused an insect infestation. The Tenant lodged photographs in support of the application.

2. Under normal circumstances the Tribunal would arrange for the Tribunal to carry out an inspection of the property to assist in the determination by the Tribunal of the application. Unfortunately, this was delayed, due to the continuing effects 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 is required or if other evidence is available or can be agreed.
3. Prior to the CMD the Landlord’s agent notified the Tribunal that the insurance company had approved remedial work at the property. An estimate from a contractor was lodged which contained details of the planned work and the agent advised that it was due to commence on 30 May 2021 and would take approximately 15 days.
4. The CMD took place by telephone conference call on 9 June 2021 at 2pm. The Landlord was represented by Ms Taylor. The Tenant also participated. Ms Taylor advised the Tribunal that the remedial work started on 1 June 2021 and was being carried out by the contractor who provided the estimate lodged with the Tribunal. It was expected to take about 16 days but decant accommodation had been arranged for a month. The Tribunal determined that the CMD should be continued to a later date to allow the remedial work to be completed. A further CMD took place by telephone conference call on 21 July 2021 at 10am. Mr Gulati participated. The Landlord did not participate and was not represented.
5. Mr Gulati advised the Tribunal that he had moved back to the property on 27 June 2021. Work had been carried out in the bathroom. The flooring had been repaired or replaced and new vinyl has been fitted. No work was carried out in the kitchen. The vinyl was lifted for inspection purposes, but not replaced, and no work to the kitchen floor was carried out. He was told that the insurance company had refused to pay for the kitchen floor as it was not connected to the leak from the bathroom. Mr Gulati advised the Tribunal that there continues to be noise from the floor when he walks across it. The kitchen floor has also lowered by half an inch. He confirmed that he was not satisfied with the work and that his complaints have not been resolved.
6. Following the discussion, the Tribunal determined that the application should proceed to an inspection and hearing to establish whether there has been a failure by the landlord to comply with the repairing standard. The parties were notified that an inspection would take place on 28 September 2021 at 11am and a hearing would take place by telephone conference call on the 4 October 2021 at 10am. The Tribunal inspected the property on 28 September 2021. The Tenant was present. The landlord did not attend and was not represented. A schedule of photographs taken at the inspection was issued to the parties. The

hearing took place on 4 October 2021. The Tenant participated. The Landlord was represented by Ms Legge.

The Inspection

7. At the time of the inspection the weather was dry with sunny intervals. The Tribunal inspected the property, which is a third floor flat comprising hall, kitchen, bathroom, living room and two bedrooms. The Tribunal noted the following: -no evidence of leak in the bathroom, new vinyl floor covering in the bathroom, gap below door to bathroom from the hall, gap below partition between kitchen and living room, no gap at intersection between kitchen floor and adjacent flat, vinyl floor covering slightly rumped in front of sink unit in kitchen, screw securing floorboard puncturing vinyl floor covering in kitchen, gap below door from kitchen to hall, slight noise from floorboards in hall and kitchen when walked on.

The Hearing

8. Mr Gulati advised the Tribunal that there has been no leak in the bathroom since the remedial work was carried out. However, there is still noise from the floor in the hall and the living room when someone walks across it, and this was not the case prior to the leak. It is particularly problematic at night and can wake them up when someone goes to the bathroom.
9. Ms Legge advised the Tribunal that there have been no issues since the leak was fixed and that the noisy floor might be due to the timber suspended flooring at the property. However, she has not been to the property recently and is not aware of the issue. The contractors who carried out the bathroom repair were satisfied that there was no problem with the other floors in the property.
10. The Tribunal noted that although the kitchen had not been specifically mentioned in the application, the estimate for the repair work indicated that the leak had spread to the kitchen. It therefore appeared that any issues with the kitchen were connected to the complaint. At the CMD it was noted that the vinyl in the kitchen had been lifted for investigation, but no repair work was carried out. However, it appears that the kitchen and living room floors have sagged. Mr Gulati advised the Tribunal that there is also a tear in the kitchen vinyl and that he is concerned that he will be charged for the defects although they were not caused by him. Ms Legge advised the Tribunal that the original quote for the repair work

included the kitchen because it was thought that the leak had spread. When the contractors checked, this turned out not to be the case and the kitchen floor was in good condition. She added that she could not comment on the current condition of the vinyl as she has not been in the property recently but confirmed that it could be checked.

11. Mr Gulati advised that the repair work had been carried out when he and his family were away from the property. Since their return, the floor has been uneven and bumpy and makes a sound when walked on. He is also concerned that it took several months from his first report of the issues at the property for the repairs to be carried out.

Findings in Fact

12. The property is two-bedroom third floor flat.
13. The Landlord carried out repairs to the bathroom of the property to fix a leak and replace damaged flooring and vinyl floor covering.
14. No repairs to the kitchen were carried out although the floor covering was lifted for investigation. The floor covering in the kitchen is slightly rumpled and a screw securing the timber floor to the structure below protrudes through the covering.
15. The flooring in the kitchen has lowered slightly leaving gaps under the door which leads to the hall and a small gap below the partition wall with the living room.

Reason for decision

16. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
17. 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.
18. The application was lodged with the Tribunal because there was a leak from the toilet which had been reported, but not repaired. This is not in

dispute. Since the application was submitted the Tenant has been decanted and the leak has been fixed. As part of the repair, the bathroom flooring and floor covering were replaced.

19. At the inspection, the Tribunal noted that there is no evidence of any ongoing issues in relation to the bathroom. This is conceded by the Tenant, who confirmed that the leak has been fixed. His current complaint is that there are residual problems in the kitchen and hallway because of the leak and the repair work which was carried out. The Tribunal noted during inspection that the floor in the kitchen has sagged slightly, that the floor covering is slightly ruffled and that there are gaps below some internal doors. There is also a slight noise from the floor in the hall when someone walks across it, although no damage to the floor was identified.
20. The Tribunal is of the view that the ongoing issues at the property are relatively minor in nature and that the property is in a reasonable state of repair, reasonably fit for human habitation and that there are no health or safety issues regarding fixtures and fittings which are also in a reasonable state of repair and proper working order. The Tribunal is also satisfied that the property meets the tolerable standard. The Tribunal is therefore satisfied that the Tenant has not established a breach of the repairing standard. However, the Tribunal notes that the vinyl flooring in the kitchen is slightly uneven and ruffled and that the Landlord should arrange for this to be rectified and could also consider taking some action regarding the gaps under the internal doors.

Decision

21. The Tribunal determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.
22. 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

Signed..... 10 October 2021

Josephine Bonnar, Legal Member