

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/21/0115

3 Dalmoak Road, Greenock (“the Property”)

The Parties:

Graham Wheelhouse, 3 Dalmoak Road, Greenock (“the Tenant”)

Judith Marshall, 61 St Ninians Road, Paisley (“the Landlord”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Donald Wooley (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 18 January 2021, the Tenant submitted an application to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Applicant stated that the Respondent had failed to meet the repairing standard in relation to the property. In a covering letter the Tenant stated that the property is cold and does not heat up (not wind tight), there are issues with the upstairs plumbing, an “unfinished shower leak” and issues with external lights, the porch windows, the exterior wall socket, toilet leak damage and problems with the**

electrics and the EICR (Electrical Installation Condition Report). The Tenant submitted copy email correspondence with the application.

2. A copy of the application and supporting documents were served on the Landlord. Both parties were notified that a CMD would take place by telephone conference call on 25 March 2021 at 10am. They were provided with a telephone number and passcode. Prior to the CMD the Landlord's agent submitted written representations and documents, including copy invoices and EICRs.
3. The CMD took place by telephone conference call on 25 March 2021 at 10am. The Landlord was represented by Mr Woodhead. The Tenant did not participate and was not represented. Following discussions with Mr Woodhead, the Tribunal continued the application to a further CMD to take place by telephone conference call on 13 May 2021 at 10am. In the CMD Note issued after the CMD the Tribunal stated that both parties were expected to participate in the continued CMD.
4. The parties submitted written representations prior to the continued CMD. Mr Woodhead lodged an amended EICR which included the NICEIC registration details of the electrician and an invoice from a plumber for repairs to the toilet and shower screen. He advised that the property is wind and watertight, fully compliant and did not require re-wiring. The Tenant lodged a copy of correspondence which appeared to relate to a complaint under the letting agent code of practice. He stated that the EICR and plumbing issues had been addressed but that the property is still not wind tight. He referred to 2 unsealed windows, draughts from places where plumbing had been installed, leaving holes, and issues with the temperature in the house in cold weather.
5. The CMD took place by telephone conference call on 13 May 2021. The Landlord was represented by her new agent, Mr Giovanachi of "Bowman Rebecchi" who had recently acquired Castle Estates, the previous representative's company. The Tenant did not participate and was not represented. He did not contact the Tribunal in advance of the CMD to advise that he would not be participating.
6. Mr Giovanachi advised the Tribunal that he had only recently taken over management of the property and was relying on the submissions made by the previous agent. He confirmed that he has spoken to the Landlord and managed to speak to the Tenant on the phone. The Tenant did not advise him that he did not intend to participate in the CMD. Mr Giovanachi confirmed that he understands that the electrical and plumbing complaints have resolved and that he is willing to have the other matters investigated.

7. As the Tenant did not participate in the CMD, the Tribunal was unable to discuss the application with him. The Tribunal noted that his written submission appeared to indicate that all complaints may have been resolved, except for the issue of the temperature in the property caused by draughts. This complaint was disputed by the Landlord. The Tribunal determined that the application should proceed to an inspection and hearing. The parties were notified that an inspection would take place on 17 September 2021, at 10.30am and a hearing would take place by telephone conference call on 23 September 2021 at 10am. Prior to the inspection the Tenant indicated verbally to a member of the Tribunal administration that it may not be required as all work had now been carried out. He did not confirm this in writing or withdraw the application.

8. The Tribunal inspected the property on 17 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. Thereafter a hearing took place by telephone conference call on 23 September 2021. The Landlord was represented by Mr Giovanachi. The Tenant did not participate.

The Inspection

9. At the time of the inspection the weather was calm, overcast with light drizzle. The property is an extended two storey semi-detached house comprising open plan entrance hall, living room, kitchen, and shower room on the ground floor and two bedrooms, bathroom, and box room on the second floor. Mr Wheelhouse advised the Tribunal that the Landlord had recently carried out the outstanding repairs to address the draughts in the property. The Tribunal noted that the rear door has been replaced with a modern upvc door which is fully functioning and wind and watertight. In addition, external mastic/silicon has been applied to the single glazed timber living room window, the upvc double glazed kitchen window and the frame of the upvc front facing, double glazed French doors. Mr Wheelhouse confirmed that the work which has been carried out has successfully addressed the draughts in the property.

The Hearing

10. The Tribunal advised Mr Giovanachi that the inspection of the property had been restricted to the issues which appeared to be outstanding at the date of the second CMD. It was also noted that Mr Wheelhouse had advised the Tribunal during the inspection that the replacement door and window repairs had addressed the draughts at the property and confirmed that these had been the only outstanding issues. Mr Giovanachi advised the Tribunal that the Tenant has been served with a Notice to leave as the Landlord intends to sell the property. He stated that the Landlord is satisfied that all required repairs have been carried out and all matters in the application have been addressed. There has been no recent contact with the Tenant and no new complaints have been received. It appears that the Tenant is happy with the work which has been carried out.

Findings in Fact

11. The Landlord has replaced the rear door of the property and applied external mastic/silicon to the living room window, kitchen window and French doors of the property.
12. The property is not affected by draughts and is wind and watertight.

Reason for decision

13. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection, and the written submissions lodged and evidence led at the hearing.
14. 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.

15. Although the Tenant did not participate in either CMD or the hearing, he lodged written submissions on 3 May 2021. In these submissions he stated that the plumbing issues (noise from toilet when flushed, shower leak, and toilet leak) had now been addressed. He also advised that the Landlord had dealt with his complaints about the faulty electrics. The only outstanding issue at the time of the inspection and hearing was the complaint about draughts from various windows and the impact of these on the temperature within the property.
16. During the inspection by the Tribunal, the Tenant confirmed that the draughts and temperature had been the only outstanding issues. He also stated that these defects had now been rectified. The Tribunal noted that repairs had been carried out to three windows and that the rear door of the property had been replaced. At the hearing, the Landlord's representative advised the Tribunal that all complaints had been addressed and that the Tenant appeared to be satisfied with the work.
17. 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 does not require to issue a repairing standard enforcement order in relation to the property.

Decision

18. The Tribunal determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.
19. 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.....

4 October 2021

Josephine Bonnar, Legal Member