

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/22/1367

Re: Property at 2/2, 27 Allison Street, Govanhill, Glasgow G42 8NP (“Property”)

The Parties:

Roman Gomez Herrero, 2/2, 27 Allison Street, Govanhill, Glasgow G42 8NP (“Tenant”)

Rubina Haq, 12 Hexham Gardens, Glasgow G41 4AQ (“Landlord”)

Martin & Co, 180 Kilmarnock Road, Glasgow G41 3PG (“Landlord’s Agent”)

Tribunal Members :

Joan Devine (Legal Member); Carol Jones (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(a) and (h) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 4 May 2022, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that he believed that the Landlord had failed to comply with her duty to ensure that the property met the repairing standard as set out in Sections 13(1)(a) and (h) of the Act. The Application stated that the Landlord had failed to ensure that:
 - The Property was wind and watertight and in all other respects reasonably fit for human habitation.
 - The Property met the tolerable standard.
3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :
 - Large patch of dampness in the kitchen.
 - Water ingress coming into the bathroom.

4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 22 July 2022.
5. Prior to the Inspection the Landlord's Agent submitted written representations in the form of copy emails between the Landlord's Agent and the Property Factor for the Property and copy emails between the Landlord's Agent and the Tenant's Representative. In addition the Tenant provided copy emails between him and the Landlord's Agent covering the period 22 November 2020 to 4 August 2021.

The Inspection

6. The Tribunal inspected the Property on the morning of 22 July 2022. The weather conditions at the time of the inspection were clear and dry. The Tenant was present at the Property during the inspection as was the Landlord's husband, Javaid Haq and Cliff Dunn of the Landlord's Agent. The Property is a second floor flat within a 4 storey traditional victorian sandstone tenement situated in a mixed residential and commercial location around 2 miles south of Glasgow city centre. The accommodation comprises a hall, Living room with bed recess, Dining Kitchen with recess and a bathroom.

The Hearing

7. The Hearing took place at 2.00pm on 22 July 2022 by conference call. The Tenant was in attendance as was Javaid Haq and Linda Nivison of the Landlord's Agent.
8. The Tribunal noted that the Tenant had first raised concerns regarding water ingress in November 2020 and it was not until September 2021 that the Property Factor had written to owners providing a list of required works. The Tribunal asked about the current position as regards the Property Factor arranging for works to be carried out. Mr Haq said that delays with the Property Factor were initially due to covid. The Property Factor then obtained 3 quotes for the works and at that point 7 owners paid their share and the remaining owners did not. Mr Haq said that the matter was then referred to the Council but they did not respond. He attempted to contact the homeowners who had not paid without success. Mr Haq said that by late 2021 the Property Factor was considering "washing their hands" of factoring the building, although they remained in place as Property Factor.

9. The Tribunal asked about the reference in the papers to a contractor visiting the Property on the instruction of the Landlord's Agent in October 2021. Mr Haq said that the contractor did not want to remove panels from the bathroom wall. The contractor thought that the problem may be the communal conductor pipe which was in the bathroom. Mr Haq said that he thought the gutter was also an issue and referred to the external sill above the windows where there is significant vegetation growth. The Tenant said that he did not think the problem was the internal pipe as the amount of water that came down the wall was too great for that. He said that water was also coming through the ceiling in the kitchen and when it was heavy rain, water poured down over the toilet seat in the bathroom.
10. The Tribunal asked if any survey of the Property had been carried out. The Tenant said that he contacted the Council and they said that someone would attend the Property but that did not happen. He said that City Building had attended last year. They were meant to return a few months ago. The visit was cancelled as the Tenant had covid. It was to be rearranged but that had not happened. The Tribunal noted reference in the papers to K&G Roofing providing a quotation and being sent a structural report by the Factor and asked if the Parties had seen the report. They said that they had not. The Tribunal asked if the Factor, Southside Housing Association routinely instructs City Building and the Landlord said they did but if City Building was busy they would use other approved contractors.
11. The Tribunal asked how many flats were in the close. Mr Haq said that there were 13 and clarified that 9 have now paid their share and 4 have failed to pay. The Tribunal asked if the Property Factor was taking enforcement action against the owners who had not paid their share of the cost of repairs. Mr Haq said the Property Factor was not keen to do that.

The Evidence

12. The evidence before the Tribunal consisted of:
 - The Application completed by the Tenant
 - Land Register report relating to the Property
 - Copy email from the Tenant's Representative to the Landlord's Agent attaching letter notifying them of the issues complained about in the Application with response from the Landlord's Agent, all dated 1 September 2021
 - Written representation from the Landlord's Agent in the form of copy emails dated 9 March 2022 and 25 May 2022

- Written representation from the Tenant in the form of copy emails covering the period 22 November 2020 to 4 August 2021
- The Tribunal's inspection of the Property
- The oral representations of the Tenant and the Landlord's Representative

Summary of the Issues

13. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

14. The Tribunal made the following findings in fact:
 - 1.1. The Tenant has lived in the Property since April 2019.
 - 1.2. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 1.3. The tenancy of the Property is managed by the Landlord's Agent.
 - 1.4. The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 1.1.1. Dampness in the kitchen on the ceiling and the wall adjoining the bathroom.
 - 1.1.2. Dampness in the bathroom on the wall adjoining the kitchen.
 - 1.1.3. Peeling paint above and around the window in the bathroom.

Reasons for Decision

15. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1)(a) and (h) of the Act.
16. The Tribunal noted that there were high moisture meter readings on the wall separating the kitchen and the bathroom. The meter readings were high in both the kitchen and the bathroom. There were damp patches evident on both sides of this wall in the kitchen and the bathroom and on the ceiling in the kitchen.

Observations by the Tribunal

17. The Tribunal observed that the smoke detectors in the hall and living room with bed recess were fixed to the wall rather than the ceiling. The Tribunal also observed that the heat detector in the kitchen was not functioning and was also fixed to the wall rather than the ceiling. In terms of the Scottish Government guidance, smoke and heat detectors should be ceiling mounted. The Tribunal observed that it would be open to the Tenant to make a further application to the Tribunal in respect of the non-functioning heat alarm in the Property, should this not be addressed by the Landlord.

Decision

18. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the Property is not wind and watertight and in all other respects reasonably fit for human habitation and it does not meet the tolerable standard.
19. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

**Legal Member
27 July 2022**

