



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/22/1710

Re: Property at 3, Flat 0/2 Baronald Street, Rutherglen, Glasgow G73 1AF (registered under title number LAN45094) (“Property”)

The Parties:

Christopher Purcell, 3, Flat 0/2 Baronald Street, Rutherglen, Glasgow G73 1AF (“Tenant”)

Mohammed Arshad, c/o 584 Cathcart Road, Glasgow G42 8AB (“Landlord”)

Aqa Property Ltd, Cathcart Road, Glasgow G42 8AB (“Landlord’s Agent”)

Tribunal Members :

Joan Devine (Legal Member); Nick Allan (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)(h) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 1 June 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 their duty to ensure that the property met the repairing standard as set out in Section 13(1) (h) of the Act. The Tenant made the following complaints in the application and in the notification communication to the Landlord :
 - Metal bars on bedroom window required to be removed
 - Mould and dampness needed to be addressed
 - Boiler repairs
 - Bathroom roof rotten and falling down

- Window sills rotten
 - Rising damp
 - Dead pigeon in between bars and window.
3. The Application was referred to the Tribunal and an inspection and hearing were fixed for 18 October 2022. The Tribunal attended the Property to carry out the inspection but were unable to gain access. A fresh date of 2 February 2023 was fixed for the inspection and hearing.
 4. Prior to the Inspection the Landlord's Agent submitted written representations by email dated 14 October 2022 in which they stated that the necessary works had been carried out.

The Inspection

5. The Tribunal inspected the Property on the morning of 2 February 2023. The weather conditions at the time of the inspection were dull and overcast. The Tenant was present at the Property during the inspection. The Property is a ground floor self-contained 1 bedroomed flat within a four-storey building. At the inspection the Tenant provided to the Tribunal what appeared to be a gas safety certificate. The document was illegible.

The Hearing

7. The Hearing took place on 2 February 2023 by conference call. Neither the Tenant or the Landlord was in attendance.

The Evidence

8. The evidence before the Tribunal consisted of:
 - 8.1 The Application completed by the Tenant
 - 8.2 Land Register report relating to the Property
 - 8.3 Written representation from the Landlord's Agent dated 14 October 2022 with photographs annexed
 - 8.4 The Tribunal's inspection of the Property

Summary of the Issues

9. 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

10. Tribunal made the following findings in fact:

- 10.1 The Tenant has lived in the Property since 6 December 2019.
- 10.2 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.
- 10.3 The tenancy of the Property is managed by the Landlord's Agent.
- 10.4 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 10.4.1 Bars on the bedroom window had been removed.
 - 10.4.2 Dead pigeon between bars removed..
 - 10.4.3 Ceiling in bathroom reinstated.
 - 10.4.4 The central heating system was inoperative.
 - 10.4.5 The wall in the living room was damp
 - 10.4.6 The wall in the bathroom was damp
 - 10.4.7 The floor in the bathroom behind the bath had collapsed.
 - 10.4.8 The seal between the glass and the sill in the living room and bedroom window was poor.
 - 10.4.9 Whilst there was a smoke detector in the hall and the living room they were not interlinked.
 - 10.4.10 There was no heat sensor in the kitchen.
 - 10.4.11 There was no carbon monoxide indicator in the Property.
 - 10.4.12 The light fitting in the bathroom was inappropriate for a bathroom.
 - 10.4.13 The spur unit in the living room was unsafe.

Reasons for Decision

11. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the tolerable standard as required by Section 13(1)(h) of the Act.
12. The Tribunal noted that there were high moisture meter readings on the external wall in the living room and the bathroom. The wall in the living room was saturated. The Tribunal noted settlement and pointing failure on inspection of the exterior of the Property. The seal between the glass and the sill in the living room window was poor. The Tribunal noted that the central heating system was inoperative and that the copy gas safety certificate provided was illegible. The Tribunal further noted that the floor in the bathroom had collapsed behind the bath unit.

Observations by the Tribunal

13. The Tribunal observed that the spur in the living room was unsafe and that the light fitting in the bathroom was inappropriate for a bathroom.
14. The Tribunal noted that the provision for the detection of smoke, heat and carbon monoxide did not comply with current regulations. Whilst there was a smoke detector in the hall and the living room they were not interlinked. There was no heat sensor in the kitchen and no carbon monoxide indicator in the Property. This provision does not comply with current statutory requirements for rented properties. The repairing standard includes a requirement under Section 13(1)(f) of the 2006 Act that the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires, and for giving warning in the event of fire or suspected fire, Section 13(5) of the Act states that regard is to be had to any building regulations or any guidance issued by the Scottish Ministers in these matters.
15. The current Scottish Government statutory guidance states that there should be at least:
 - one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes;
 - one functioning smoke alarm in every circulation space, such as hallways and landings;
 - one heat alarm in every kitchen; and
 - all alarms should be interlinked.
16. The Landlord should also be aware of the extension of the repairing standard to require the installation of carbon monoxide warning detectors from 1 December 2015. The guidance states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:
 - a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling;
 - a fixed combustion appliance in an interconnected space, for example an integral garage;

- a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) – the CO detector should be sited outside the room, as close to the appliance as possible, but allowing for the effect humid air might have on the detector when the bathroom door is open.

17. The Tribunal observed that it would be open to the Tenant to make a further application to the Tribunal in respect of the absence of a heat detector and carbon monoxide sensor within the Property as well as the failure to interlink all alarms should this not be addressed by the Landlord.

Observations by the Tribunal

18. The Tribunal observed that the spur in the living room was unsafe and that the light fitting in the bathroom was inappropriate for a bathroom.

Decision

19. 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 does not meet the tolerable standard.

20. 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.

**Legal Member
16 February 2023**