



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

Statement of a Decision of the First Tier Tribunal Housing and Property Chamber regarding the Landlords' compliance with a Repairing Standard Enforcement Order in terms of Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/20/2000

13 Jura Street, Greenock PA16 7JH ("the property")

Title Number REN45137

The Parties:-

**Nicola Allan, 13 Jura Street, Greenock PA16 7JH
("the Tenant")**

**Jeetender Jones, 14 Darluith Park, Brookfield, Johnstone, Renfrewshire
PA5 8DD
("the Landlord")**

Tribunal Members:

Richard Mill (Legal Member) and Colin Hepburn (Ordinary Member)

Decision

The Property does meet the Repairing Standard. The Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is not necessary. The application by the Tenant is Dismissed.

Introduction

1. By application dated 18 September 2020, the Tenant applied to the First-tier Tribunal for Scotland, Housing and Property Chamber for determination of whether her Landlord had failed to comply with the duties imposed by section 14 of the Housing (Scotland) Act 2006 in respect of the property.
2. Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an inspection to assist in the determination by the Tribunal of the application. Unfortunately, this has not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, this Case Management Discussion

(CMD) was arranged, in order to discuss further procedure in the case and to ascertain if an inspection is required or if other evidence is available or can be agreed.

3. A Case Management Discussion (CMD) was fixed to take place on 19 January 2021 at 10.00 am. Notices of Referral were issued to both parties on 9 December 2020.
4. On 23 December 2020 the Landlord advised that the Tenant had informed her that she intended to withdraw her application. Additionally, it was submitted that there had been insufficient time for the Landlord to prepare and lodge written representations. In response, a Direction was issued dated 5 January 2021. This noted the Landlord's understanding of the Tenant's wish to withdraw her application. The Tribunal had not received anything directly from the Tenant to confirm this. The Tenant was requested in the Direction to confirm her position within 7 days. The Landlord was also afforded an additional period of time – until 15 January 2021, to lodge written representations.
5. On 13 January 2021 the Tribunal received a brief letter from the Tenant stating that she wished to withdraw her application. Reference therein was made to repairs being in the “process of getting done”. A further Direction was issued by the Tribunal dated 13 January 2021 acknowledging the Tenant's letter. The Tribunal also required the Landlord to prepare and lodge their intended written submissions on the basis that the Tribunal must consider whether the application should be continued and determined, or whether it should be abandoned, all in terms of Schedule 2, Paragraph 7(3) of the Housing (Scotland) Act 2006.
6. On 14 January 2021 the Landlord submitted lengthy written representations. This consisted of a chronology of the tenancy, the difficulties which are said to have occurred since the Tenant took up occupation, and details regarding repairs carried out at the property.
7. In the application it is stated that the conditions contained within subparagraphs (a), (b) and (h) of Section 13(1) of the Act were applicable which are in the following terms:-
 - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.
 - (b) The structure and exterior of the housing (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - (h) The house does not meet the tolerable standard.
8. A paper apart and narrative is attached to the written application which

specifies that the house is not wind and watertight due to poor seals of the windows and doorframes. It is stated that the structure and exterior of the house is deficient due to the collapse of the living room ceiling and the lack of effective front door to the property. It is stated that the house does not meet the tolerable standard as there are several areas of dampness in the tenancy and a lack of thermal insulation which is contrary to Section 86(b) and Section 86(ca) of the Housing (Scotland) Act 1987 (as amended).

9. The application was also accompanied by a written independent report of Professor Tim Sharpe, Environmental Research Ltd, which is dated 14 October 2019. This highlights repairs issues and contains a number of photographs of the property.
10. The tenancy commenced on 7 November 2014. The property is a lower flat in a block of four originally built for Local Authority use. It comprises a living room, two bedrooms, bathroom and kitchen.

The CMD on 19 January 2021

11. The Tenant did not join the teleconference CMD on 19 January 2021. There was no barrier to her doing so. The Landlord was represented by Mr Rajinder Samrai. He has knowledge of the property and the history of the tenancy. He is not a qualified tradesman, but has undertaken repairs on residential properties for some 20 years. He is employed by the Landlord on a regular basis in respect of this and other properties. The Landlord is the owner director of Homes Scotland Lettings Ltd which manages the property.
12. Mr Samrai submitted the following in response to the application and with reference to the general condition of the property:-
 - The front door of the property has now been replaced. There was a long history to this with the door having been kicked in on a number of occasions and remedial repairs undertaken. Full replacement of the door had been significantly delayed due to the conduct of the Tenant and those with whom she associates with. The door was ultimately replaced fully in October 2020.
 - No trickle vent or mechanical ventilation has been installed despite the terms of the report by Professor Tim Sharpe. Regard had been had to the report and the property evaluated. The conclusion upon full inquiry with the Tenant is that the lack of heating and lack of ventilation by the opening of windows had caused condensation which had resulted in dampness being detected. Advice as per Local Authority guidelines had been given to the Tenant.
 - Seals on two of the windows in the property had been replaced.
 - The collapsed and damage ceiling in the living room had been

substantially repaired and had not yet been redecorated.

- Previous smoke alarms and a portable carbon monoxide alarm had been disposed of by the Tenant. They have been replaced by a wireless linked operating system for detection of both smoke and carbon monoxide.
- The boiler of the property was replaced in recent times – in February 2019.
- The gas fire in the living room which was part of the previous central heating system with a back boiler has been disconnected.
- An up to date Gas Safety Certificate is in place though no details could be given regarding the date of the Certificate.
- An Electrical Installation Condition Report (EICR) has been undertaken in recent times, approximately 18 months ago, but no date could be given.
- Grants have been applied for and obtained, for the purposes of external wall insulation being installed but the work has not yet been instructed.

13. The Tribunal was concerned that the only independent evidence of the condition of the property beyond the submissions made on behalf of the Landlord was the previous report prepared in October 2019 by Professor Tim Sharpe which was supported by photographic evidence. The Tribunal was concerned that there no up to date documentation in respect, in particular of the Gas Safety Certificate, for the property. In all of these circumstances, the Tribunal concluded that notwithstanding the Tenant's lack of want to pursue the application further, that the Tribunal had a duty in the interests of public safety, to continue consideration of the application.

14. The Tribunal determined that the application, which was no longer insisted upon by the Tenant, should be continued under Schedule 2, Paragraph 7(3) of the Housing (Scotland) Act 2006. A Minute of Continuation was issued by the Tribunal simultaneously.

15. Given the current restriction on the Tribunal being able to undertake an inspection of the property itself, due to ongoing Covid-19, the Tribunal agreed with Mr Samrai that a number of documents, all as specified within the Direction issued simultaneously, would be produced by him and that thereafter a further CMD would take place.

16. The Tribunal issued a Direction simultaneously which required the Landlord to produce the following items

- i. The up to date Case Safety Certificate for the property.

- ii. The most recent Electrical Inspection Condition Report (EICR) for the property.
- iii. A selection of photographs of the property to cover the following items:-
 - The smoke alarms in situ in the property.
 - The carbon monoxide alarms in situ in the property.
 - The front door of the property.
 - The replacement living room ceiling.
 - The resealed windows in the property.
 - A section of five photographs to cover the general internal condition of the property.

Further evidence produced on behalf of the Landlord

17. All required documents requested in the Direction issued by the Tribunal were produced. An EICR prepared by a registered Select electrician dated 5 June 2019 was produced which raised no concerns. This includes reference to the heat and smoke alarms in the property. A recent Gas Safety Certificate prepared by a registered engineer dated 31 January 2021 was produced which raised no concerns. This includes reference to adequate carbon monoxide detection. A total of 13 photographs were produced which evidenced the matters which the Tribunal required to be satisfied about.

Reasons for Decision

18. The Tribunal determined the application having regard to the original bundle of papers issued to parties together with the additional documents produced on behalf of the Landlord.

19. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the reference.

20. The Tribunal was satisfied that all components of the Repairing Standard are met. The Tribunal attached weight to the extensive documentary evidence and photographs together with the Landlord's representative's submissions which were all unchallenged and found to be both credible and reliable.

Right of Appeal

21. In terms of section 46 of the Tribunals (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.

Effect of section 63 of the Act

22. 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.

R Mill

Legal member

Date: 24 February 2021