

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

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.

Chamber Ref: FTS/HPC/RP/20/2487

Farm Cottage, Kirkton of Tealing, by Dundee, DD4 0RD registered in the Land Register of Scotland under Title Number ANG84077 (“the Property”)

The Parties:-

Craig Dunn residing at Farm Cottage, Kirkton of Tealing, by Dundee, DD4 0RD (“The Tenant”)

William Mowbray residing at Kirkton of Tealing Farm, By Dundee, DD4 0RD (“The Landlord”)

Tribunal Members:

Jacqui Taylor (Chairman) and David Godfrey (Ordinary Member)

1. Background

The Tenant leases the Property from the Landlord in terms of the lease between the parties, which had been produced. The Tenant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (‘the Act’).

2. Application

The application stated that he considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. He advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation and the Property does not meet the tolerable standard.

In particular the application stated :-

2.1 Lack of cavity wall insulation in the Property.

2.2 Due to the lack of cavity wall insulation in the Property the heating is rendered ineffective causing the Property to be very cold in the winter. The average temperature at the moment is approximately 62 degrees F, with the heating on full, during what has been an unusually mild autumn. The lack of insulation means that the Property temperature is at the mercy of the weather and as such will only get colder.

2.3 An additional problem caused by the cold is condensation in the walls and windows. The average humidity level is 70% which is 20% above what is generally agreed to be advised maximum for healthy and safe living. There are discoloured areas of wall and ceiling in a number of the rooms. I am unable to open windows during the winter due to the house being cold.

3. Notice of Acceptance

On 17th December 2020, Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that she had considered the application, comprising documents received on 2nd December 2020 and she referred the application under Section 22 (1) of the Act to a Tribunal.

4. Case Management Discussion

4.1 This case called for a conference call Case Management Discussion (CMD) at 2pm on 9th February 2021.

The Tenant and the Landlord attended.

4.2 The Tribunal acknowledged that under normal circumstances, they 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. Consequently 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.

4.3 Mrs Taylor read out the written representations that had been submitted by the Landlord, which were as follows:

'The Farm Cottage is a detached bungalow (picture attached) comprising three bedrooms, a living room, a kitchen, hall and a small porch.

Heating is all electric as follows:

Bedrooms (3)- storage heater in each bedroom.

Living Room- Radiator (new) plus a wall mounted radiant heater.

Kitchen- storage heater.

Hall- Thermostatic panel heater.

Bathroom- Towel Rail.

The Farm Cottage has a current EPC rating 'F'.

The certificate of loft insulation had been provided, together with invoices for the replacement of the living room storage heater and bathroom extraction fan with the modern equivalent.'

Mr Dunn confirmed that he agreed with this description of the Property and the heating in the Property. He also confirmed that there was roof insulation in the Property.

Mrs Taylor explained that the Tolerable Standard is defined in section 86(1) of the Housing (Scotland) Act 1987, as amended, and includes the following provisions:

The Property has satisfactory provision for natural and artificial lighting, for ventilation and for heating and also has satisfactory thermal insulation.

The section also states that in construing these provisions regard shall be had to any guidance issued by the Scottish Ministers.

She further explained that the guidance stipulates that a property has satisfactory provision for heating if it has a mains electricity supply that supports portable electric heaters in each apartment and in relation to insulation the requirement is for the property to have insulation in the roof space.

4.4 In relation to the repairs specified in the application the parties advised as follows:

4.4.1 Lack of cavity wall insulation in the Property.

Mr Dunn confirmed the Property has loft insulation. Mr Mowbray explained that as far as he is concerned the Property complies with the legislation.

4.4.2 Ineffective Heating.

Mr Dunn explained that the heating in the Property is not sufficient to heat the Property to a reasonable temperature. The average temperature of the bedrooms are approximately fifty to fifty three degrees Fahrenheit. He confirmed that the electric heaters provided by the Landlord all work. He also advised that he uses additional portable heaters in the bedroom.

Mr Mowbray advised that he has storage heaters in his own property and he does not have a problem.

4.4.3 Condensation in the Property.

Mr Dunn advised that there is condensation in the Property which is particularly bad in his children's bedroom. That room has two external walls and the walls are soaking wet. Also, water runs down the inside of the windows throughout the Property. He doesn't know if the window vents are open or closed. When asked by Mr Godfrey whether he dried his clothes inside the Property he advised that he dries them on a clothes horse in the living room or the kitchen. He explained that there is an extractor fan above the cooker in the kitchen and also an extractor fan in the bathroom that is connected to the light. He advised that his children live with him half the time and the maximum number of people who live in the property are himself and his two children.

Mr Mowbray advised that he lived in the Property for thirty years and never had any problem with condensation.

5. Decision at the Initial CMD held on 10th February 2021

5.1 Lack of cavity wall insulation in the Property.

The Tribunal determined that the Property complies with the insulation requirement of the Tolerable Standard as the Property has roof insulation, as confirmed by the parties and as evidenced by the Loft Insulation Certificate produced by the Landlord.

5.2 Ineffective Heating.

The Tribunal determined that the Property complies with the heating requirement of the Tolerable Standard as the Property has electrical heaters in each apartment, as confirmed by the parties.

5.3 Condensation in the Property.

In relation to the Tenant's complaint that there is condensation in the Property:-

5.3.1 The Tribunal required the Landlord to provide the Tribunal with a report by a damp specialist as to whether there is dampness/ condensation in the Property and if so, the cause of the dampness/ condensation.

5.3.2 The Tribunal required the Tenant to provide the Tribunal with photographs evidencing the dampness/ condensation referred to in his application.

5.3.3 The Tribunal issued a Direction to the parties, which was contained in a separate document.

6. Adjourned CMD on 14th April 2021.

This case called for the adjourned conference call Case Management Discussion (CMD) at 10am on 14th April 2021.

The Landlord attended. The Tenant did not attend and was not represented. The Tenant had sent an email to the Tribunal Administration dated 9th April 2021 which advised that he was unable to call into the conference call due to work commitments but he was happy for the conference call to go ahead. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been met and proceeded with the Adjourned CMD.

The Tenant had provided the Tribunal with photographs which evidenced condensation in the Property.

The Landlord had provided the Tribunal with a specialist report by Intona, Damp Specialists dated 8th March 2021.

The report concluded that there was condensation in the Property.

The Landlord advised that he considered that the Tenant should meet the cost of remedying the condensation as it was caused by his lifestyle as he did not open the windows in the property and he dried his clothes in the Property. He explained that he had leased the property to approximately a dozen tenants over the last twenty five years and only one previous tenant (other than Mr Dunn) had reported problems of condensation. On that occasion the condensation had been caused by a non vented tumble drier.

Mr Godfrey suggested to the Landlord that the problem of condensation in the Property may be cured by installation of a dehumidifier. The Landlord explained that he would be prepared to install a dehumidifier. He also advised that he would also ask his Letting Agent to give the Tenant a leaflet on how to mitigate condensation.

7. Decision

7.1 The Tribunal and the parties acknowledge that there is condensation in the Property. This is also confirmed by the specialist report by Intona provided by the Landlord. Section 16(1)(b) of the Housing (Scotland) Act 2006 states that the duty on the Landlord to comply with the Repairing Standard does not require any work to be carried out for which the Tenant is liable by virtue of the Tenant's duty to use the Property in a proper manner.

The Tribunal have to determine if the condensation in the Property is caused by the Tenant's lifestyle.

The Tribunal acknowledge that the Tenant dries his clothes in the Property. This was confirmed by the Tenant at the initial CMD.

The Tribunal considered the evidence provided by the Landlord to the effect that he has leased the Property to a dozen tenants over the last twenty five years and only received a complaint of condensation from Mr Dunn and one previous tenant. The condensation experienced by the previous tenant had been caused by use of a tumble drier.

The Tribunal determined that on the balance of probabilities the condensation in the Property is caused by the Tenant's life style in that he dries clothes in the Property and the Tenant was unable to confirm if the air vents were used to air the Property and therefore they find that in terms of Section 16(1)(b) of the Housing (Scotland) Act 2006 the Landlord is not required to carry out any works to remedy the condensation as it is caused by the Tenant not using the Property in a proper manner

Accordingly, the Tribunal dismiss the Tenant's application

7.2 The decision of the Tribunal was unanimous.

8. 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.

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.

Signed J Taylor.

Chairperson

Date: 14th April 2021