



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)
Title No: LAN94337

Chamber Ref: PRHP/RP/17/0033

13 George Mann Terrace, Blairbeth, Rutherglen, Glasgow G73 4NN ("The House")

The Parties:-

Mrs Maureen Clark, formerly residing at 13 George Mann Terrace, Blairbeth, Rutherglen, Glasgow G73 4NN ("The Tenant")

Mr James Kelly, Flat 3, 2 Grove Park Gardens, St Georges Cross, Glasgow ("The Landlord")

Per his agent, AVJ Homes Letting & Estate Agents , 279 Castlemilk Road , Glasgow G44 4LE ("The Landlord's Agent ")

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 house concerned, and taking account of the written evidence submitted by the Landlord's Agent , determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of-

Morag Leck (Legal Member and Chair)
Lori Charles (Ordinary member)

Background

1. By application comprising documents received between 31t January 2017 and 11 February 2017, the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) The house is wind and water tight and in all other respects reasonably for human habitation (as required by section 13(1)(a) of the Act) ; and
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (as required by section 13(1) (b) of the Act)

3. The Tenant set out the following complaints in her application :-

- (a) Tiles are missing from the roof
- (b) Loft is damp and wet
- (c) Bathroom is mouldy and damp
- (d) Door handle is missing from kitchen door
- (e) Dampness on the kitchen walls and cupboards
- (f) Dampness in bedrooms and windows soaking
- (g) Smoke detectors not hard wired
- (h) Carbon monoxide detectors not hard wired

The tenant added in her application that work requiring to be done included: -
“...Wooden batons and tiles replaced on roof .Bathroom needs mould and damp removed /damp proofed. “

4. The tenant thereafter advised the Tribunal that she had left the house. The Tribunal then issued a Minute of Continuation dated 28th March 2017 and by Minute of even date, the Convener of the Tribunal with delegated powers under section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal for a determination.

5. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 7th April 2017. An inspection of the house and a hearing were fixed for 16th May 2017.

6. Following service of the Notice of Referral, written representations were received from the Landlord's agent, AJV Homes Letting Agency by means of an email dated 18th April 2017 that all of the repairs identified by the Tenant as set out in her application had been completed other than the kitchen door handle as a new door was due to be fitted.

7. On 2nd May the Tribunal issued a Direction to the Landlord requiring him to provide the Tribunal by 11th May 2017 with the following :-

- 1. Evidence of repairs carried out to the roof and loft space of the property to include invoices/receipts
- 2. Evidence of repairs carried out to rooms within the property including the bathroom, bedrooms and kitchen to include invoices/receipts
- 3. Evidence of replacement door being fitted in the kitchen of the property to

include invoices/receipt

4. A current gas safety record, certifying that the gas installations are in satisfactory working order, from a Gas Safe registered engineer in relation to the property
 5. A certified Electrical Installation Condition Report (EICR) from a suitably qualified and registered SELECT or NICEIC electrical contractor in relation to the property
8. By email dated 11th May 2017 the Landlord's Agent advised that they had only that day been made aware of the Direction by the Landlord and were therefore unable to respond timeously to the Direction. They confirmed that a representative would attend the inspection and that safety certificates would be provided at the inspection. They also stated that the Landlord would be requested to forward copies of receipts for repairs to the Tribunal.
9. The Tribunal inspected the House on the morning of 16th May 2017. The Tenant was neither present nor represented, no longer being the Tenant of the house. A representative of the landlord's agent, Mr Vijay Gindha was present. He explained that the house had been re-let and one of the new tenants was also present at the start of the inspection but took no part in it. Mr Ghinda provided a copy of a gas safety record dated 12th May 2017 and advised that an Electrical Installation Condition report (EICR) had been instructed and a copy would be sent to the Tribunal once completed. He stated that he was in attendance to facilitate the inspection but would not be attending the hearing. As far as he was aware the Landlord would not be attending the hearing. He explained that the landlord undertook all his own repairs so he did not have any receipts for the work carried out.
10. Following the inspection of the Property the Tribunal held a hearing at Wellington House, Glasgow. There were no parties in attendance.

Summary of the issues

11. As a preliminary issue the Tribunal noted that no response in relation to the Direction had been made by the Landlord other than the provision of a gas safety record. The Landlord's agent had also advised that an EICR had been instructed. Whilst the Tribunal noted that the Direction had not been complied with in all its terms the Tribunal were satisfied that the physical inspection of the property had allowed an opportunity to ascertain if the repairs advised by the Landlord's agent in their written representation had been undertaken. Accordingly the Tribunal agreed that no further action was required in respect of the Direction.

Thereafter the issue to be determined is whether the house meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1) (b)

Findings of fact

12. The Tribunal finds the following facts to be established:-

- (a) The Tenant entered into a Short Assured tenancy agreement with the Landlord per the Landlord's Agent with a start date of 10th March 2016.
- (b) The Landlord is recorded on the lease as James Kelly.
- (c) James Kelly is the registered owner of the House.
- (d) The Tenant ceased to occupy the House prior to 24th March 2017.
- (e) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- (f) The Tenant notified the Landlord by email correspondence between January and December 2016 of all the repair issues detailed in her application other than those relating to the smoke detectors and carbon monoxide detectors. The Tenant acknowledged the Landlord had not been notified of these issues. Notwithstanding these issues were referred to by the Landlord's agent in their email of 18th April 2017 which stated that both the smoke and carbon monoxide detectors had been repaired.
- (g) The Tribunal at its inspection on 12th May 2017 carefully checked the items which were the subject of the complaint. Since the Landlord's Agent had made written representations regarding the smoke and carbon monoxide detectors these items were also noted by the Tribunal during the inspection. The Tribunal observed the following :-
 - i) From an external visual inspection some work appeared to have been carried out to lead flashing around the chimney head of the roof. There were no tiles missing and a tile appeared to have been replaced at the top right hand corner of the rear elevation.
 - ii) In the loft space, the timbers around the chimney head showed evidence of water ingress. However the readings on the damp meter were all within the amber range showing no current evidence of dampness. Historic water staining was noted on the roofing boards. A large wasps' nest at the back of the loft space had been treated but another two small nests were noted nearer the chimney. The Landlord's representative's attention was drawn to the nests and a recommendation to have these treated also.
 - iii) The bathroom had no evidence of damp or mould. The window was timber framed double glazing with trickle ventilation. Damp meter readings at the window and in the corner beside the bath were green showing there was no dampness present.
 - iv) Both the front and rear bedrooms had no evidence of damp or soaking windows. The windows were also timber framed double glazing with trickle ventilation. Damp meter readings in both bedrooms at the windows, ceilings and corners were green showing there was no dampness present. The cupboard in the front bedroom was dry with no sign of mould. This also housed the boiler and a carbon monoxide detector was located there and operational.
 - v) The kitchen cupboards were all dry. Damp meter readings were taken under the sink, at the back door and at the under stair area at the rear of the kitchen and all readings showed green. Further damp

meter readings at the back door also showed green. The kitchen door handle had been replaced and was functioning normally.

- vi) There were heat and smoke detectors systems installed in the house which were interlinked and battery powered. The house therefore does not meet current requirements regarding fire safety and the Landlord's representative was advised of the requirement for hard wired interlinked heat and smoke detectors.

13. A schedule of photographs taken at the inspection is appended to this decision.

Reasons for the decision

14. The Tenant had complained that tiles were missing from the roof. Some repairs appeared to have been carried out around the chimney head area. The Tribunal noted from the inspection on 16th May 2017 that no tiles were missing. The loft area was found to be dry. The bathroom was found to be dry with no evidence of dampness or mould. The bedrooms and windows were dry with no evidence of dampness. The kitchen cupboards and walls were dry with no evidence of dampness and a replacement door handle had been fitted. Whilst no receipts for repairs had been provided to the Tribunal as requested, it was clear from the inspection that remedial work had been undertaken to address the issues in the Tenant's complaints. A gas safety record was produced and the Landlord's representative advised that an ECIR had been instructed and the report would be forwarded to the Tribunal shortly. The Tribunal considered that as references to defects with the smoke and carbon monoxide detectors had not been notified to the Landlord these issues did not fall to be determined as part of the application .

Given all the circumstances as set out above, the Tribunal is satisfied that (i) the house is wind and watertight and in all other respects reasonably fit for human habitation; and (ii) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order. Accordingly there is no breach of the repairing standard and no Repairing Standard Enforcement Order should be made.

Observations

15. The provision for detecting fire in the house does not meet the current required standards. This should be rectified forthwith in order to meet the repairing standard.

16. A large wasps' nest had been treated in the loft space. Two other small nests were observed and it is suggested that these are also treated.

Decision

- a) The Tribunal accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
- b) The decision of the Tribunal was unanimous.

Right of Appeal

A Landlord, Tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

- c) Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Morag Leck

Signed

[Redacted Signature]

Date

25/5/17

Chair and Legal Member

Schedule of Photographs



13 George Mann Terrace
Blairbeth, Rutherglen, G73 4NN
FTS/HPC/RP17/0033
Inspection 16/05/17 at 10.00
Weather dry/overcast

Inspection

The property is a two-storey mid terrace house with front and back door access.

The landlords' agent was present during the inspection.

1) Roof – Tiles are missing from roof

Externally the property has the original rosemary tiled roof with a brick chimney only serving the property. The roof has a covering of moss front and back, however there is no evidence of missing tiles or any replacements tiles at the front elevation.



Front elevation



Rear elevation

Lead flashing at chimney head appears to have had works carried out and a tile appears to have been replaced at the top righthand corner.

Internal

2) Loft space – Damp and wet

Access to loft space was via a small hatch in the hall.



The timbers around the chimney showed evidence of water ingress however the readings on the protimeter (damp metre) were all within the amber range.



No evidence of recent dampness within loft space - historic water staining was noted.



A large wasps nest was noted during the inspection, this appears to have been successfully treated. Two small wasp's nests were noted and highlighted during the inspection to the landlord's agent.

3) Bathroom – Wet and mouldy

No evidence of mould noted, the window cill and timbers at the bath were tested with the protimeter and all were found to be within normal range and the ceiling was clear of mould.



- 4) Dampness in bedrooms and windows soaking. The front and back bedroom ceilings and window cills were tested for dampness. No evidence of dampness recorded. Window and window cills dry.



Back bedroom



Front bedroom

All readings are within the normal range no evidences of dampness or mould was recorded within the bedrooms. The gas fired combi boiler is housed in the bedroom cupboard and a battery-operated carbon monoxide monitor was fitted, this meets with the current repairing standards.

5) Kitchen – Dampness within cupboards and handle from kitchen door missing

All cupboards checked no evidence of dampness was found. The walls were tested and all were within normal range. Moisture readings were also taken at the back door and all reading are within the normal range.





The kitchen door handle has been replaced and works accordingly.

It was noted that the heat and smoke detectors are inter linked battery powered (10year), however they require to be hardwired inter linked heat and smoke detectors.

Signed Lori CharlesDated 16/05/17

25/5/17

This is the schedule
referred to in the
foregoing decision

Morag Leck