

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

---



**First-tier tribunal for Scotland (Housing and Property Chamber)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/18/3266**

**Property at 82 Cardowan Road, Carntyne, Glasgow, G32 6QP**

**("The Property")**

**The Parties:-**

**Ms Elizabeth Dickson**

**("the Tenant")**

**Mr Stephen McCullagh, 105 Gartcraig Road, Riddrie, Glasgow, G33 2RY**

**("the Landlord")**

**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) in relation to the house concerned, and taking account of the written representations by the Tenant, those on behalf of the Landlord, the inspection and representations at the hearing on behalf of the Tenant and by the Landlord, determined to dismiss the application on the basis that the Tribunal does not have jurisdiction to determine the claim.

**The Tribunal consisted of:**

**Rory A.B. Cowan – Legal Member**

**Andrew McFarlane – Surveyor/Ordinary Member**

## Background

- 1) By application dated 4 December 2018 the Tenant applied to the First-tier Tribunal: 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 she considered the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:
  - a) That the boiler within the Property was inoperative and that there was therefore no hot water or heating.
- 3) By letter dated 7 January 2019 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
- 4) The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant.
- 5) Following service of the Notice of Referral, written representations were received from the Landlord.
- 6) The Tribunal inspected the Property on the morning of 12 February 2019. The Tenant was present and provided access. The Landlord was not present at the inspection.

## The 12 February 2019 Hearing

- 7) Following the inspection of the Property, the Tribunal held a hearing on 12 February 2019 at the Glasgow Tribunals Centre, Room 110, 20 York Street, Glasgow G2 8GT. The Tenant attended and was represented by a Mr Christman of the Legal Services Agency. The Landlord did not attend.
- 8) A preliminary issue regarding the Tribunal's ability to deal with the application was raised. In particular, it was noted by the Tribunal that the terms of the printout from the Registers of Scotland dated 5 December 2018 under title number GLA179132, in section B headed "Proprietorship" recorded the following:

*"1. In terms of Disposition to STEPHEN DAVID MCCULLAGH, registered 01 AUG 2008, a liferent interest in this Title was conveyed to ELIZABETH DICKSON residing at 82 Cardowan Road, Glasgow, G33 2RY."*
- 9) Whilst it is subsequently noted in that printout that there has been no application for registration of the liferent interest in the Property and no real right in the liferent therefore exists, that does not mean that a personal right liferent in favour of the Tenant does not exist. The Tenant was unable to confirm her understanding of what, if anything, had happened in relation to the liferent and

the Tribunal did not have anything other than the Registers of Scotland printout to consider. As such, the hearing was adjourned to another date on the basis that a direction would be issued for the provision of further information.

- 10) A direction was issued dated 19 February 2019 requiring the Tenant to provide to the Tribunal the following:

*"1. A copy of the disposition to Stephen David McCullagh relative to the Property (title number GLA179132) and registered on 1 August 2008.*

*2. All documents, correspondence (including but not limited to formal letters of missives – if any), notes and records (hand written or otherwise) showing or tending to show the circumstances leading to the creation or extinguishing (if appropriate) of the liferent in favour of the Applicant in relation to the Property."*

- 11) In response to the direction, by letter from her representatives dated 20 March 2019, the Tenant lodged a copy of the disposition to Stephen David McCullagh registered on 1 August 2008. The said letter also confirmed that:

*"Unfortunately, we have been unable to obtain any further documentation or correspondence in relation to the creation (or extinguishing) of the liferent in favour of Ms Dickson."*

#### **The 20 May 2019 Hearing**

- 12) Thereafter the Tribunal fixed a further hearing on 20 May 2019 to allow the parties to make representations on whether the Tribunal had jurisdiction to deal with the application. In advance of that hearing the Landlord made further written representations.
- 13) At the hearing, the Landlord attended and represented himself. The Tenant was not present but was represented by a Ms Johnston of the Legal Services Agency.
- 14) The Landlord confirmed that he had seen the direction issued and that he had received a copy of the response to same on behalf of the Tenant. When asked about the issue of a potential liferent over the Property his position was that, up until it was raised by the Tribunal, he had not heard of a "liferent". He also confirmed that both he and the Tenant had been represented in the transaction by the same solicitor a Mr Renfrew of William Renfrew & Co, Glasgow. He also indicated that he had contacted that firm but had been unable to get further information due to the illness of Mr Renfrew.
- 15) Ms Johnston on behalf of the Tenant stated that, until the matter had been raised by the Tribunal, she had not been aware of the existence of a potential liferent. She conceded that it appeared a liferent had been properly created in favour of the Tenant and that she had not been able to find anything to suggest, nor did she have any instructions to suggest, that the liferent had been extinguished or brought to an end. As such, based on what she was able to

establish, she conceded (whilst not formally withdrawing the application) that the Tribunal did not have jurisdiction to hear the Tenant's claim.

- 16) In response the Landlord suggested that it may be appropriate to continue the hearing further to allow him to contact the solicitors. The Tribunal decided that a further continuation was not appropriate. The Tenant's representative had conceded, that the Tribunal had no jurisdiction to deal with the application. That concession would have the effect of bringing the proceedings to an end. The Landlord's position was that he was unaware of the existence of the liferent in the first place and that there was nothing to suggest that the solicitors could add anything. In particular, there was nothing to suggest that there was a likelihood of documents being found to suggest that the liferent had ever been brought to an end.

### **Summary of the issues**

- 17) The issues to be determined are whether:
- a) The Tribunal has jurisdiction to determine the application.

### **Findings of fact and Law**

- 18) The tribunal finds the following to be established: -
- a) That there is not tenancy for the purposes of section 12(1) of the Housing (Scotland) Act 2006.
- b) That the Tribunal therefore does not have jurisdiction to determine the application.

### **Reasons for the decision**

- 19) The Tribunal's jurisdiction in relation to matters of alleged disrepair arises from the terms of section 12 of the Housing (Scotland) Act 2006 (the 2006 Act). Changes have been made to section 12 by The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations) 2019, these changes apply from 1 March 2019 and have been included in the wording below with deletions shown as struck through and additional text shown as underlined. The wording of the current section 12 is therefore as follows:

#### ***"12 Tenancies to which repairing standard duty applies***

*(1) This Chapter applies to any tenancy of a house let for human habitation unless it is—*

*(a) a Scottish secure tenancy or a short Scottish secure tenancy,*

*(b) a tenancy of a house retained or purchased by a local authority under section 121 of the 1987 Act for use as housing accommodation,*

*(c) a tenancy of a house which is—*

- ~~(i) on land comprised in a lease constituting—~~
- ~~(A) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)),~~
- ~~(B) a short limited duration tenancy (within the meaning of that Act),~~
- ~~(C) a limited duration tenancy (within the meaning of that Act), and~~
- ~~(D) a modern limited duration tenancy (within the meaning of that Act), or~~
- ~~(E) a repairing tenancy (within the meaning of that Act),~~
- ~~(ii) occupied by the tenant of the relevant lease,~~
- ~~(d) a tenancy of a house on a croft (within the meaning of the Crofters (Scotland) Act 1993 (c. 44)), or~~
- ~~(e) a tenancy of a house on a holding situated out with the crofting counties (within the meaning of that Act of 1993) to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies.~~
- (f) a tenancy of a house which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the house for a holiday.

*(2) A reference in this Chapter to a tenancy refers only to a tenancy to which this Chapter applies.”*

- 20) As such, the Tribunal only has jurisdiction to deal with applications in relation to properties which are subject to “any tenancy” to which the 2006 Act applies.
- 21) Occupation by way of a liferent interest is not a “tenancy” for the purpose of the 2006 Act and therefore the Repairing Standard does not apply to this category of occupation right. Indeed, with liferents, whilst a liferenter is entitled to use and enjoy a *fiar’s* property there is a requirement on the liferenter to return the *fee* without deterioration (*salva rei substantia*) and the rule that liferenters must bear the ordinary expenses of keeping the subjects of the liferent in repair. Further, a liferenter holds an interest very close to that of a heritable proprietor to the extent that it is a liferenter (not anyone else) who can grant a tenancy for a property (subject to it not enduring past their lifetime).

### **Decision**

- 22) The Tribunal accordingly determined to dismiss the application in terms of Rule 27 on the basis that they do not have jurisdiction to determine it.
- 23) The decision of the Tribunal was unanimous.
- 24) The Surveyor/Ordinary Member of the Tribunal took several photographs. However, standing the decision of the Tribunal to dismiss the application, these have not been included in this decision.

**Right of Appeal**

- 25) 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.
  
- 26) 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 Cowan

Signed .....

Date .....24 May 2019.....

Chairperson