

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/21/2225

Title no: LAN176957

2 Cumberae Drive, Motherwell ML1 3LG ("The Property")

The Parties:-

Miss Alana Watson, residing at 2 Cumberae Drive, Motherwell ML1 3LG ("the Tenant")

Mr Paul Gordon and Ms Lynne Jenkinson, 137 Glencoe, Whitburn, Bathgate EH47 8AS ("the Landlords")

Tribunal Members: Richard Mill (Legal Member) and Sara Hesp (Ordinary Member)

Decision

The Property does not meet the Repairing Standard. The Landlord has not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background

1. The Tenant lodged a written application with the Tribunal dated 10 September 2021 complaining that the Property does not meet the repairing standard. The application raises issues in terms of Section 13(a), (b) (c) and (d) of the Housing (Scotland) Act 2006 ("the Act"). The matters put at issue in the application are:-

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
- Whether 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.

- Whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
 - Whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
2. The parties entered into a short assured tenancy in respect of the Property which was for an initial 6 months between 9 May 2016 and 9 November 2016. This has continued by way of tacit relocation.

Notices of Referral

3. Notices of Referral were issued to the parties on 21 September 2021. A Case Management Discussion (CMD) was assigned to take place on 28 October 2021 at 10.00 am.

Documentation

4. The application was accompanied by a number of documents including a copy of the lease between the parties and numerous electronic messages exchanged between the parties.
5. The landlords relied upon detailed written submissions attaching a number of appendices numbered 1-17 lodged on 11 October 2021. These included vouching for roof works undertaken, relevant photographs, correspondence with Mr Kashif Ghos, Environmental Health Officer, and a copy of the current Gas Safety Certificate which is dated 5 December 2020.
6. On the day before the initial CMD the tenant lodged numerous further communications between the parties, together with additional photographs.

Case Management Discussion (CMD)

7. An initial CMD took place by teleconference on 28 October 2021 at 10.00 am. The tenant joined the hearing personally and represented her own interests. Both landlords also joined the hearing.
8. The issues in the application were clarified. The tenant's narrative contained within her written application highlights that in October 2020, the kitchen ceiling in the Property had fallen in due to the leaking shower upstairs. Neither had been repaired. The kitchen ceiling remained unstable with the 'Artex' finish flaking. She also raised concerns regarding the chimney of the Property and the front elevation

which she reported was unsafe. She additionally highlighted dampness in the walls and mould and dampness in the loft.

9. The Tribunal noted the disagreement between the parties as regards to the condition of the Property. The Tribunal determined that the issues in the application could not be resolved in the absence of an onsite inspection by the Tribunal. An inspection of the Property together with the fixing of a full hearing were ordered to be fixed.

Inspection

10. The Tribunal inspected the Property at 10.00 am on 24 November 2021. The tenant allowed entry and directed the Tribunal Members around the Property. Both landlords were in attendance and had access to the Property.
11. An inspection report incorporating a schedule of photographs was subsequently issued to the parties in advance of the hearing.

Hearing

12. The formal hearing on the application took place by teleconference at 10.00 am on 2 December 2021. The tenant and both landlords joined the hearing.
13. The tenant had stated at the time of inspection that she was no longer insisting upon her complaints regarding the structure or external condition of the Property. In particular, her complaints regarding the chimney and front elevation, of the Property were not insisted upon. The render to those areas has been replaced and renovated by the landlords over recent months. These aspects were not the subject of further discussion.
14. Both parties confirmed that they accepted the terms of the Tribunal's inspection report. To that extent, it was accepted and agreed that there were issues regarding the condition of the Property which required to be remedied. The issues of concern noted by the Tribunal at the time of their inspection was high levels of damp in the side elevation, the shower cubicle was not operative with the plumbing having been disconnected after a leak was detected, and the kitchen ceiling had historical damage due to the former shower leak. No other issues of concern were identified by the Tribunal. The landlords expressed frustration and concerns about the chronology of events and were concerned about some of the previous actions of the tenant but these were not relevant matters for the Tribunal. Both parties were afforded a full opportunity to make submissions.

Findings in Fact

15. The Tribunal makes the following findings in fact:-
 1. The Title to the subjects known as 2 Cumbrae Drive, Motherwell ML1 3LG is held by the Landlords. Their interest is registered in the Land Register of Scotland under Title number LAN176957.
 2. The Property which is the subject of this application is an end terraced house with accommodation over two floors.
 3. The Property is in generally good condition. The external render of the house has been recently renovated and replaced. Smoke detectors and a carbon monoxide detector were present in the Property. There is a current valid Landlord Gas Safety Record dated 5 December 2020 confirming that the combination boiler is safe and in working order. That Gas Safety Record notes the existence of the smoke alarms and carbon monoxide alarms. A further annual gas safety check requires to be undertaken imminently.
 4. High levels of damp were noted in the ground floor of the side elevation of the property in the living room primarily around the chimney void area.
 5. The upstairs bathroom contains a bath and a separate shower cubicle. The plumbing to the shower cubicle has been disconnected following a leak. Water had been leaking into the kitchen below from around October 2020. The grouting and silicone around the shower tray are in a poor state of repair. The kitchen ceiling has been damaged as a consequence of this former water leak.

Reasons for Decision

16. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal by both parties at the hearing.
17. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing on 2 December 2021.
18. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.

19. The Tribunal's decision is primarily based upon their findings at the time of their inspection. Reference is made to the inspection report incorporating photographs which is referred to for its terms.
20. The landlords accept that the issues of concern found at the time of the Tribunal's inspection require to be remedied and the decision of the Tribunal is based upon the agreement of both parties at the hearing as regards the current condition of the Property.

Observation

21. The Tribunal has no doubt that the landlords are seeking to maintain the property and are taking their responsibilities seriously. The Tribunal did note that the carbon monoxide detector is situated in the living room, some distance away from the gas boiler which is situated at the far end of the kitchen. It is unlikely that this is the most effective location for the detector. The Tribunal noted the intention of the landlords to explore that further and resolve this.

Right of Appeal

22. 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.
23. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 2 December 2021 before this witness:-

 R Mill Legal Member

  Witness

CATHERINE MCWAGHER Name and Address

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