

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/RT/19/3404

Gas House, Balgray, Lockerbie, DG11 2JT

(“the property”)

The Parties:-

Dumfries and Galloway Council, Community & Customer Services,
Strategic Housing Services, Municipal Chambers, Buccleuch Street, Dumfries
DG1 2AD

(“the third party applicant”)

Michael Jardine-Paterson, Balgray Estate, Balgray House, Lockerbie,
Dumfriesshire, DG11 2JT

(“the respondent”)

Savills, 28 Castle Street, Dumfries, DG1 1DG

(“the respondent’s agents”)

Tribunal Members:

Adrian Stalker (Chairman) and Andrew McFarlane (Ordinary Member)

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 respondent has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006, to ensure that the property meets the repairing standard under section 13, determined that the respondent had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

1. By an application to the Housing and Property Chamber received on 24 October 2019, the third party applicant sought a determination of whether the respondent had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).

2. The application contended that the respondent had failed to comply with his duty to ensure that the property meets the repairing standard under section 13 of the 2006 Act, and in particular, that the respondent had failed to ensure, at all times during the tenancy, that:-
 - the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
 - 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 (section 13(1)(c));
 - any fixtures, fittings and appliances provided by the respondent under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d)); and
 - the house meets the tolerable standard (section 13(1)(h)).
3. On 4 December 2019, a convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier tribunal. The Tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both the respondent and the third party applicant by letter dated 17 December.
4. This is a third party application made by a local authority, under section 22(1A) and (1B) of the Act. The third party applicant provided the tribunal with a copy of a tenancy agreement, in terms of which the property was let by the respondent to Jean and Charlie Bunting, under an assured tenancy, commencing on 1 June 2017.
5. Following service of the notice of referral, written representations were made by the respondent's agents. Reference is made to the content of these representations, below.
6. The Tribunal inspected the property on the morning of 22 January 2020. Mr Robert Rome and Mr Adam Black, of the third party applicant's Community & Customer Services, Strategic Housing Services, were present. Mr Mark Fogden, and Mr Matthew Law, respectively client director and property manager at Savills, the respondent's agents, were present. Both of the tenants, Jean and Charlie Bunting, were also present.
7. Later that morning the Tribunal held a hearing at Moffat Town Hall, High Street, Moffat. Again, Mr Rome, Mr Black, Mr Fogden, and Mr Law were present. The tenants did not attend.

Summary of the issues

8. The application made reference to a letter from the third party applicant to the respondent, in which the following issues were listed:

- (a) The property is not wind and watertight as a result of rainwater penetration in the rear porch.
- (b) The installation for the provision of space heating may not meet the repairing standard as the underfloor heating only partially works.
- (c) There appears to be an issue with excessive electricity usage even when use of all electric appliances are monitored and restricted: (i) the tenant has not had sight of an EICR for this property; (ii) there are disconnected cables in the attic and elsewhere in the property with no indication whether the exposed ends are live or not; (iii) tenant suspects that there is an electrical fault within the property that constantly drains power.
- (d) Two double glazing panels in the living room windows are clouded up with water vapour.
- (e) The window in the kitchen may have been installed back to front.
- (f) The handle on the French doors in the living room is broken.
- (g) The water supply to the WC cistern is excessively noisy when filling up after a flush.
- (h) The septic tank has not been registered with SEPA.
- (i) The property has a private water supply, and is therefore subject to the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017. This requires the supply to be subject to an annual water sample, and five-yearly risk assessment. The respondent requires to have a water sample and risk assessment carried out by the local authority.

Inspection

9. During the course of the inspection, all of the parties were in agreement that issues (c), (d) and (g) had been addressed by the respondent's agents.
10. The property is a traditional extended cottage with main outer walls of masonry finished with painted render and incorporating stone details to openings. The roof is of pitched construction finished with slates. Windows are of uPVC framed construction with sealed double glazed units. Other finishes, fixtures and fittings are of the types commonly found in such properties.
11. The porch is a projection to the main building with outer walls of a single skin of light weight concrete blocks finished externally with painted render. The roof is of mono-pitched configuration comprising timber supports spanning from the main building to the outer wall with a decking of plywood. The waterproofing layer to the roof is of felt held down by timber battens. The window is of uPVC and similar to the main house whilst the rear door is of metal framed construction with sealed double glazed units. External and internal views of the porch are shown in the photographic schedule attached to this decision (photographs 1-7).
12. It was evident the porch was affected by penetrating dampness. Dampness staining could be seen on the internal roof and the walls

(photographs 1 and 2). Damp meter readings, taken on the inner surface of all three outer walls, indicated the presence dampness. Daylight was visible at the intersection between the door leaf and adjacent frame. This permits windblown rain to enter.

13. Space heating is apparently by an underfloor electrical system. It was accepted by all parties at the inspection, that the underfloor system cannot be controlled, and is effectively inoperable. Given the problems with the space heating, Savills have provided the tenants with electrically powered radiators.
14. In the kitchen, above the sink, there are two windows each comprises an opening upper sash over a lower fixed pane (see photograph 8). Neither of those windows has been installed back to front. However, they are of different designs, such that from the kitchen, the upper sash to the right window opens outwards, whilst that to the left window inwards. This looks odd. But, both windows are wind and watertight, and appear to be in good repair and working order.
15. The handle on the French door in the living room was loose, and looked near the end of its useful life. It appears to be held intact with a screw that has been inserted in the handle (see photograph 9).

Hearing

16. The written submissions made by Savills indicated an acceptance that the porch has a problem with dampness and water ingress. It was said that consideration had been given to a repair, but this was thought not to be long-term solution. Instead, the porch is to be replaced, at a cost of about £11,000. This had been delayed, due to issues with funding. Mr Law and Mr Fogden both thought that the work could be done in about two months, but thought an order specifying a period of three months would be prudent.
17. The written submissions made by Savills also conceded that the current underfloor heating system is not functioning to full capacity, and needs to be replaced. It was accepted, at the inspection and hearing, that repair, or replacement with a new underfloor system, is not practically feasible. Instead, the respondent and Savills intend that an oil fired central heating system will be installed. That will entail the fitting of pipework, a boiler, and radiators, at an estimated cost of about £12,000.
18. Mr Fogden argued that this repair was not of the highest priority. The respondent has supplied the tenants with electrically powered radiators. They had originally supplied seven radiators, but the tenants have handed back two of them. This indicates that the radiators are adequate to heat the property. The respondent has also recognised that the cost of heating the property, with these radiators, is significantly higher than the cost of running electrical underfloor system. The respondent's agents are making a payment of £150 per month, to cover increased cost of the tenants' electricity bills. They are acutely aware, given this cost, that this is not a

long-term solution. The respondent intends to have an entirely new central heating system fitted. That will cost about £12,000. The respondent's agents are currently investigating sources of funding for that work. In the circumstances, Mr Fogden suggested a period of 12 months as being reasonable for this repair to be effected.

19. Mr Fodgen and Mr Law indicated that there had been a delay in effecting a repair to the French door handle, because Savills' joiners had been unable to source a suitable replacement. Instead, the joiners are making a replacement, which should be capable of being supplied over the next couple of months.
20. Mr Fodgen and Mr Law confirmed that an application for registration of the septic tank has now been made to SEPA. Both parties were in agreement that, at the present time, the septic tank appears to be in a reasonable state of repair, and in proper working order.
21. The parties reported that the water supply has recently been tested by Dumfries and Galloway Council's Environmental Health Department. The supply has failed the sample test. The water tank must be cleaned out, and tested again. In the meantime, the tenants have been advised to boil their water or use bottled water. Accordingly, the property does not currently have "an adequate piped supply of wholesome water available within the house", for the purposes of section 86(1)(d) of the Housing (Scotland) Act 1987. It therefore fails to meet the tolerable standard as defined in that section. The respondent's agents accepted that this was a matter that required to be addressed as soon as is reasonably possible. They anticipate that, once the tank has been cleaned out and re-tested, the tenants can begin using the water supply as normal. It was expected that this would take 2-3 weeks.
22. The Tribunal would wish to record that there was substantial agreement between parties' representatives as to the nature of the outstanding problems. Much of the discussion, at the hearing, concerned the measures proposed by the respondent's agents as to how to address those problems, and how long those measures would take to implement.

Findings in fact

23. The tribunal finds the following facts to be established: -
 - i. The property is as described in paragraph 10.
 - ii. It is currently occupied by Jean and Charlie Bunting under an assured tenancy which commenced in June 2017.
 - iii. The porch to the property, described at paragraph 10 suffers from penetrating dampness, and is not wind and watertight.
 - iv. The respondent intends to replace the porch.
 - v. The current underfloor heating system is not functioning properly. It is not in proper working order.

- vi. The respondent has supplied the tenants with electrically powered radiators.
- vii. He intends to have central heating fitted.
- viii. The issues described in the application, noted as “(c)”, “(d)” and “(g)” in paragraph 8 above, had all been addressed by the date of the inspection, 22 January 2020.
- ix. The windows above the sink in the kitchen are wind and watertight, in reasonable state of repair, and in proper working order.
- x. The handle on the French door in the living room is loose. It is held intact with a screw that has been inserted in the handle. The respondent intends to replace it.
- xi. The septic tank has not been registered with SEPA. An application is currently pending. Currently, the septic tank is in reasonable state of repair, and in proper working order.
- xii. The property has a private water supply. The supply has failed a sample test, taken by Dumfries and Galloway Council’s Environmental Health Department. Currently, the property does not have an adequate piped supply of wholesome water available within the house. It therefore fails to meet the tolerable standard defined in that section.

24. These findings follow from the papers obtained by the Tribunal in relation to the application, or were apparent to the Tribunal members during the course of the inspection, or were based on their discussion with parties’ representatives at the hearing.

Reasons for the decision

25. Of the points (a) to (i) listed at paragraph 8 above, being the complaints made in the application, the Tribunal was satisfied that the property failed to meet the repairing standard, as regards points:

- (a) – dampness in porch
- (b) – heating system not in proper working order
- (f) - handle on living room French door is not in a reasonable state of repair
- (i) – there is currently no adequate piped supply of wholesome water.

26. As already indicated, the respondent’s representatives did not dispute these matters had to be addressed. It was accepted that the Tribunal would require to make a Repairing Standard Enforcement Order (“RSEO”) as required by section 24(2) of the 2006 Act.

27. Some discussion took place at the hearing, as to the appropriate timescale, for carrying out the work specified in the RSEO. This was not straightforward, because the four outstanding issues are of varying urgency. However, section 24(3) of the 2006 Act states:

“(3) A repairing standard enforcement order must specify the period within which the work required by the order must be completed.”

This does not appear to allow for an RSEO with multiple periods, in respect of different breaches of the repairing standard.

28. The landlord's representatives suggested a three month period, in respect of the porch replacement. That seemed to the Tribunal to be reasonable the circumstances. The Tribunal decided that 12 weeks, from the date of the RSEO, would be appropriate for this repair, and for the other repairs.
29. The Tribunal accepts that addressing the problem with the water supply needs to be done as quickly as possible. However, it was prepared to accept the assurances, from Mr Law and Mr Fogden that this matter is in hand. It also accepts that replacing the current heating system may take longer. However, if that proves to be case, the respondent may apply for a variation of the RSEO under section 25 of the 2006 Act.

Decision

30. The Tribunal accordingly determined that the respondent had failed to comply with the duty imposed by section 14(1)(b) of the Act.
31. In particular, the Tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(a), given the penetrating dampness at the porch.
32. The Tribunal also determined that the property fails to meet the repairing standard in terms of section 13(1)(c), because the installations in the house for the supply of space heating are not in proper working order.
33. The Tribunal also determined that the property fails to meet the repairing standard in terms of section 13(1)(d), because the handle on living room French door is not in a reasonable state of repair.
34. The Tribunal also determined that the property fails to meet the repairing standard in terms of section 13(1)(h), because it currently fails to meet the tolerable standard.
35. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms.
36. The decision of the Tribunal was unanimous.
37. **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.

38. 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.

A Stalker

Signed

Date 06/02/20.....

Chairperson