

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

Chamber Ref: FTS/HPC/RP/23/1384

Re: Property at 9, Stenhouse Street East, Edinburgh, EH11 3DD registered in the Registers of Scotland under Title Number MID48799 (“the Property”)

The Parties:

Mr. Abdulhafeez Adalakun and Ms. Grace Otoni residing at the Property (“the Tenants”)

And

Mrs. Carol Graham residing at The Schoolhouse Cottage 2b, Baird Road, Ratho, EH28 8RA (“the Landlord”) per her agents, Messrs. Murray and Currie, Property, Sales and Letting, 60, Queen Street, Edinburgh EH2 4NA (“the Landlord’s Agents”)

Tribunal Members:

Karen Moore (Chairperson) and Andrew McFarlane (Ordinary and Surveyor Member)

Decision of the Tribunal

The Tribunal determined that the Landlord has failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), 13(1) (d), 13(1) (e) and 13(1) (h) of the Act.

Background

1. By application received between 2 and 4 May 2023 (“the Application”), the first-named Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), 13(d) 13 (e) and 13(1) (h) of the Act. The Application comprised

a copy of the tenancy agreement between the Tenants and the Landlord, copy correspondence between the Tenants and the Landlord's Agents regarding repairs to the Property and copy photographs of the condition of the Property.

2. The Application noted the following heads of complaint and listed works required:-
 - i. Section 13(1) (a) There is an issue with water ingress at the back of the Property with carpets and walls in the main bedroom permanently damp and growing mould; there are also gaps in the kitchen cupboards and shelving and a broken window in the kitchen all allowing wind and draughts to enter the Property; there is a gap at the kitchen/ living room pass door meaning that draughts go through the whole Property;
 - ii. Section 13(1) (b) There is an issue with drainage in the Property with the kitchen sink not draining and sediment flowing back into the sink;
 - iii. Section 13(d) The ignition for the gas hob is not working;
 - iv. Section 13(1) (e) The kitchen table has a broken leg and is not safe to use and the bedframe has broken slats making it unsafe and uncomfortable to use;
 - v. Section 13(1) (h) There is rising dampness in the Property causing mould to form on personal belongings and likely to cause health issues; the Property is draughty and cold.
3. The Application was referred to the Tribunal. An Inspection of the Property and a Hearing were fixed for 31 July 2023 and intimated to the Parties.
4. Prior to the Inspection and Hearing, the first-named Tenant requested that his co-tenant be allowed to participate in the proceedings. The Tribunal dealt with this as a preliminary matter at the Hearing.
5. Also, prior to the Inspection and Hearing, the Landlord's Agents lodged a survey report of the Property prepared by Jason Barrie, Surveyor, of Richardson and Starling on 18 July 2023 following instructions to investigate the prevailing damp conditions within the Room Rear Left (Bedroom) and Rear Extension (Kitchen). The Survey Report set out findings, specification and a quotation for the appropriate remedial treatment and associated builders work.

Inspection and Hearing

6. The Inspection of the matters complained of in the Application took place at the Property on 31 July 2023 at 10.00 am. The Landlord was not present or represented. A Schedule of Photographs taken at the Inspection was prepared and is annexed hereto.
7. The Hearing took place on 31 July 2023 at 11.45 am at George House, Edinburgh. The Tenants took part and were not represented. The Landlord was not present or represented.
8. As a preliminary matter, the Tribunal considered the first-named Tenant's request to allow his co-tenant to participate in the proceedings. The Tribunal

agreed to this request and took the view that Ms. Otoni, as co-tenant, should be admitted to the proceedings as a joint applicant.

9. The Tribunal discussed the Inspection with the Tenants who expanded on the detail of the complaints raised in the Application. They explained that they had noticed the dampness in the main bedroom shortly after moving into the Property in January 2023 when they moved a chest of drawers and found the wall and skirting behind it to be wet. They advised that the Landlord's husband and a contractor called out in February 2023 and stripped the wallpaper on the affected wall, painted the wall and instructed the Tenants to heat the room and leave the window open to allow the wall to dry out. The Tenants stated that in spite of following this instruction, the wall has not dried out. The Tenants advised that all of the other matters complained of have been notified to the Landlord via her agents but no steps have been taken to carry out any repairs. The Tenants advised that the Landlord's Agents advised them to contact the Council regarding the drainage issue and to use drain un-blocker, which they did without success.
10. The Tribunal treated the Richardson and Starling Survey Report as a production in respect of its findings relating to the Application.

Tribunal's assessment of the evidence.

11. The Tribunal found the Tenants to be credible, straightforward and fair in their evidence and had no reason to doubt the evidence.

Findings of Fact

12. The Tribunal's findings in fact were made from the Application, the Inspection and the Hearing.
13. The Property is a ground floor flat in a block of four similar flats. The common roof is of hipped pitched configuration finished with slates. Gutters and downpipes appear to be mainly cast iron. Outer walls are of masonry construction finished externally with a roughcast finish incorporating smooth bands, all of which has received a paint finish. Windows and external doors are in a variety of types and styles appearing to be in many cases replacements for the originals. A single storey projection has been added to the rear with a flat roof with a membrane finish, uPVC rainwater goods and walls with a similar finish to the original building.
14. The Property comprises an entrance vestibule, hallway, front and rear (main) bedrooms, bathroom and lounge with extended kitchen off.
15. There is a private residential tenancy of the Property between the Parties.
16. Electronic damp meter testing carried out at the Inspection showed that the exposed areas of outer walls in the main bedroom gave higher than normal readings. These readings were generally consistent at all levels with higher readings noted on areas appearing darker in colour. The general pattern of

dampness is consistent with penetrating dampness. This may be masking some areas of rising dampness but penetrating dampness needs to be eliminated first before this can be established conclusively.

17. An external examination identified a number of factors likely to be contributing to penetrating dampness such as leaking gutters and downpipes, vegetation close to or attached to the outer walls, hard surfaces close to outer walls and the condition of the roughcast. Further investigations will be necessary to establish all of the factors which need to be addressed to eliminate penetrating dampness.
18. The findings in respect of dampness are broadly in line with the Richardson and Starling Survey Report.
19. The bedframe comprises outer timber members supporting slats which in turn support the mattress. One of these slats is cracked and another has been previously patch repaired. The effect is that neither now offer proper support to a mattress as intended.
20. The built in cupboard in the kitchen was examined and appears to have formed part of the original construction and probably accommodated a hot water cylinder or similar. This cylinder has been removed leaving gaps in the linings through which draughts, dirt and debris can enter. The shelves have been formed around the previously removed items leaving gaps.
21. The cupboard unit below the kitchen sink was examined as the Tenants indicated that draughts were noted but the source of the draughts was not evident. An external inspection revealed a ventilator through the outer wall. There was a requirement at one time for a particular volume of externally ventilated storage to be provided in every domestic kitchen, dating back to a time when larders were provided and refrigeration was not common. In this instance the ventilator has been covered with a plastic bag.
22. The sealed double glazed unit in the side window has a crack in the outer pane. This has destroyed the seal and allowed moisture to accumulate between the two panes of glass.
23. The Tenants indicated that the drainage problem from the kitchen sink had eased but had been replaced by a similar problem in the bathroom. When the shower was run, water accumulated in the bath. The shower and the wash hand basin taps were run showing that water “gurgled up” in the bath leaving a deposit around the bath. It was not possible to see the configuration or operation of the drainage system but there appears to be a blockage or restriction somewhere in the system.
24. The system designed to ignite the gas burners on the gas hob in the kitchen was tested and did not operate as intended. There was no “spark”.

25. The door from the kitchen to the lounge would not close into the frame as intended. The door leaf appears misaligned and clashes with the frame.
26. The dining table in the kitchen shows signs of having been patch repaired. This has involved one of the legs being screwed to the frame which supports the table top. The manner in which the screw has been added has caused the top of the table leg to split.

Issues for the Tribunal

27. In these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d), 13(1) (e) and 13(1) (h) of the Act at the date of the Inspection.

Decision of the Tribunal and reasons for the decision.

28. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that as the door leaf in the door from the kitchen to the lounge does not fit properly in the frame and as there is dampness in the main bedroom, the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
29. In respect of the complaint in terms of Section 13(1)(b) that the Property and in particular that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order the penetrating dampness in the main bedroom, the condition of the external parts of the Property and the broken sealed double glazing unit in the side window to the kitchen are such that the that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
30. The installations in the house for sanitation are not in a reasonable state of repair and in proper working order as required by s13(1)(c), as there is an impediment which prevents waste water being conducted away from the property.
31. In respect of the complaint in terms of Section 13 (1) (d) that the Landlord has failed to ensure that any fixtures, fittings and appliances provided by her are in a reasonable state of repair and in proper working order, as there are gaps in the shelves and linings to the built in cupboards in the kitchen and the ignition switch on the gas hob is inoperative, the fixtures, fittings and appliances are not in a reasonable state of repair and are not in proper working order and so the

Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

32. In respect of the complaint in terms of Section 13 (1) (e) that the Landlord has failed to ensure that any furnishings provided by her are capable of being used safely for the purpose for which they are designed as the bedframe no longer provides the intended support to the mattress and the dining table has been subject of a poor-quality repair, the furnishings provided are not capable of being used safely for the purpose for which they are designed and so the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
33. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the Tolerable Standard, as the Tribunal has found that there are draughts in the Property and that there is dampness in the Property, albeit that it is not possible to determine conclusively that there is rising dampness, the Tribunal finds that the Property does not meet the Tolerable Standard and so the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
34. The decision is unanimous.

Repairing Standard Enforcement Order

35. Having determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

Appeal

36. 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.

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.

K Moore

Signed

Karen Moore, Chairperson

2 August 2023.