



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/21/2833

Re: Property at 196 Chirnside Road, Glasgow G52 2LQ (“Property”)

The Parties:

Lisa Nicholson, 196 Chirnside Road, Glasgow G52 2LQ (“Tenant”)

Locheden Limited, 55 Baker Street, London W1U 7EU (“Landlord”)

Cairn Letting, 34 Gibson Street, Glasgow G12 8NX (“Landlord’s Agent”)

Tribunal Members :

Joan Devine (Legal Member); Andrew Taylor (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(h) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 26 October 2021, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that she believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (h) of the Act. The Application stated that the Landlord had failed to ensure that:
 - The Property met the tolerable standard.
3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :

- Mould and dampness in bedrooms, kitchen and bathroom
 - Floors rotting under carpets
 - Kitchen cupboards smell of damp
 - Toilet unsecure
4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 21 and 28 March 2022 respectively.
 5. Prior to the Inspection the Landlord's Agent submitted written representations in which they stated that the Landlord accepted that the Property did not meet the tolerable standard as well as explaining repairs conducted to tackle the dampness and proposed further investigations.

The Inspection

6. The Tribunal inspected the Property on the morning of 21 March 2022. The weather conditions at the time of the inspection were clear and dry. The Tenant was present at the Property during the inspection as were Lauren Burns and Gemma Waters of the Landlord's Agent. The Property is a ground floor self-contained 3 bedroomed flat within a 2 storey building. Following the Inspection the inspection summary with a schedule of photographs was issued to the Parties.

The Hearing

7. The Hearing took place on 28 March 2022 by conference call. The Tenant was in attendance and was represented by Rhona McLeod of the Legal Services Agency. Gemma Waters of the Landlord's Agent was also in attendance.
8. The Tribunal noted the written representation provided by the Landlord's Agent and asked the current position as regards investigations and works. Ms Waters told the Tribunal that the roughcasting works had been completed in February 2022. She said that access to the Property had been requested for a full damp survey to be carried out by Rowallan Timber and Damp Specialists. This had been arranged but cancelled as the Tenant's daughter had a positive covid test.

The Evidence

9. The evidence before the Tribunal consisted of:
 - 9.1 The Application completed by the Tenant
 - 9.2 Land Register report relating to the Property
 - 9.3 Screenshots of messages between the Tenant and the Landlord's Agent notifying them of the issues complained about in the Application
 - 9.4 Photographs of the interior of the Property
 - 9.5 A letter from the Tenant's GP dated 10 December 2021

- 9.6 A letter from Matt Kerr, former neighbour of the Tenant
- 9.7 Written representation from the Landlord's Agent dated 7 March 2022
- 9.8 The Tribunal's inspection of the Property
- 9.9 the oral representations of the Tenant and the Landlord's Agent

Summary of the Issues

- 10. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

- 11. Tribunal made the following findings in fact:
 - 11.1 The Tenant has lived in the Property since 27 March 2018.
 - 11.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 11.3 The tenancy of the Property is managed by the Landlord's Agent.
 - 11.4 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 11.4.1 Damp patches and mould in back bedroom.
 - 11.4.2 Dampness and mould in the kitchen.
 - 11.4.3 Broken fire detector in the kitchen.
 - 11.4.4 Broken fire detector in the living room.
 - 11.4.5 Dampness and mould in the front bedroom 1.
 - 11.4.6 Dampness and mould in the front bedroom 2.
 - 11.4.7 Dampness and mould in the bathroom.
 - 11.4.8 Poorly fixed toilet and wash hand basin.

Reasons for Decision

12. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the tolerable standard as required by Section 13(1)(h) of the Act.
13. The Tribunal noted that there were high moisture meter readings on the external wall in all three bedrooms as well as in the kitchen and bathroom. There were damp patches and mould evident in all three bedrooms, the kitchen and the bathroom. The Tribunal also noted in the bathroom that the toilet and cistern are not properly fixed to the floor or wall and the wash hand basin is not properly fixed to the floor or the wall.

Observations by the Tribunal

14. The Tribunal observed that there was one smoke alarm in the hallway. This provision does not comply with current statutory requirements for rented properties. The repairing standard includes a requirement under Section 13(1)(f) of the 2006 Act that the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires, and for giving warning in the event of fire or suspected fire, Section 13(5) of the Act states that regard is to be had to any building regulations or any guidance issued by the Scottish Ministers in these matters.
15. The current Scottish Government statutory guidance states that there should be at least:
 - one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes;
 - one functioning smoke alarm in every circulation space, such as hallways and landings;
 - one heat alarm in every kitchen; and
 - all alarms should be interlinked.
16. The Tribunal also observed that it would be open to the Tenant to make a further application to the Tribunal in respect of the absence of smoke alarms within the Property, should this not be addressed by the Landlord.
17. The Landlord should also be aware of the extension of the repairing standard to require the installation of carbon monoxide warning detectors from 1 December 2015.
18. The guidance states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:
 - a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling;

- a fixed combustion appliance in an interconnected space, for example an integral garage;
- a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) – the CO detector should be sited outside the room, as close to the appliance as possible, but allowing for the effect humid air might have on the detector when the bathroom door is open.

19. The Tribunal noted that there was only one smoke alarm situated in the hall, and there was no CO detector. This was not in accordance with the Scottish Government guidance. Further, the Tribunal noted that there was no heat detector present in the kitchen.

Decision

20. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the Property does not meet the tolerable standard.

21. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

**Legal Member
28 March 2022**