

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

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

Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber Ref: FTS/HPC/RT/22/1411

Title no/Sasines Description: STG60123

1 Mochray Court, Dennyloanhead, Bonnybridge, FK4 1FE (“the House”)

The Parties:-

Mrs Nicola Cairney, 1 Mochray Court, Dennyloanhead, Bonnybridge, FK4 1FE (“the Tenant”)

Falkirk Council, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”)

Ms Donna Kelly, 26 Bellaville Grove, Chryston, Glasgow, G69 9JT (“the Landlord”)

Tribunal Members:

Mrs Nicola Weir, Legal Member and Mr Nick Allan, 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 Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 13 May 2022, the Third Party Applicant applied on behalf of the Tenant to the Tribunal in terms of Section 22 of

the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House, including issues with smoke alarms, heat and carbon monoxide detection; lack of gas and electrical safety certificates; cracks in the ceiling plaster in the kitchen from a previous leak; issues with the shower and a resultant leak and damage to the living room ceiling below; and issues around the doorway between the hall and garage conversion with cracks in the surrounding plasterwork and gaps around the door and at the skirting. Supporting documentation was submitted with the application, and subsequently. The application indicated that the Tenant wished to be party to the application too.

2. On 27 May 2022, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal and Inspection and Hearing was issued to the parties on 17 June 2022, requesting that any written representations should be lodged with the Tribunal by 8 July 2022. Written representations were lodged by the Tenant including further information on repair issues of which the Tenant had notified the Landlord direct, including a recurring fault with the boiler and issues concerning pigeons accessing the loft area and flies accessing the house through defects around the doorway between the hall and garage conversion. The Landlord did not lodge written representations with the Tribunal but some written communications she had had with the Third Party Applicant prior to submission of the application had been submitted by the Third Party Applicant in connection with the application.

3. Inspection

The Tribunal Members carried out an Inspection of the House at 10.30am on 1 August 2022. The Tenant was present. The Tribunal noted that some of the issues had been attended to by the Landlord, namely that a Gas Safety Certificate in satisfactory terms and dated 30 March 2022, had been produced and that smoke alarms and heat and carbon monoxide detectors had been installed. The Tribunal inspected each of the issues raised by the application and noted that the smoke alarms and heat and carbon monoxide detectors appeared to be correctly installed and to be operating properly; that there were cracks and other damage evident on the kitchen and living room ceilings which appeared to have been caused by leaks from above; that there were cracks and gaps around the doorway between the hall and garage conversion and that a temporary repair/plugging of the gap between the skirting and wall/floor in the garage conversion appeared to have been carried out; that there appeared to be a gap or gaps in the roof where the Tenant alleged pigeons had got into the loft; that the shower unit in the ensuite was leaking in parts, the shower head fell off and water sprayed out, that some of the tile grouting on the shower enclosure wall was in poor condition with some gaps in the grout, that the shower enclosure did not appear to be attached to the base, that water pooled slowly on the

bathroom floor when the shower was run for a few minutes and subsequently a steady drip came through the living room ceiling below, and that there was evidence of water damage on the wall adjacent to the shower enclosure in the ensuite bathroom. The Tenant also showed the Tribunal Members a photograph on her mobile phone which she said had been taken last September/October and showed black flies around the door way between the hall and garage conversion and on the walls. She stated that she had also shown this previously to the Landlord and the Third Party Applicant. A Photographic Schedule taken during the Inspection by the Ordinary Member dated 12 August 2022 is attached to this Statement of Decision.

4. Evidential Hearing

The Evidential Hearing took place by telephone conference call at 2pm on 1 August 2022. It was attended by the Tenant, the Landlord and also by Ms Kate Smith, Private Sector Officer of the Third Party Applicant. After introductory comments from the Legal Member and it being ascertained that there were no preliminary matters that either party wished to raise, the Tribunal heard evidence from all parties and asked questions of all parties.

5. At the Hearing, the Tribunal had before it the Application and other documentation referred to above. The Tribunal also had before it a copy of Land Certificate STG60123 relative to the House which is registered in the name of the Landlord and confirmation that the House is included in the Landlord's Landlord Registration with Falkirk Council.
6. The Legal Member explained briefly to the Landlord and Third Party Applicant the main findings from the Inspection of the House that morning as neither had been present and explained that a Photographic Schedule will be prepared by the Ordinary Member and circulated in due course.
7. The Tenant gave evidence about the background to this application, that they had been the tenant for a number of years and that relations with the landlord seemed to have been generally fine until around autumn 2021. The Tenant's position was that she and her husband had maintained the House over a number of years, replacing white goods and decorating from time to time and that they had not really had to have many dealings with the Landlord. However, they had advised the Landlord around July 2021 that there was an issue with pigeons getting into the loft and nesting there. According to the Tenant, the Landlord had said that she would do something about this but had then failed to do so. They had then reported other repair and safety concern issues but these were not addressed by the Landlord either. Around this time, the Landlord had informed them that she was wanting to sell the property and has visited the property with an estate agent. A Notice to Quit was issued requiring them to vacate the property in March 2022 and the Tenant then sought advice from Shelter and Falkirk Council. The Landlord had involved her brother in some of the repair issues but

relations with the Landlord and her brother have since deteriorated further. Disputes have also arisen about the Landlord wanting to be given a key to access the property and claiming that the Tenant is being difficult about access for repairs and moving out of the property. The Tenant advised that around September/October 2021, a number of large black, slow-moving flies had appeared in the garage conversion and had made their way into the hall, around the doorway. The Tenant advised that, after several requests to the Landlord to resolve this, she had taken the matter into her own hands and had called in a pest control contractor herself. The contractor advised her that these were cluster flies and that they had probably come down into the wall cavity to feed on a dead pigeon carcass and had then made their way out into the garage conversion and then into the hall through the gaps between the walls, floor, doorframe and skirtings. The contractor eradicated the flies using smoke and the Tenant had plugged the gaps as best they could to stop this happening again. There has been no sign of such flies since but the Tenant is concerned that if proper repairs are not carried out, there may be a repeat infestation. The Tenant's position is that the pigeons are still in the loft and can be heard from time to time, which is also a concern. The Tenant confirmed that, following the involvement of Ms Smith from Falkirk Council in March 2022, the annual Gas Safety check was carried out and she has been issued with a copy of the report. However, she stated that there had been a repeat issue with the boiler which she had previously reported to the Landlord and which has still not been resolved. She said that she mentioned this to the contractor who carried out the Gas Safety check and he thought it might be to do with a defect in the temperature regulation/thermostat. Smoke alarms and a heat and carbon monoxide detector have also now been installed, although an electrical safety inspection has not yet been carried out. The Tenant advised that the Landlord did get a contractor out to fix the leak in the bath/drain above the kitchen and also to look at the leak from the ensuite shower through the living room ceiling. He had mentioned the grout and that the tiles in the shower felt "spongy" to the touch but no repairs have been carried out, and nor has the ceiling damage in the kitchen nor living room been rectified. The Tenant states that, as a consequence, they have not been able to use the ensuite shower since autumn last year as they do not want any more water coming through the living room ceiling and causing more damage. She said that being unable to use the shower is a real inconvenience. The Tenant confirmed that they will be moving out of the House once their new house is ready but that they have been advised that they do not require to do so until the Landlord properly obtains an eviction order. She confirmed that she refused to provide the Landlord with a key in order that she could access the House as she considers this to be an unreasonable request and also that she does not want the Landlord or her brother in the House nor to have direct contact with them, due to their relations having deteriorated and recent events. The Tenant does, however, wish the repairs issues which have been raised to be dealt with while they are still living there. She said the repairs issues are legitimate and it is in both parties interests to have these matters rectified. She denied having been difficult about allowing access

as the Landlord has alleged and confirmed that she will continue to allow access for tradespeople instructed by the Landlord, provided she is given reasonable notice of when they will be attending. She confirmed that the Landlord's plumber who has attended before has her direct contact number and she is happy to make arrangements for access direct with him.

8. Ms Smith, of the Third Party Applicant, confirmed the background to the application being submitted on behalf of the Tenant and of her communications with the Landlord. She gave evidence about visiting the House prior to contacting the Landlord and submitting the application to the Tribunal. She confirmed that she had been shown the photograph of the flies and given details regarding this issue by the Tenant but that she herself had not seen any flies nor heard pigeons in the loft on her visit to the House in March 2022. She confirmed having been sent a copy of the Gas Safety Certificate, that she understands that the smoke alarms and heat and carbon monoxide detectors have now been installed and that the other issues remain outstanding. She has not visited the House again.
9. The Landlord also gave evidence. Her position is that there was never any issues with repairs until she informed the Tenant that she wanted the House back. She is a single parent and struggling financially to pay for two houses and for repairs to this one. She needs to sell the House and to do so, she has been trying to get the Tenant to move out but the Tenant is refusing. As she was having difficulty getting access herself and access for contractors, she did ask the Tenant for a key. The Landlord accepts that there are repairs and other issues needing attended to but she said that some of the issues, such as the marks on the kitchen ceiling from the leak which was fixed previously, and cracks in the plasterwork, are more decorative in nature and the Tenant has said that these items could just wait to be dealt with after they have moved out. The Landlord advised that she did get a plumber out to have a look at the ensuite shower and that he thinks this is just a grouting issue. She arranged for the Gas Safety check to be done and sent the paperwork to Ms Smith as requested. The gas check was a pass and she said that the contractor had not mentioned anything about a faulty thermostat or other fault having been found with the boiler. She also arranged for the smoke alarms to be installed and the heat and carbon monoxide detectors. She accepts that the EICR has not yet been done and has not been done within the past five years. As regards the pigeons in the loft and the flies, she confirmed that the Tenant had informed her of both issues and that she was originally going to have her brother attend to try and resolve these issues but, on speaking to Falkirk Council, they had been advised that nesting pigeons cannot be removed. The Landlord confirmed that it is her intention to resolve the outstanding repairs issues but she does not have an exact timescale and has not instructed any contractors to attend imminently.

Findings in Fact

1. The tenancy has been in place for around 10 years, but the Tribunal has not had sight of the tenancy agreement.
2. Relations between the parties appear to have been good for many years, until around August 2021 when repairs issues were raised by the Tenant and the Landlord also informed the Tenant that she wished to recover the House with a view to selling it.
3. A Notice to Quit was served by the Landlord in or around September 2021, providing 6 months' notice which expired in or around March 2022.
4. The Tenant is in the process of acquiring an alternative property and does intend to vacate the House, but remains in possession at the present time.
5. The Landlord has attended to some repairs issues intimated to her in writing in March 2022 by both the Tenant and the Third Party Applicant but some remain outstanding.
6. This application was lodged with the Tribunal on 13 May 2022.
7. Reference is made to the Tribunal's findings on Inspection, which took place on 1 August 2022.
8. Some of the repair issues mentioned in the Tribunal application had been rectified prior to the Inspection but some remained outstanding.
9. The House does not meet the Repairing Standard in some respects, as detailed in the Repairing Standard Enforcement Order (RSEO).

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the written representations and the oral evidence of the parties at the Evidential Hearing.
2. The Tribunal is satisfied that parts of the Repairing Standard are not currently met in respect of the House, namely Sections 13(1)(a), (b), (c) and (d), given the present condition of the roof, the ensuite shower and surrounds, the living room and kitchen ceilings, the doorway and surrounds between the hall and garage conversion, the boiler/thermostat and the lack of a current EICR. The Tribunal is satisfied that the Landlord had been notified in writing of the required repairs and given a

reasonable opportunity to attend to same prior to this application being lodged with the Tribunal. Whilst acknowledging the Landlord's explanations for some of the repairs not yet having been attended to, namely financial pressures, deteriorating relations with the Tenant and difficulties arranging access for repairs, the Tribunal was of the view that the Landlord was in breach of her duty in terms of the Repairing Standard and that an RSEO requires to be made in respect of the outstanding matters. Given the nature of the required works, the Tribunal is of the view that a period of 6 weeks is an adequate and reasonable timescale for these works to be completed.

Decision

1. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
2. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
3. The decision of the Tribunal was unanimous.

Right of Appeal

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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.

Signed... .. Date: 16 August 2022
N Weir, Legal Member of the Tribunal