

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier For Scotland (Housing and Property Chamber)

Housing (Scotland) Act 2006 Section 34

Chamber Reference: FTS/HPC/RP/17/0370

Title Number: MID70342

Property Address: 122/4 Duke Street, Edinburgh EH6 8HR

The Parties:- Mrs Maureen Kay, 122/4 Duke Street, Edinburgh EH6 8HR ("the tenant") represented by Andrew McCloskey, Community Help & Advice Initiative, ELS House, 555 Gorgie Road, Edinburgh EH11 3LE

Mr Khwaja Akbar Mir, Craigroyston House, 50 West Shore Road, Edinburgh EH5 1QH and Mrs Sabira Mir, Craigroyston House, 50 West Shore Road, Edinburgh EH5 1QH ("the landlords")

The landlords are represented by Alan Mauran

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

Decision

The Tribunal, having made such enquiries as is fit for the purpose of determining whether the landlord has complied with the duties imposed upon them by Section 14(1)(b) of the Act in relation to the property concerned, and taking account of the evidence presented in the written and oral representations, determined that the landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

Background

1. By application received on 28 September 2017, the tenant applied for a determination of whether the landlords failed to comply with duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the tenant set out that the landlords had failed to comply with their duty to ensure the house meets the repairing standard and in particular that the landlords had failed to ensure compliance with Sections 13(1)(a), (d) and (e) of the Act. The tenant's complaint of disrepair set out the following:
 - a. The bedrooms and living space are not fit for habitation due to leaks which are permeating through a newly fitted bedroom window and from the roof. This was in part due to the sealant on the window not being finished securely and allowing water to get through. There was a further bedroom window which was affected and overall created issues of damp.
3. In the documentation submitted by the tenant in relation to the application a copy of the Lease was attached. The tenant had commenced the lease on 8 February 2014.
4. The tenant's representative had provided copies of documentation setting out the issues regarding the tenancy. In particular a letter was sent by the representative to the landlord on 13 June 2017. Some works had been undertaken to the property subsequent to that.
5. Following upon service of the Notice of Referral dated 8 November 2017 a further written communication was received from the landlord.
6. The Tribunal consisted of the following members:-
 - a. Mark Thorley – Legal Member
 - b. Susan Napier – Ordinary Member

7. The Tribunal inspected the house on the morning of Monday 18 December 2017. Both the tenant, her husband and the tenant's representative Mr McCloskey were present. Neither the landlords nor the landlords' representative attended.
8. For health and safety reasons no roof inspection was carried out. The temperature was below 3 degrees centigrade and there were already reports from the City of Edinburgh Council and Corstorphine Roofing indicating that the roof may be structurally unsafe.
9. Following upon the inspection the Tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH.
10. At the hearing the tenant together with her husband, the tenant's representative and the landlords' representative attended.
11. Thereafter there was a discussion about the property. The landlords' representative Mr Mauran acknowledged that there were issues of water penetration contained within the property. In particular it was noted that the livingroom, bedrooms and hall showed visible signs of water penetration (See Appendix One) The landlords' representative indicated that the issue was in connection with the roof. The roof required repair. Two quotes had been obtained in relation to the repair.
12. The landlords' representative indicated that the reason that no work had been undertaken as yet is that they were attempting to ensure that other owners in the stair contributed to the cost of the roof work. They received no such commitment despite significant efforts to do so.
13. It was acknowledged that there was water penetration in the property and that there was damp and that meter readings taken in the front livingroom indicated a moisture level that was unacceptable.

Summary of Issues

The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the landlords have complied with the duty imposed by Section 14(1)(b).

Findings in Fact

The Tribunal made the following findings in fact:-

1. That tenant entered into a lease with the landlords for rent of the property at 122/4 Duke Street, Edinburgh EH6 8HR.
2. That the house is a top floor tenant property in a communal stair built in about 1879.
3. The property consists of a livingroom, three bedrooms, kitchen and bathroom. The property is accessed from a front communal stair.
4. The weather at the time of inspection on 18 December 2017 was bright and cold.

The inspection revealed the following:-

- a. That there was visible signs of water penetration in the ceiling of the livingroom and in the window surrounds.
- b. There was further evidence of water penetration in one of the rear bedrooms again around the ceiling and at the window. There was also evidence of water penetration in the remaining two bedrooms and in the hall.
- c. Damp meter readings in the livingroom confirmed an unacceptable level of dampness.

Reasons for the Decision

In considering the repairing standard issue the Tribunal carried out an internal and external inspection of the property. In addition the Tribunal considered the written

documentation from the tenant and the documentation from the landlords and the representations made both on behalf of the tenant and on behalf of the landlords.

The following can be confirmed:-

1. That there were no longer any issues surrounding the fixtures and fittings or furnishings as provided.
2. That the property is not wind and watertight. There is significant areas of water penetration in the property and the damp level is unacceptable.

Decision

The Tribunal, in considering the terms of Section 13(3) of the Act, determined that the landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal proceed to make a Repairing Standard Enforcement Order as required by Section 24(2).

The decision of the Tribunal was unanimous.

Additional notes

1. There appeared to be no hard wired smoke detection system and alarm system. This requires to be installed in the property.
2. There appeared to be no up to date Gas Safety Certificate and again this should be made available by the landlords.
3. There appeared to be no up to date Electrical Installation Condition Report and again this requires to be provided by the landlords.

Right of Appeal

A landlord or tenant or third party applicant aggrieved by the decision of the Tribunal may apply 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 from the date the decision was sent to them.

Where such an appeal is made, the effect of the decision will be treated as having effect from the date on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the seven preceding pages are executed by Mark Thorley, Solicitor, 51 South Bridge, Edinburgh EH1 1LL, Chairperson of the Tribunal at Edinburgh on the Third day of January Two Thousand and Eighteen before this witness:-

M Thorley

Alison Gibson witness

___ chairperson

ALISON GIBSON name in full

51 SOUTH BRIDGE Address

EDINBURGH EH1 1LL

Property – 122/4 DUKE STREET, EDINBURGH EH6 8HR

Inspection Report 18 December 2017 - Photographs

Front Elevation



Rear Elevation



Living Room – Damp staining on timber soffit above window and on ceiling



Bedroom 1 – south south west – damp staining on ceiling



Bedroom 2 – south west – damp staining on ceiling above window



Bedroom 3 – north east – damp staining on ceiling in corner



Hall – damp staining at ceiling corner above consumer unit at front entrance door



Susan Napier BSocSc FRICS
Ordinary Member
18 December 2017