

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Case Reference FTS/HPC/RP/21/0710

Miss Emma Mulgrew and Mr Callum Miller, Flat 102, 5 Elfin Square, Edinburgh, EH11 3BF (“the Tenants”)

Spindlehawk Ltd, a company incorporated under the Companies Acts and having its registered office at 3rd Floor, Building 2, Universal Square, Manchester, M12 6JH (“the Landlord”)

Flat 102, 5 Elfin Square, Edinburgh, EH11 3BF registered in the Land Register under Title Number MID214715 (“the Property”).

Tribunal Members: Martin McAllister, Solicitor, (Legal Member) and Andrew Murray, Chartered Surveyor, (Ordinary Member)

Background

1. By application to the Tribunal dated 19th March 2021, the Tenants applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (the Tribunal) for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act. The Application was accompanied by a number of photographs of the Property.
2. The Application stated that the Property does not meet the repairing standard set out in Section 13 of the 2006 Act. It states that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order and that the Property does not meet the tolerable standard as defined in the 2006 Act.

The Application refers to a specific matter:

That there has been water ingress to the living room ceiling since October 2020.

3. On 5th May 2021, parties were advised that, on 28th April 2021, the President of the Tribunal had decided to refer the matter to a tribunal for determination. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.
4. A case management discussion was held on 17th June 2021 and it was held by audio conference because of the coronavirus restrictions. The Tenants were both present and Ms Stephanie Hilditch and Mr William Dodd of MCR Property Group represented the Landlords.

Preliminary Matters

5. The purpose of a case management discussion was explained to parties and it was intimated to them that the Tribunal can do anything at a case management discussion which it could do at a Hearing, including making a decision.
6. It was noted that, immediately prior to the case management discussion, the Landlord's agents had submitted a copy email from a contractor detailing a programme of work to be carried out on the building of which the Property forms part. The Tenants confirmed that they had sight of the email.

The Property

7. Ms Hilditch said that the Property is part of a development of one hundred and twenty five units and that the Landlord owns eighty five of them. She said that the Development was recently constructed and that the first occupiers moved in at the end of 2019. She said that there are various warranties and guarantees covering the development and she referred to the email from Stoneguard Projects Limited dated 17th June 2021 which set out a programme of work to deal with water ingress. She said that Stoneguard Properties Limited was the original contractor responsible for the roof and balcony areas when the development was constructed.

Matters Agreed by the parties

8. Parties agreed that the tenancy commenced on 27 July 2020 and that water ingress first occurred to the ceiling of the living room in October 2020 and that such ingress continues. They agree that décor is adversely affected as a result of this. £250 was paid to the Tenants by the Landlord as compensation for the water ingress and, in addition, the Landlord has agreed to a reduction in the monthly rent of £100 since March 2021.

Findings in Fact

9. 1. There is water ingress to the ceiling of the living room of the Property.

2. Décor in the living room of the Property has been damaged by water ingress.

Findings and Reasons

10. It was a matter of agreement between the parties that there was water ingress to the ceiling of the living room and that décor had been damaged.
11. Ms Hilditch referred the Tribunal to the email from Stoneguard Projects Limited which detailed that work to deal with the ingress of water would be carried out in the week commencing 28th June 2021. She explained that the properties consisted of flats with walkways and balconies and that investigative and remedial work would require to be carried out.
12. Mr Dodd and Ms Hilditch said that it may take time to track the issue and deal with it.
13. Ms Hilditch said that the reduction in rent would continue until the water ingress had been resolved.

Discussion and Findings

14. The Tribunal considered that there was no requirement for an inspection of the Property. Both parties agreed that there was water ingress and the Landlord had a plan to deal with it. The Tribunal accepted the evidence it heard as being credible and noted that, in terms of the email from Stoneguard Properties, work would soon commence.
15. The Tribunal had regard to Rules 17(4) and 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

17 (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

18.— (1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

16. The Tribunal did not consider that a Hearing was necessary and that it could determine the matter on the information before it. There was no dispute as to the facts and the interests of the parties would not be prejudiced by a Hearing not being held.

17. The Tribunal determined that the Property did not meet the repairing standard set out in the 2006 Act. It determined that the property is not wind and watertight and that the structure of the Property is in a reasonable state of repair. The Tribunal determined that that it was appropriate to make a repairing standard enforcement order in the following terms:

The Landlord is to rectify the water ingress to the living room of the Property, make good any damage caused to the ceiling, wall, floor and floor covering and reinstate the décor.

The works require to be completed by 30th September 2021.

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.

M J McAllister

Martin J. McAllister,
Solicitor, Legal Member
17 June 2021