

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 (2)

Chamber Ref: FTS/HPC/RP/20/2394

12/2 Westhall Gardens, Edinburgh, EH10 4JQ which property consists of the first floor flat above ground or street more particularly described in Disposition by Peter McKiernan in favour of Janette Elaine Smith recorded in the Division of the general Register of Sasines applicable to the County of Midlothian on 7th June 1990 and being part of the building 12 Westhill Gardens, erected on ground at Viewforth, being the subjects described in the Disposition to Frank Moffat recorded in the said Division of the General Register of Sasines on 16th May 1884 (“the Property”)

The Parties:-

Ms Katie Biggs, formerly residing at the property, (“the Tenant”) and (“the Applicant”)

Jeanette Smith, current address unknown and care of Braemore Sales and Lettings, 30 Queensferry Road, Edinburgh, EH24 2HS (“the Landlord”) and (“the Respondent”)

Braemore Sales and Lettings, 30 Queensferry Road, Edinburgh, EH24 2HS, (“the Respondent’s Agents”)

Tribunal Members:

Mr Martin McAllister, solicitor, (Legal Member) and Ms Sara Hesp, chartered surveyor, (Ordinary Member) (“the tribunal”).

Background

1. This is an application by the Tenant for a determination with regard to whether the property meets the repairing standard as defined in the Housing (Scotland) Act 2006. It is dated 16th November 2020. The application makes specific reference to windows in the Property not being wind and watertight including trickle vents requiring to be repaired.

2. A case management discussion was held on 19th January 2021 at which the Applicant was present and there was no appearance by the Respondent. A Direction was made requiring the Respondent to provide her residential address and for her to provide certain documentation with regard to windows in the Property.
3. The Direction was not complied with and neither the residential address nor documentation with regard to the windows was provided.
4. On 29th June 2021, the Applicant intimated that she had moved from the Property and on the same date the Tribunal issued a Minute of Continuation under Schedule 2 Para 7 (3) of the 2006 Act.
5. On 30th June 2021, the members of the tribunal inspected the Property and a copy of the inspection summary and schedule of photographs is attached to this Note.
6. A case management discussion was held on 8th July 2021 and it was conducted by audio conference. Mr Fergus Walker of the Respondent's Agents participated.
7. Mr Walker said that he agreed the terms of the inspection report which had been sent to him.
8. At the case management discussion on 8th July 2021, Mr Walker undertook to send the Landlord's residential address to the Tribunal office and said that certain work to the windows was ongoing.
9. In view of the information provided by Mr Walker, the tribunal did not determine the application but continued consideration of it to a case management discussion to be held at a time and date to be intimated in due course.
10. On 12th July 2021, the Tribunal made a Direction requiring the Landlord to provide her residential address and satisfactory evidence that demonstrates resolution of the faults in the windows which had been identified at the inspection on 30th June 2021.
11. On 13th September 2021, the Tribunal made a Direction in the same terms as that made on 12th July 2021 but with the inclusion of reference to the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 so that the Landlord could not plead ignorance of the terms of the said Regulations.

The Inspection

12. Living Room: There is a large bay in the living room consisting of three separate sliding sash windows. It was noted that trickle vents

were missing from the windows and that debris had gathered where the vents had been. The windows could not be opened effectively.

13. Master Bedroom: it was noted that the casement at the top of the window had slipped and was not secure. There was a gap at the top of the window. The bottom sash could not be opened effectively.

Case Management Discussion on 4th October 2021

14. The case management discussion was held by audio conference. Despite delaying the start of the case management discussion, there was no appearance from either the Landlord or the letting agent.

Preliminary Matter

15. The Tribunal noted that, despite Mr Walker intimating at the case management discussion that the windows were being repaired and that he would send the Landlord's residential address to the Tribunal, no information on either had been provided.

16. Mr Walker had been quite specific and indicated that contractors had been instructed to attend to the faults with the windows and also to ensure that all the windows in the Property were in efficient working order. He hoped that the work would be done within ten days of the case management discussion of 8th July 2021.

17. The Tribunal considered whether or not a hearing should be fixed. The Rules state:

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.

15. The tribunal saw no reason for a hearing to be fixed and it determined the application.

The Issues

16. The Issues:

Sections 13(1) (a) and (b) of the Act provide that the house has to be wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the house (including drains, gutters and external pipes) are to be in a reasonable state of repair and in proper working order.

17. The specific issues which the tribunal required to address were those detailed in the application and referred to in this Decision.

Findings

18. The Tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the House fails to meet it.

Reasons

19. The tribunal had regard to what had been observed at the inspection.

20. At the case management discussion held on 8th July 2021, Mr Walker took no issue with the schedule of photographs and indicated that works were to be done to the windows.

Determination

21. The tribunal determined to make a repairing standard enforcement order in the following terms:

21.1. The Landlord is to make the living room windows wind and watertight.

21.2. The Landlord is to secure and repair the window in the master bedroom.

The works are to be completed within four weeks of service of the repairing standard enforcement order on the Landlord or her letting agent.

Note

22. The tribunal was disappointed that the Landlord failed to comply with Directions, particularly in view of the possibility of her being prosecuted for non-compliance with the terms.

M McAllister

‘Martin J. McAllister, Legal Member
11th October 2021