

Housing and Property Chamber
First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/22/1119

Property: 59/3 Viewforth, Edinburgh REH10 4LQ (“the Property/house”)

Title No: MID67416

The Parties:-

Ms Kristina Tamane, 59/3 Viewforth, Edinburgh EH10 4LQ (“the Tenant”)

Ms Lucy Graham, c/o Zone Letting Limited (Edinburgh), 30 St Stephen Street, Edinburgh EH3 5AL (“the Landlord”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Andrew Taylor (Ordinary/surveyor 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”), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

By application, dated 15 April 2022, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).

The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard. In particular, the Landlord had failed to ensure that the house is

wind and water tight and in all other respects reasonably fit for human habitation. The Tenant's complaint was that the windows in the Property are not wind and water tight and had not been so since her tenancy began. Professional assessment had confirmed that they are beyond repair and need to be replaced.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the parties commencing on 8 February 2019 at a rent of £850 per month and email exchanges between the Tenant and the Landlord's letting agents from October 2019 until February 2022. From these exchanges, it was apparent that a number of firms had been asked to provide estimates for replacing the windows. The letting agents had also told the Tenant that the Landlord was not in a position financially to replace the windows. On 14 July 2022, the Tenant advised the Tribunal that the Landlord and the letting agents had inspected the Property on 10 June 2022.

The Landlord did not make any written representations to the Tribunal.

The Inspection

The Tribunal Members inspected the Property on the morning of 8 August 2022 and were admitted by the Tenant. The Landlord was not present or represented. A Schedule of Photographs, taken at the Inspection, is annexed to and forms part of this Statement of Decision.

The Hearing

A Hearing was held by means of a telephone conference call on the afternoon of 8 August 2022. The Tenant participated in the Hearing. The Landlord was neither present nor represented. The Tenant told the Tribunal that, at the inspection carried out on 1 June 2022, the Landlord and her agents had suggested that they might paint the windows shut.

Following the Hearing, the Tribunal Members considered all the evidence, written and oral, that had been presented to them.

Reasons for Decision

Section 14(1)(b) of the Housing (Scotland) Act 2006 requires landlords to ensure that a rented property meets the Repairing Standard at all times during the tenancy, and Section 13 of the Act states that a house meets the Repairing Standard if it is wind and water tight and in all other respects reasonably fit for human habitation. Section 24(2) of the Act provides that where the Tribunal decides that a Landlord has failed to comply with the duty

set out in Section 14(1)(b), the Tribunal must make a Repairing Standard Enforcement Order.

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The Tribunal noted from its inspection that the Property comprises a living room with a 3-bay window, one bedroom, a bathroom and a kitchen with scullery off. All the windows in the Property are single-glazed sash and case windows. Although the inspection had taken place during a prolonged period of dry weather, so the Tribunal could find no evidence of rainwater penetration, every window was loose-fitting and it was evident that none of the windows were windproof. There was some evidence of rotted timber, of window ironmongery falling off and of putty which had fallen out. The window in the scullery does not close properly. The view of the Tribunal was that the windows require extensive overhaul and repair and that they may require to be replaced, although it is not for the Tribunal to determine whether replacement is necessary. The Landlord's agents had stated in emails to the Tenant that the Landlord could not afford to replace the windows, but this does not alter the Tribunal's Decision, which is that the Property does not meet the Repairing Standard. The Tenant has been in the Property for more than three years, during which time she has paid to the Landlord more than £30,000 in rent. Landlords must anticipate that repairs to their rental property will be necessary, and the Tenant had first reported a problem with a window as far back as October 2019. It will not be acceptable to the Tribunal for the windows to be painted shut. For reasons of ventilation and health and safety, they must all be capable of being opened and closed safely.

The Tribunal considered that a period of two months should be allowed for the Landlord to carry out all the works required by the Order it had decided to make. At the end of that period, the Tribunal will re-inspect the Property to determine whether the works required by the Order have been satisfactorily carried out and the Order can be discharged. If, at the reinspection, the Tribunal finds that the Order has not been complied with, the failure to comply will be reported to the local authority and to Police Scotland for possible prosecution and the Tribunal will also decide whether to make a Rent Relief Order, all in terms of Sections 26-28 of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

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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.

Signed

George Clark (Legal Member/Chairman)