



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

Reference number: FTS/HPC/RP/23/0102

Re: Property at Flat 3-3, 29 Kirkwood Street, Rutherglen, Glasgow G73 2SN (Registered under title Number LAN111850) (“Property”)

The Parties:

Thomas Cuthbertson, Flat 3-3, 29 Kirkwood Street, Rutherglen, Glasgow G73 2SN (“Tenant”)

Duncan Buchan, 4 MacGregor Place, Falkirk FK2 8RJ (“Landlord”)

Property Store, 6 Hunter Street, The Village, East Kilbride G74 4LZ (“Landlord’s Representative”)

Tribunal Members :

Joan Devine (Legal Member); Nick Allan (Ordinary Member)

DECISION

The Tribunal determined that 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 Property in respect that the Property does meet the Repairing Standard in respect of Section 13(1)(h) of the Act. The Tribunal's decision is unanimous.

Background

1. By application lodged on 12 January 2023, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that he believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (h) of the Act. The Application stated that the Landlord had failed to ensure that:
 - The Property met the tolerable standard.

3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :
 - The flat is so cold and water is leaking in from the roof onto the walls and floor.
4. The Application was referred to the Tribunal and an inspection and Hearing took place on 18 April 2023. At the Hearing the Tribunal was told that the factor had recently carried out work to the roof of the Property. The Tribunal considered that the works undertaken may have addressed the source of the dampness and that the damp present in the Property on the day of the inspection was residual dampness whilst the Property was “drying out”. The Tribunal determined to continue consideration of the Application to allow a further inspection of the Property to be undertaken. Reference is made to the note of the Hearing dated 28 April 2023.

The Second Inspection

5. The Tribunal inspected the Property on the morning of 26 June 2023. The weather conditions at the time of the inspection were dull and overcast. Rachel Trevithick and Laurie Robb of the Landlord’s Representative was in attendance. The inspection summary with a schedule of photographs is provided along with this Decision.

The Evidence

6. The evidence before the Tribunal consisted of:
 - 6.1 The Application completed by the Tenant
 - 6.2 Land Register report relating to the Property
 - 6.3 Copy emails from the Tenant to the Landlord’s Representative reporting coldness in the Property and water ingress.
 - 6.4 Written representation from the Landlord’s representative with supporting documents
 - 6.5 The Tribunal’s inspection of the Property on 18 April and 26 June 2023
 - 6.6 The oral representations of the Tenant and the Landlord’s Representative

Summary of the Issues

7. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

8. Tribunal made the following findings in fact:
 1. The Tenant has lived in the Property since 26 July 2021.
 2. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 3. The Tribunal in its inspection on 18 April 2023 carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 3.1.1 High damp meter readings in the bedroom on the wall beside the window indicating the wall was saturated.
 - 3.1.2 High damp meter readings in the living room on the wall on each side of the press indicating the wall was saturated.
 - 3.1.3 High humidity and poor air quality readings in the bedroom, living room and hall.
 4. The Tribunal in its inspection on 26 June 2023 carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 4.1.1 Surface and below surface damp meter readings in the bedroom indicated that the section of the wall to the right of the window was now damp free.
 - 4.1.2 Surface and below surface damp meter readings in the High damp meter readings in the living room indicated that only a localised section of wall to the left side of the press remained damp.
 - 4.1.3 The Tribunal noted normal level relative humidity readings in the bedroom and living room.

Reasons for Decision

9. Following the inspection on 26 June 2023, the Tribunal determined that the Property does meet the repairing standard as required by Section 13(1)(a) of the Act and as the Property is substantially free from damp, it does meet the tolerable standard as required by Section 13(1)(h) of the Act.

Decision

10. The Tribunal determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act. The Tribunal therefore will not make a repairing standard enforcement order.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

**Legal Member
7 July 2023**