

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision under section 24(1) of the Housing (Scotland) Act 2006

Chamber Reference: FTS/HPC/RP/21/0596

Title number: Subjects registered in the Land Register of Scotland under title number ABN61768

The Parties

Miss Anastasia Leligdowicz, Mr Pierre-Louis Cardin, 207 Hilton Drive, Aberdeen, AB24 4ND (“The Tenants”)

Mr Manu Mathew Mattamana, c/o Capital Letters Property Management, Springfield Property, Laurelhill Business Park, Stirling, FK8 2LJ (“The Landlord”)

Subjects: 207 Hilton Drive, Aberdeen, AB24 4ND (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr C Hepburn (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) 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”) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

- 1. By application dated 15th March 2021, made under section 22 of the Housing (Scotland) Act 2006 (“the Act”), the Tenants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).**

2. The Tenants considered that the Landlord has failed to comply with their duty to ensure that the Property meets the repairing standard, in that the Property is not wind and water tight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; and the Property does not meet the tolerable standard.

3. The Tenants listed the issues as follows:

Damp and mould throughout the Property

Guttering and roof require repair

Inadequate ventilation

4. The Tenants formally notified the Landlord's representative of the defects on 19th February 2021, following a significant amount of correspondence.

5. By email dated 16th April 2021, the Tenants' representative lodged written representations and productions.

6. By email dated 16th April 2021, the Landlord's representative requested an extension to the period allowed for written representations. An extension was granted to 30th April 2021. No written representations were received.

7. By email dated 29th April 2021, the Tenants withdrew their application.

8. The Tribunal decided, in terms of Schedule 2 Paragraph 7(3) of the Act, that the application should be determined, given the health and safety issues raised. A Minute of Continuation dated 6th May 2021 was issued.

9. A Case Management Discussion ("CMD") took place by telephone conference on 7th May 2021. The Landlord was not in attendance and was represented by Mr Steven Strachan of Capital Letters Property Management. The CMD was continued to allow Mr Strachan to provide evidence of works carried out. No evidence was received by the Tribunal.

10. A CMD took place by telephone conference on 8th June 2021. The Landlord was not in attendance and was represented by Mr Steven Strachan of Capital Letters Property Management. Mr Strachan said that works are currently being carried out to the Property, including internal plastering, decoration, and the installation of kitchen and bathroom ventilation fans. Works were delayed because the Tenant was due to leave the Property on 9th June 2021; however, her leaving date was delayed. She had also refused access to workmen. Mr Strachan will be in a position to provide photographs, invoices, survey reports and any other relevant information to show that all areas complained of by the Tenant have been addressed. The Tribunal urged Mr Strachan to submit as much information as is available as soon as the works are carried out.

11. The Tribunal decided to schedule an inspection of the Property, noting that it may transpire that an inspection would not be necessary, if enough evidence was provided to establish whether the repairing standard was met. No information or evidence was received on behalf of the Landlord.

The Inspection

12. An inspection of the Property took place on 13th October 2021. Both Tribunal members were in attendance. The Tenants were in attendance. Ms Dawn Ronaldson attended on behalf of the Landlord.
13. The Property is a two-bedroomed upper flat comprising a former local authority property in a block of four properties. The property is constructed of cavity blockwork construction, externally cement rendered and internally plastered "on the hard ". The roof is pitched and slated. Access to the flat is by means of a communal external stair. There was no evidence of cavity insulation within the wall structures although insulation was noted in the roof void.
14. The Tribunal found signs of mould, and high damp meter readings throughout the Property. The Tribunal observed that there were two smoke detectors with missing batteries, and no heat detector in the kitchen. There were no extractor fans in the kitchen or bathroom. A vent in the kitchen appeared to be blocked up, due to the positioning of a kitchen wall unit.
15. A schedule of photographs was prepared by the Ordinary Member and issued to the Landlord's representative prior to the hearing.

The Hearing

16. A hearing took place by telephone conference on 20th October 2021. The Landlord was not in attendance and was represented by Mr Strachan.
17. As a preliminary matter, the Tribunal asked for details of the surveys carried out by the Landlord, as these had not been lodged with the Tribunal despite Mr Strachan undertaking to do so at the first CMD. Mr Strachan said, as a result of survey work, repairs were undertaken to the roof to attend to damp above the bedroom window in the front bedroom. Other issues that were raised as the lack of ventilation, and the way in which the Tenants were using the Property, which was adding to the problems with condensation. A survey by a damp specialist had mirrored the opinions in the first survey. Three opinions had been sought and there were two written reports. The only work that was outstanding was the installation of extractor fans in the kitchen and bathroom. There have been difficulties in getting access to carry out the work due to the Tenants' commitments and issues around Covid-19. The matter was discussed the previous week and it was hoped the Tenants would shortly come back to the contractor with a suitable date for the work to be carried out. The same contractor will attend to the installation of hard-wired smoke and heat detectors.
18. Responding to questions from the Tribunal as to whether there is any cavity insulation in the Property, Mr Strachan said this had been discussed but there

had been an objection from the local authority, who own properties within the block, and agreement could not be reached. Mr Strachan said the EICR that was lodged, which showed several C3 entries, was carried out before his firm took over the letting agency, and no further action had been taken

19. Mr Strachan said there had been a noticeable deterioration in the mould within the Property at the time of the Tribunal's inspection. The mould had not been present at the last inspection in August. He said there had previously been discussion about the installation of cladding as an alternative to cavity insulation, due to concerns about the efficacy of cavity insulation. Notice had been given to the Tenants due to the level of work that would be required to install the cladding. The Tenants could not find alternative accommodation, and they had agreed to increase ventilation in the Property and remove the excessive plants, at which time they withdrew the application to the Tribunal.

Tribunal discussion

20. The Tribunal determined that:

- (a) The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006)**

The Property is not reasonably fit for human habitation due to the condensation and extensive mould throughout the Property. The Tribunal considered this to be likely to be due to a failure to balance the heating and ventilation, and lack of insulation in the external walls.

- (b) The structure and exterior of the house (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order.**

The Tribunal considered that repair works had been carried out to the gutters and there were no defects obvious at the time of inspection.

- (c) The Property meets the tolerable standard.**

The Tribunal found that the Property meets the tolerable standard.

Observations

21. The Tribunal was concerned that the system for detection of fires within the Property does not comply with the repairing standard; however, this was not included within the application, so no formal order was made in this regard. The Tribunal was encouraged to hear that the matter is in hand.

Decision

22. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

23. The decision of the Tribunal was unanimous.

Right of Appeal

24. **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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Legal Member and Chairperson
Date: 22nd October 2021