

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/2403

18 South Back Road, Biggar, South Lanarkshire ML12 6AD (“the property”)

Ms Yvonne McGregor, formerly residing at 18 South Back Road, Biggar, South Lanarkshire ML12 6AD (“The Tenant”)

Mrs Gillian McDonald, 184 High Street, Biggar, South Lanarkshire ML12 6AD (represented by Limehouse Ltd, 116 High Street, Biggar, South Lanarkshire ML12 6DH) (“The Landlord”)

Tribunal Members – Graham Harding (Legal Member) and Kingsley Bruce (Ordinary 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 had complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 9 November 2020 the Tenant applied to the Housing and Property Chamber 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”).
2. The application stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the property meets the repairing standard and in particular that the Landlords had failed to ensure that: -
 - (a) The house is wind and watertight and in all other respects fit for human habitation; and

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

Specifically, the Tenant complained that: -
There was a cracked window in the bathroom;
2 cracked windows in the bedroom;
mould in the electric meter cupboard;
the roof required to come off; and
there was a damp problem.

3. The Tenant provided the Tribunal with emails and photographs in support of her application.
4. By Notice of Acceptance dated 2 December 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
5. A Case Management Discussion was held by teleconference on 13 January 2021. The Tenant attended personally. The Landlord also attended and was represented by Ms Laura Mallen of Limehouse Ltd. In light of the representations made by the parties the Tribunal determined that an inspection of the property was necessary and the application was continued for that to be arranged and for a hearing or further Case Management Discussion to be fixed.
6. By email dated 24 May 2021 the Tenant advised the Housing and Property Chamber that she was moving out of the property on 7 June 2021.
7. By Minute of Continuation dated 14 June 2021 the Legal Member intimated a decision to continue to determine the application on health and safety grounds.
8. The Tribunal inspected the Property on the morning of 15 June 2021 the Landlord and Ms Mallen were present during the inspection. The Ordinary Member of the Tribunal took photographs of the property and prepared a report outlining what was found, which are attached as a schedule to this decision. The Schedule was intimated to the Landlord's representative in advance of the hearing.
9. Following the inspection of the Property the Tribunal held a hearing by teleconference on 24 June 2021 and heard from both the Landlord and her representative.

The Hearing

10. The Tribunal noted that the roof repairs to the property which had been underway at the time of the inspection had now been completed.

According to the Landlord the roofing contractor had advised that there had been no signs of water damage coming from the roof when the repairs had been carried out. The Tribunal also noted that the issues with regards to the cracked windows had been dealt with prior to the Case Management Discussion in January and did not form part of the application to be determined.

11. The Tribunal confirmed with the Landlord and Ms Mallen that they had received the Inspection report. Neither the Landlord or Ms Mallen took any issue with the Ordinary Members comments in the report and it was accepted that there was an issue with damp particularly at the front of the property.
12. The Landlord went on to say that she was planning on lifting the floors in the lounge and kitchen and installing a damp proof course. The Tribunal queried whether a timber specialist report had been obtained and Ms Mallen advised that the report obtained by the Tenant had been sent to the Tribunal in January and a further specialist report together with the check-in and check-out reports had been sent to the Tribunal administration on 10 June 2021. A check by the Tribunal clerk did not disclose the documents and Ms Mallen arranged to re-send them during the hearing.
13. The Tribunal noted that the Landlord had obtained a timber specialist report from Richardson & Starling dated 5 February 2021. The Tribunal noted that the report did not make mention of any treatment to the front kitchen wall despite high moisture readings being obtained during the inspection. The Landlord explained that the surveyor had not been given access to the kitchen on his visit on 5 February.
14. The Tribunal pointed out that high moisture readings had also been noted in the room mid left to the left side of the window extending for the full height of the wall indicating the problem may be coming from above. The Landlord said that a new window had been installed in the room without any sealant and this might be the cause of the problem.
15. The Tribunal also pointed out that at the rear of the property the gutter on the neighbouring property was falling away from the gutter outlet, i.e., running the wrong way with the result that during periods of sustained rainfall, it is being likely that water could discharge onto the subject property, where detailing may not be sufficient to prevent water ingress. There is evidence of water ingress having occurred in this area, observed internally. The Landlord noted that this may require to be addressed by improving the flashing detail to allow rainwater to run over the outhouse roof.
16. The Landlord explained that it was her intention to install new double-glazed windows at the property. She had also considered installing a new gas boiler and as the kitchen units would require to be removed when

installing the damp proof course, she intended to replace them with a new kitchen.

17. The Landlord said that a realistic timescale for completing the works was six months. There were issues with regards to obtaining materials and tradesmen due to the Covid-19 pandemic. Once the works were complete it was her intention to re-let the property.

Summary of the issues

18. The issues to be determined are whether:-

- (a) The house is wind and watertight and in all other respects fit for human habitation; and
- (b) The structure and exterior of the house (including drains and gutters and external pipes) are in a reasonable state of repair and in proper working order.

Findings in fact

19. There is evidence of dampness in the front room right, the kitchen, room mid left all as detailed in the schedule annexed hereto.
20. There is evidence of decay to flooring timbers along the front elevation of the property.
21. The gutter along the adjoining house abutting the rear wall and associated detailing may cause escape of water and potential for ingress to rear right room, as evidenced internally.
22. There is inadequate sealant around window in room mid left.
23. There is limited sub floor ventilation and no visible damp proof course.
24. The Tribunal observed that areas of ceiling, in particular the room rear right, were cracked and bulging, consistent with plaster which has become loose or detached, whilst not a part of the application, this is drawn to the attention of the Landlord as it may present a safety issue.

Reasons for the decision

25. It was acknowledged by the Landlord that there were issues with damp at the property particularly at the front and that it was her intention to instruct a timber specialist firm to install a new damp proof course having already obtained a report from Richardson & Starling. The Tribunal noted however that a further report would be required to take account of the

issues identified in the kitchen, room mid left and in the front room right on the right-hand wall.

26. Although the Landlord had reported that there were no signs of water ingress following the repairs carried out by the roofer instructed by her at the front of the property given the damp readings obtained in the room rear right the Tribunal was of the view that a roofing contractor should be instructed to inspect and report in relation to any works required to prevent water ingress and to complete such works as may be necessary.
27. Although the lack of sealant around the window in the room mid left may give rise to water ingress, further investigation of this area is required to identify the cause of damp conditions affecting an area of wall extending from floor to ceiling, to the left side of the window and any necessary repairs should be completed.
28. The Landlord intends to carry out reasonably extensive renovations to the property albeit issues around the availability of tradesmen and materials due to the Covid-19 pandemic has led her to suggest that the work may take up to six months to complete. In the circumstances the Tribunal considers this to be a reasonable timescale for completion of the works.

Decision

29. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
30. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
31. The decision of the tribunal was unanimous.

Right of Appeal

- 32. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

33. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed Graham Harding Legal Member

Date 13 July 2021