

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)

Reference number: FTS/HPC/RP/22/2925

Re: Property at 40 Crossgates, Bellshil, ML4 2EE (“the Property”)

Title No: LAN16458

The Parties:

Matthew Campbell, residing at 40 Crossgates, Bellshill, ML4 2EE (“the Tenant”)

Lorraine McAllister and Cory Griffin, residing at 75 Loancroft Avenue, Baillieston, Glasgow, G69 7RN (“the Landlord”)

Tribunal Members:

Paul Doyle (Legal Member)
Lori Charles (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 has 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 the Tenants 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. On 15 August 2022 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the Tolerable Standard.

2. The applicant maintains that there is a failure to meet the repairing standard, because the property is infected by damp and so does not meet the tolerable standard.

3. On 14 October 2022 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. Following service of the Notice of Referral neither the Landlord nor the Applicant made further representations.

6. Tribunal members inspected the Property at 10am on 21 November 2022. The Tenant was present. The Landlord was neither present nor represented. During the inspection on 21 November 2022, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

7. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 2pm on 21 November 2022. The Tenant was present; he was represented by Mr J Melvin of Coatbridge CAB. Ms L Maxwell was present, and supported by Ms L Crofton of Your Move, letting agents.

Summary of the issues

8. The issues to be determined are

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of fact

9. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 40 Crossgates, Bellshill, ML4 2EE ("the property"). The landlord let the property to the tenant on 2 December 2021.

(b) The property is a one bedroomed flatted dwellinghouse forming the lower part of a divided two-storey end terraced villa. A small front garden leads to the front door of the property, which opens onto a central hallway providing access to the bedroom to the front of the property, an internal shower room and WC, and the living room/kitchen to the rear of the property. The property is built of sandstone, but the external front and gable walls were covered in roughcast & render. Within the last six years the roof of the property has

been overhauled, and the gable wall roughcast has been renewed. The property benefits from gas central heating and double glazing.

(c) During the inspection on 21 November 2022, tribunal members took damp meter readings in the bedroom and in the living room of the property. High moisture readings were noted at skirting board, mid-level, and ceiling level in the bedroom. High moisture readings were found on the floor one metre from the wall of the property, through the carpet.

(d) There is a gap between the floorboards the skirting board on the interior gable wall in the bedroom. It is likely that gap has been created by water penetration & damp. The wallpaper of the internal gable wall of the bedroom is peeling away because of damp.

(e) The front facing wall in the bedroom is wet to the touch. The floorboards adjacent to the front facing wall and gable wall are also wet to the touch. Furniture in the bedroom shows signs of mould.

(f) The internal gable wall in the living room is damp. High moisture readings were noted in the living room. The wallpaper in the living room is coming away from the wall because of the damp.

(g) Both the living room, and the bedroom windows (which are double glazed units) were running with condensation.

(h) The roughcast on the external gable wall shows signs of cracking. Sections are missing from the roughcast areas adjacent to the gutters of the larger property. Sections of the roughcast on the gable wall are coming away from the underneath wall. There are signs of discolouration (in a sandstone hue) penetrating the roughcast along the length of the gable wall.

(i) The property has a significant problem caused by water ingress and damp. The property has a history of damp problems and, approximately 6 years ago, the landlord carried out remedial work, including the replacement of the roughcast on the gable wall, and the insertion of a damp proof course.

(j) The roughcast is attached to the gable wall with cement render. Sandstone is porous, cement is not. The cement render bonding the roughcast to the original sandstone gable wall may be creating or contributing to the damp problem.

(k) Because there is a significant damp problem, the property fails to meet either the tolerable standard, and so fails to meet the repairing standard.

Reasons for the decision

10. (a) Tribunal members inspected this property at 10:00am on 21 November 2022. It was a damp, chilly, autumn, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) As soon as tribunal members approached the internal gable wall in the bedroom of the property, it was obvious that the wallpaper and skirting board had been damaged by water ingress. Using a damp meter, tribunal members consistently found high moisture readings from the skirting board to the ceiling on the gable wall, and consistently found high moisture readings extending from the skirting board to the middle of the floor. Tribunal members could see a slight drop in the floorboards at the skirting board.

(c) In the bedroom there was a small bedside cabinet. The drawer of that cabinet bears mould stains.

(d) Tribunal members placed their hands on the bedroom wall (close to the window to the front of the property) and on the carpet and floorboards. Each time both tribunal members felt that the surface that they touched was wet.

(e) In the living room to the rear of the property, tribunal members again saw high moisture readings and could see the wallpaper was coming away from the wall - showing obvious signs of water ingress and damp.

(f) The double glazed windows in both the bedroom and the living room were running with condensation.

(g) Tribunal members examined the exterior of the gable wall. By tapping the wall tribunal members found patches of roughcast which were bossed. Cracks in the roughcast were evident on visual inspection, and at the gutter level (to the front of the adjacent upstairs property) sections of roughcast were missing.

(h) Tribunal members' observations of the condition of the roughcast are consistent with excess moisture building up between the original sandstone wall and the cement render applied to the wall.

(i) Ms Maxwell candidly conceded that, five or six years ago, there were damp problems with the property. It was then that a damp proof course was installed and the render to the gable wall renewed. Ms Maxwell told us that she has already obtained a report from a damp specialist and has instructed remedial work.

(j) it is not disputed that the tenant was provided with a dehumidifier when he took entry to the property and was instructed by the landlords' letting agent to ensure that the dehumidifier is always in use and the window vents are open.

(k) The only conclusion that can realistically be drawn from tribunal members' observations, from the damp meter readings obtained, and from the landlords' candour, is that this property has a significant damp problem.

(i) The tenant says that the property does not meet the tolerable standard. S.86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as follows

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(j) On the facts as we find them to be, the property is not substantially free from rising or penetrating damp. The property therefore fails to meet the tolerable standard, and, because it fails to meet the tolerable standard, the property fails to meet the repairing standard set out in section 13 (h) of the 2006 act.

(k) We therefore find that the landlord has not complied with the section 13 (h) of the 2006 Act. A repairing standard enforcement order is therefore necessary.

11. The tribunal makes a repairing standard enforcement order requiring the landlord to

(i) Instruct a damp proofing expert or specialist to identify the cause of the damp affecting the property, and identify the repairs necessary to eradicate the damp affecting the property.

(ii) Send a copy of the damp specialist report to the tribunal.

(iii) Carry out the damp eradication works recommended by the damp proofing expert or specialist

(iv) Carry out any necessary damp proofing works to prevent the return of damp to the property.

All within 8 weeks of service of this order.

12. The decision of the tribunal was unanimous.

Right of Appeal

13. 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

14. 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

22 November 2022

Legal Member