

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RP/21/0143

Re Property: 1D Meadowside Place, Clarkston, Airdrie, ML6 7AW

Parties:

Mrs Helen McPhail, 1D Meadowside Place, Clarkston, Airdrie, ML6 7AW (“the Applicant”), and

Mr Alasdair Lawson and Ms Mary Lawson, both residing at 18 Finlayson Drive, Airdrie, ML6 8LU (“the Respondents”)

Tribunal Members:

G McWilliams- Legal Member

L 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 or not 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 and that a Repairing Standard Enforcement Order should be made.

Background

1. By Application, received by the Tribunal in documents lodged between 20th January 2021 and 2nd March 2021, the Applicant applied to the Tribunal for determination of whether or not the Respondents had failed to comply with the

duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”).

Case Management Discussions

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 26th April 2021. Reference is made to the Notes on the CMD and Notice of Directions, both dated 26th April 2021.

Inspection

3. The Tribunal Members inspected the Property on 23rd September 2021. The Applicant, Mrs McPhail, was present and represented by her daughter, Ms L Finlay. The Respondent Mr Lawson attended.
4. A Schedule of Photographs, taken at the Inspection, and Summary of the Inspection, is attached to and forms part of this Decision.

Hearing

5. Following the Inspection, the Tribunal held a Hearing which proceeded remotely by telephone conference call on 30th September 2021. Mrs McPhail, Ms Finlay and Mr and Mrs Lawson attended.
6. The Tribunal considered all of the evidence it had obtained at the Inspection and noted at the Hearing.
7. The Repairing Standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended (“the 2006 Act”):

(1) A property (house) meets the Repairing Standard if:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (c) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (h) The house meets the tolerable standard.

Findings in Fact and Law

8. Having considered all of the oral and documentary evidence the Tribunal made the following findings in fact and law:

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- i) The Property is a three-bedroomed first floor flat floor in a three-storey block of flats within the Clarkston area in Airdrie. The Property comprises of a close entrance, living room, three bedrooms, kitchen, WC/bathroom and storage room.
- ii) A new handle has been fitted to the veranda door in the living room and the original lock and key has been cleaned and refitted. The door's multi point locking system is not operational and the door is only secured by a single lock. The seal around the veranda door is original, from the date of installation of the windows in the Property, in 1989, and it is now dry and brittle and the veranda door is draughty. A secondary seal has been fitted but it is no longer effective. A new multi-locking system and new seal require to be fitted to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (a) of the 2006 Act..
- iii) The living room front window is difficult to open, the handle sticks and the safety lock does not open without effort. The seal around the window is original and it is now dry and brittle and the window is draughty. There is water ingress at this window. A new seal requires to be fitted, and the safety lock and window handle have to be repaired or replaced to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (a) of the 2006 Act..
- iv) The living room side window handle is difficult to open and the handle sticks. The seal around the window is original and it is now dry and brittle and the window is draughty. There is also water ingress at this window. A new seal requires to be fitted, and the window handle has to be repaired or replaced to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (a) of the 2006 Act..
- v) The kitchen window handle is difficult to open and the handle sticks. The seal around the window is original and it is now dry and brittle and the window is draughty. There is also water ingress at this window. A new seal requires to be fitted, and the window handle has to be repaired or replaced to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (a) of the 2006 Act..
- vi) The seal around the window in the first bedroom is original and it is now dry, brittle and draughty. There is also water ingress at this window. The window handle is difficult to open and the handle sticks. A new seal requires to be fitted, and the window handle has to be repaired or replaced to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (a) of the 2006 Act..

- vii) The second bedroom window handle is difficult to open and the handle sticks. The glazed units are misty. The seal around the window is original and it is now dry and brittle and the window is draughty. There is also water ingress at this window. The glazed units have to be replaced, and new seals fitted and the window handle has to be repaired or replaced to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (a) of the 2006 Act.
- viii) The third bedroom window handle is difficult to open and the handle sticks. The seal around the window is original and it is now dry and brittle and the window is draughty. There is also water ingress at this window. A new seal requires to be fitted, and the window handle has to be repaired or replaced to ensure that the Property meets the Repairing Standard in terms of Section 13 (1) (a) of the 2006 Act.
- ix) The UPVC front door is ill-fitting and its fascia is broken and coming away from the door surround. The door requires to be refitted/adjusted and the fascia has to be replaced to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (a) of the 2006 Act.
- x) There is no heat detector and CO monitor in the kitchen and no smoke detector in the hallway. A hardwired or wireless interlinked heat detector requires to be installed in the kitchen and a hardwired or wireless interlinked smoke detector has to be fitted in the hallway to ensure that the Property meets the Repairing Standard, in terms of Section 13 (1) (f) and (g) of the 2006 Act..

Decision

9. The Tribunal found, on a balance of probabilities, that the defects in the windows in the living room, kitchen and bedrooms, and the front door, and the lack of heat and smoke detectors, in the kitchen and hallway respectively, and the absence of a CO monitor in the former, had been established. The defects, and lack of detectors and monitor, were visible at the Inspection and agreed by Mr Lawson at the Inspection and Hearing. The Tribunal considered whether or not the defects, and lack of detectors and monitor, brought the Property below the Repairing Standard in terms of the provisions of the 2006 Act. Having considered all of the evidence and submissions the Tribunal found, on a balance of probabilities, that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, and does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and if carbon monoxide is present in a concentration that is hazardous to health.
10. The Tribunal accordingly determined that the Respondent has failed to comply with the duties imposed by Section 14(1)(b) of the Act given the defects in the windows in the living room, kitchen and bedrooms, and the front door, and the lack of heat and smoke detectors, in the kitchen and hallway respectively, and the absence of a CO monitor in the former.

11. The Tribunal proceeded to make a Repairing Standard Enforcement Order (“RSEO”), as required by Sections 24 (1) and 24 (2) of the 2006 Act, in the following terms:-

- a) **The Respondent has to carry out such works as are required to ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation, all in terms of Section 13(1)(a) of the 2006 Act. Specifically the Respondent has to instruct a window and door specialist to:**
- i) **repair or replace the seals and handles in and on both windows in the living room and in and on the windows in the kitchen and in each of the three bedrooms, and storage room, in the Property, and**
 - ii) **replace the sealed glazed units in the veranda door in the living room and in the second bedroom; and**
 - iii) **carry out such works as are necessary to ensure that all windows in the rooms in the Property are free from mist between their glazed units.**
 - iv) **replace the locking mechanism in the veranda door in the living room in the Property, and**
 - v) **repair or replace the safety lock in the front window in the living room in the Property, and**
 - vi) **refit/adjust the UPVC front door and replace the fascia surrounding that door.**
 - vii) **Provide a full report, and invoice, in respect of the above works.**
- b) **The Respondent has also to carry out such works as are required to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and if carbon monoxide is present in a concentration that is hazardous to health, all in terms of Section 13 (1) (f) and (g) of the 2006 Act. Specifically the Respondent has to:**
- i) **install a heat detector and CO monitor in the kitchen, which comply with current health and safety guidelines ; and**
 - ii) **install a smoke detector in the hallway, which complies with current health and safety guidelines**
- c) **In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, and the extent of the remedial works which require to be carried out, the Tribunal determined that the RSEO requires to be complied with by 30th November 2021. Mr Lawson agreed that he should be able to have the works, identified in the RSEO, carried out by that date.**

Reasons for Decision

12. The Tribunal made its findings and determination based on what they found at the Inspection and having considered all of the evidence as well as the representations and the submissions of Mrs McPhail, Ms Finlay and Mr and Mrs Lawson. Mr Lawson candidly agreed, at the Inspection and also at the Hearing, that the facts were as found by the Tribunal. Accordingly the Tribunal found that it was appropriate and just to make an RSEO in the above terms.

Observation

13. The Tribunal noted the evidence and submissions of Ms Finlay and Mr Lawson at the Hearing and that they are each going to liaise with North Lanarkshire Council to press for repairs of the communal entrance door and entry system at the three-storey block of flats within which the Property is situated. Mr Lawson confirmed that he would pay his share of the repair. The entrance door lock and entry intercom system are not working and it is to be hoped that they are repaired as soon as possible to ensure the safety of the occupiers of the flats in the block.

14. The Decision of the Tribunal was unanimous.

Right of Appeal

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.

G McWilliams

Signed: G McWilliams

Legal Member

Date: 8th October 2021