

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

Chamber Ref: FTS/HPC/RP/21/2837

Re: Property at 6 Cardross Park Mansion, Cardross, Dumbarton G82 5QH registered in the Registers of Scotland under Title Number DMB73688 (“the Property”)

The Parties:

Mr. and Mrs. Rahim and Kirsteen Frikha residing at 6 Cardross Park Mansion, Cardross, Dumbarton G82 5QH (“the Tenants”)

Mr. and Mrs Iain Stuart and Bernadette Jardine (“the Landlords”) care of Caledonia Bureau Ltd., 130-132, High Street, Dumbarton, G82 1PQ (“the Landlords’ Agents”)

Tribunal Members:

Karen Moore (Chair and Legal Member) and Carol Jones (Ordinary and Surveyor Member)

Decision of the Tribunal

The Tribunal determined that the Landlords have failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a) and 13(1)(d) of the Act and has not failed to comply with that duty in respect of Section 13(1)(h) of the Act.

Background

1. By application received on 17 November 2021 (“the Application”), the Tenants of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1) (a), 13(1) (d), and 13(1) (h) of the Act.

2. The Application noted the following heads of complaint: -
 - i. The windows in Property are not wind and watertight as they are draughty and water ingresses causing dampness to the interior ledges and the Property to be cold and
 - ii. The en suite bathroom shower leaks causing dampness in the en suite and causing the floor tiles to break and move underfoot.
3. The Application comprised copy emails between the Tenants and the Landlord's Agents which, in addition to the above heads of complaint, referred to the washing machine leaking and causing damage to the kitchen floor, the dryer not working and an issue with the front door.
4. The Application was referred to the Tribunal and an Inspection and Hearing were fixed for 31 January 2022 and 7 February 2022, respectively.
5. Prior to the Inspection, the Landlords submitted written representations explaining the steps taken by them to address the Tenants' complaints.

Inspection and Hearing

6. The Inspection of the matters complained of in the Application took place at the Property on 31 January 2022 in accordance with the tribunal chamber's Covid-19 protocol. The Tenants and the Landlords' daughter-in-law as their representative were present. The Tenants accompanied the Tribunal members and the Landlords' daughter-in-law remained outside of the Property. The Landlords' daughter-in-law then inspected the Property and the Tribunal Members remained outside of the Property.
7. At the Inspection, the Tenants advised the Tribunal that the leaking washing machine had been repaired, the dryer replaced and that they no longer had any concerns in relation to the front door.
8. Following the Inspection and before the date of the Hearing, the Inspection Summary with a Schedule of Photographs was issued to the Parties.
9. The Inspection Summary and Schedule of Photographs noted the following in respect of each of the heads of complaint listed in the Application:
 - i) The windows in the living room and in both bedrooms appear to let in water and are draughty;
 - ii) The internal window sills in the living room and the adjacent south facing bedroom show signs of water staining;
 - iii) There are signs of water staining to the decor in the living room above the main bay windows and to the wall below, above the skirting board;

- iv) There are high moisture readings at the base of the south facing bedroom window;
- v) The seals of two of the double glazed units of the living room bay windows appear to have failed;
- vi) There is cracking to the external surround at the window of the bedroom with the en suite (west facing);
- vii) There are moderate moisture readings at base of the window of the bedroom with the en suite (west facing);
- viii) The shower in the en suite is leaking at the base;
- ix) The floor tiling in the en suite is badly cracked;
- x) There appears to be water under the floor tiling in the en suite causing the tiles to lift and move;
- xi) A small section of the kitchen flooring appears to have been damaged by a former leak from the washing machine and
- xii) The smoke and heat detectors in the Property are not fully compliant with current regulations in respect of their positioning and it is not clear if these detectors are all interlinked.

10. Prior to the Hearing, the Landlords submitted further written representations explaining the further steps taken by them and their contractors to address the Tenants' complaints.

11. The Hearing took place on 7 February 2022 at 10.00 by telephone conference call. Mrs Frikha of the Tenants and Mrs. Jardine of the Landlords took part, with Mr. Jardine of the Landlords present. Mr. Frikha of the Tenants did not take part and was not present.

12. Mrs. Frikha confirmed that the two main issues raised in the Application and noted at the Inspection remain outstanding. With reference to the email correspondence lodged with the Application, she explained that the Tenants first raised the repairs issues shortly after the entry date in March 2021 and that she had had to chase the Landlords' Agents to try to progress matters. She explained that the effect on her family is that the bedroom with the en suite is not habitable and that it is not comfortable to eat at the dining table due to the extent of the draughts. She advised that the washing machine had been repaired some six months after the defect being notified.

13. Mrs. Jardine accepted that there are issues with the windows, which are all south and west facing, and, with reference to both sets of written representations, explained that the advice she has been given is that the repair to the windows is a common repair which the property factors for the building of which the Property forms part have failed to address. She explained that the property factor's contractors have used the wrong sealant, repeatedly using silicone when they should have used masons mortar. She maintained that the issue with the windows, being the securing of the windows to the external stonework, is a common repair for which the property factor is responsible. She stated that the

Landlords were not aware that the double glazed unit seals are defective and undertook to have them repaired. With regard to the en suite shower, Mrs. Jardine said that she had arranged for a plumber with experience of the building of which the Property forms part to investigate the leak and had been advised that the likely cause was defects in the construction plumbing and that the shower would need to be removed to effect a repair. It was her understanding that the Tenants did not want intrusive work of this kind to be carried out. Mrs. Jardine advised the Tribunal that, as the Landlords intended to recover possession to reside in the Property themselves, that they had taken the decision to wait until they were in residence to carry out this work.

14. Mrs. Jardine expressed dissatisfaction with both the property factor and the Landlord's Agents who had not passed on the Tenants complaints fully or promptly and whom she considered had not carried out an acceptable service to either the Landlords or the Tenants and expressed sympathy for the Tenants' position. With reference to the written representations, she referred the Tribunal to the correspondence with the property factor and the Landlord's Agents and to the recent efforts the Landlords had made direct with contractors. She agreed that the property factors' had responded in writing that they considered the window repair to be the Landlords' responsibility and not a common repair and agreed that the Landlords had not spoken directly with any of their co-proprietors in respect of the window repairs.
15. With regard to the Tolerable Standard complaint, Mrs. Frikha agreed that this complaint referred to the matters raised as the breaches of the Repairing Standards at 13 (1) (a) and 13 (1) (d).
16. Although not part of the Application, the Tribunal observed that the smoke and heat detectors in the Property are not fully compliant with current regulations.

Findings of Fact

17. The Tribunal's findings in fact were made from the Application, the written submissions and the Inspection and Hearing.
18. The Tribunal found the following matters established: -
 - a. The windows in the living room and in both bedrooms are not wind and watertight;
 - b. There are high moisture readings at the base of the south facing bedroom window and moderate moisture readings at the base of the west facing bedroom with en suite window;
 - c. The seals of two of the double glazed units of the living room bay windows appear to have failed;
 - d. There is cracking to the external window surround at the west facing bedroom with the en suite;

- e. There are some damp stains to the decor around the windows of the living room and the bedroom with the en suite;
- f. The shower in the en suite is leaking at the base;
- g. The floor tiling in the en suite is badly cracked and the tiling has lifted;
- h. A small section of the kitchen flooring has been damaged by a former leak from the washing machine and
- i. The smoke and heat detectors in the Property are not fully compliant with current regulations in respect of their positioning and it is not clear if these detectors are all interlinked.
- j. The washing machine has been repaired and is in proper working order.
- k. The dryer has been replaced with a new appliance.

Summary of the Issues

19. The Tribunal acknowledge the frustration and annoyance which the Landlords have with the property factors and the Landlords' Agents and that it is likely that there had been a lack of communication by the Landlords' Agents. However, in these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by Section 14(1)(b)" of the Act. The Section 14(1)(b) duty is an absolute duty on the Landlords and is not diminished by difficulties with agents or contractors. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13(1) (d) and 13(1) (h) of the Act at the date of the Inspection.

Decision of the Tribunal and reasons for the decision.

20. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the condition of the windows is such that the Property is not wind and watertight and so is not reasonably fit for human habitation. The Tribunal had regard to the Landlords' position that the necessary repair is a common repair and outwith their control. However, the property factor's response does not support this view and, from the information before the Tribunal, the Landlords have made no attempt to either challenge the property factors or to effect a repair themselves. Accordingly, the Tribunal found that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

21. In respect of the complaint in terms of Section 13 (1) (d) that the Landlords have failed to ensure that the fixtures, fittings and appliances provided by them under the tenancy are in a reasonable state of repair and in proper working order, the Tribunal found that the general condition of the en suite is that it is unusable and so it is not in a reasonable state of repair and in proper working order. The Tribunal found it wholly unacceptable that the Landlords intended to wait until they had recovered possession of the Property before effecting a repair. The Tribunal took the view that responsible landlords who were dissatisfied with their letting agents would have taken control of the repair themselves at any earlier stage and would have made a greater effort to ensure that works were carried out

to their tenants' satisfaction. Accordingly, the Tribunal found that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

22. In respect of the complaint in terms of Section 13 (1) (h) that the Landlords have failed to ensure that the Property meets the Tolerable Standard, the Tribunal gave careful consideration to the information before it, and took the view that on balance, the breaches of this Repairing Standard fell short of a breach of the Tolerable Standard and so found that the Landlords have not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
23. The decision is unanimous.

Repairing Standard Enforcement Order

24. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

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.

signed

K Moore

Karen Moore, Chairperson

14 February 2022