



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

Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/21/2892

Property: Marmel, Main Street, Auchtertool, Kirkcaldy KY2 5TH (“the property/house”)

Title No: FFE94204 (part)

The Parties:-

Ms Lisa-Marie Wilson, sometime Marmel, Main Street, Auchtertool, Kirkcaldy KY2 5TH (“the Tenant”)

Miss Elspeth Hunter, c/o Marmel, Main Street, Auchtertool, Kirkcaldy KY2 5TH (“the Landlord”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Geraldine Wooley (Ordinary/surveyor 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) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Landlord had 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

By application, dated 17 November 2021, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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”).

The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard. In particular, the Landlord had failed to ensure that 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, that 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, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house meets the tolerable standard. The specific items of complaint are summarised as follows:

1. The toilets are leaking contents onto the floor. They are not suitably secured. Only one of the three toilets can now be used. The toilets with the worst leaks have been out of use for some time and the Property is unsanitary, with foul water inside.
2. The seals on two showers are broken.
3. Inadequate drainage has resulted in water from the shower pouring through the downstairs ceiling, through the smoke detector, which has had to be disconnected as a health and safety hazard.
4. The water also pours into the electric circuit, tripping it.
5. If the shower in the en-suite is used, the water will come through the ceiling directly into the electrical cupboard and fuse box below. It also runs down a bedroom wall and on to the light switch.
6. Of four sinks in the house, only two have drainage.
7. The bath can only be filled from the shower head, as the lever to change the taps from bath to shower is not functional.
8. The dishwasher is not working.

The Tribunal received confirmation from the Tenant that the tenancy of the house had been terminated, and accordingly, under Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 ("The Act"), the Tenant was to be treated as having withdrawn the application under Section 22(1) of the Act. On 24 February 2022, the Tribunal considered whether the application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act. The Tribunal noted that a number of the alleged items of disrepair would, if established, constitute a health and safety risk to any future tenant or occupant of the Property and, accordingly, decided to continue to determine the application. An Inspection scheduled for 22 March

2022 was postponed at the request of the Landlord.

The Inspection

The Tribunal arrived to inspect the Property on the morning of 4 May 2022 but was unable to gain access as neither the Landlord nor anyone representing her was present. The Tenant, having vacated the Property, was no longer a Party to the proceedings. The Tribunal noted that the Property appeared to be empty and that a “For Sale” board was erected outside.

The Hearing

A Hearing was held by means of a telephone conference call on the afternoon of 4 May 2022. The Landlord was neither present nor represented. The Tribunal Members considered all the written evidence that had been presented to them.

Reasons for Decision

The Tribunal noted that the Tenant had provided an email dated 30 August 2021 from Mrs Gerry McDougall, an independent landlord, who had been invited by the Tenant to inspect the Property. Mrs McDougall stated that she was “pretty horrified” at the seriousness of some of the issues and she fully corroborated the contentions of the Tenant in relation to the specific items of complaint summarised above. Although Mrs McDougall did not profess to hold professional surveying qualifications, the Tribunal was satisfied that her email, together with the written representations of the Tenant, was sufficient to entitle the Tribunal to make a finding 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 (“RSEO”) should be made, despite the fact that the Tribunal Members had been unable to inspect the Property for themselves.

The view of the Tribunal was that there was a significant health and safety risk to any new tenant that the Landlord may choose to install in the Property and that, as it did not know the extent, if any, to which any prospective purchaser would be made aware of the defects, that risk extended to any tenant of a new owner.

The Tribunal accepted that it was possible that the Home Report which will have been prepared in connection with the marketing of the Property may contain information indicating that some of the items of disrepair have been dealt with, so decided to include in the Order a requirement to exhibit the Home Report.

The Tribunal considered that a period of six weeks should be allowed for the Landlord to carry out all the works required by the Order it had decided to make. At the end of that period, the Tribunal will re-inspect the Property to determine whether the works required by the RSEO have been satisfactorily carried out and the RSEO can be discharged. Meantime, the Landlord is

reminded that it is an offence to re-let the Property whilst the RSEO remains in place.

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.

Signed

A handwritten signature in blue ink, appearing to read 'George Clark', is written over a faint, illegible stamp.

Date: 4 May 2022
George Clark (Legal Member/Chairman)