

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/22/2289

Flat 7, 171 Bank Street, Coatbridge, ML5 1HA (“the Property”)

Parties:

Jennifer Lee, Flat 7, 171 Bank Street, Coatbridge, ML5 1HA (“the Tenant”)

McNinch Property Holdings Limited, The Albany, South Esplanade, St Peter Port, Guernsey (“the Landlord”)

Tribunal Members:

Josephine Bonnar (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) of the Housing (Scotland) Act 2006 (“the 2006 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.

Background

1. The Tenant lodged an application in terms of Section 22 of the 2006 Act stating that the Landlord has failed to meet the repairing standard in relation to the property. In particular, the application states that there has been a leak from the roof leading to water ingress into the second bedroom. This has resulted in a large hole in the ceiling which goes through to the rafters. In addition, there is water ingress in the bathroom, due to a defective window, and loose tiles.

2. The parties were notified that an inspection and hearing would take place on 5 October 2022. Due to problems with service of the application on the Landlord, the inspection and hearing were rescheduled for 9 November 2022 at 10am and 2pm, the latter by telephone conference call.
3. The Tribunal inspected the property on 9 November 2022 at 10am. The Tenant provided access and the joint tenant, Stephen Menzies, was also present. The Landlord was not represented. Thereafter a hearing took place by telephone conference call at 2pm. The Tenant and Mr Menzies participated. The Landlord was represented by Mr Gallagher and Ms Rose of Prsim Lettings.

The Inspection

4. The Tribunal noted the following during the inspection:- Water ingress has caused a section of the ceiling in the second bedroom to collapse; Staining visible on the ceiling of both bedrooms, moisture readings within normal range; Mould visible round the bathroom window frame, high moisture readings at the top and bottom of the window; Bathroom window could not be opened and the key is corroded in the lock; Tiles above the bath need to be re-sealed and grouted. An inspection report, with photographs, is attached to this decision.

The Hearing

5. Ms Lee told the Tribunal that the tenancy started in January 2021. In February 2021 they experienced water ingress in the bathroom at the window. This was reported and a contractor attended and told them that the window needed to be replaced. Other contractors have also been to look at the window but only in relation to the defective lock. In May 2021 they noticed water marks on the ceiling of the second bedroom. This was followed by water ingress in August 2021, which was immediately reported. A contractor attended. On 18 November 2021 a large hole caused by the water ingress developed. Several roofers have attended, and some repairs have been carried out. None of these have led to a permanent fix, although sometimes several weeks can pass without any water ingress. The last roof repair was about 6 weeks ago. Since then, there has been no water ingress in the second bedroom although they did experience water ingress in the main bedroom on one occasion, shortly after the repair. Ms Lee told the Tribunal that they appreciated that it has been difficult for the Landlord to identify the source of the problem but the delay in getting the matter resolved has been excessive.
6. The Landlord's representatives told the Tribunal that the Landlord accepts that repair work is required. A quote has recently been obtained

and sent to the Landlord for approval. It is for a significant and costly repair. Once external work to address the water ingress involving the roof and cladding is completed, the internal works will be carried out. The Landlord is and always has been willing to do any work which is required. There have been problems getting contractors and this has led to delay. In response to questions from the Tribunal, the representatives confirmed that the Landlord owns the whole block of flats. The work will involve both the roof and the cladding. It will also involve the defective window. The problem with the window is connected to some historic movement in the building and the contractor will need to shave away some brickwork. The works will require the erection of scaffolding. Once approved, the work will be instructed immediately. It is expected to take 6 weeks, but this depends on the weather and a delay over the Christmas period is expected.

Findings in Fact

7. The bathroom window at the property is defective.
8. The bathroom is affected by water ingress and dampness because of the defective window.
9. Tiles above the bath require to be sealed and grouted.
10. The roof and cladding at the property are defective resulting in water ingress at the property.
11. Water ingress has led to the collapse of part of the ceiling in the second bedroom.

Reason for decision

12. The Tribunal considered the issues of disrepair set out in the application, the condition of the property at the inspection and the information and evidence provided by the parties.
13. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 3 of the 2006 Act "The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it" The Tribunal is satisfied that the Tenant notified the Landlord of the repairs issues at the property prior to lodging the

application.

14. During the inspection of the property, the Tribunal saw evidence of water ingress on the ceiling of both bedrooms. The Tribunal also noted a large hole in the ceiling of the main bedroom, where part of the ceiling has collapsed due to water ingress. In the bathroom, the Tribunal noted that tiles above the bath require to be re-sealed and grouted and that the bathroom window is defective, cannot be opened and that there is evidence of water penetration and dampness around the window.
15. During the hearing the Landlord's representatives told the Tribunal that the Landlord accepts that repairs are required to address water ingress at the property. Both parties also confirmed that several roofing contractors have carried out repairs, but these have not been successful. Window contractors have also attended at the property, although these visits have not resulted in the window being repaired or replaced.
16. The Tribunal is therefore satisfied that the Landlord has failed to comply with sections 13(a) and (h) of the 2006 Act in relation to the defective window, the loose tiles and water ingress in both bedrooms and the bathroom.

Decision

- (a) The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The decision of the Tribunal is unanimous.

Right of Appeal.

A Landlord, Tenant or Third-party applicant 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.

In terms of Section 63 of the Act, 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.

J Bonnar

Josephine Bonnar, Legal Member

17 November 2022