

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) in terms of Section 24(1) of the Housing
(Scotland) Act 2006**

Reference number: FTS/HPC/RP/22/0914

Re: Property at 16c Elizabeth Crescent, Glasgow G46 7HN ("Property")

The Parties:

Konstantin Karnejenko, 16c Elizabeth Crescent, Glasgow G46 7HN ("Tenant")

**Annette Munro, 15 Paidmyre Crescent, Newton Mearns, Glasgow G77 5AG
("Landlord")**

Tribunal Members :

Joan Devine (Legal Member); Nick Allan (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (d) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 29 March 2022, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that he believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (d), (f) and (h) of the Act. The Application stated that the Landlord had failed to ensure 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
 - The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
 - The Property met the tolerable standard.

3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :
 - Smoke detector not correctly installed
 - Mould in the bathroom under the bath
 - Mould on the ceiling in the hall
 - Smell of damp
 - Damage caused by flooding from property above
 - Wallpaper and tiles “came off”
4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 8 July 2022 respectively.
5. Prior to the Inspection the Landlord submitted written representations in which she stated that the necessary works had not been carried out as the Tenant had not agreed to a list of works.

The Inspection

6. The Tribunal inspected the Property on the morning of 8 July 2022. The weather conditions at the time of the inspection were dull and overcast. The Tenant was present at the Property during the inspection. The Landlord was not present. The Property is a first floor self-contained 2 bedroomed flat within a 3 storey building.

The Hearing

7. The Hearing took place at 2pm on 8 July 2022 by conference call. The Tenant was in attendance. The Landlord was not.
8. The Tribunal noted that the provision of smoke and heat detectors in the Property was satisfactory. The Tenant told the Tribunal that the Landlord had carried out the necessary works regarding smoke detectors but only after the present application had been made.
9. The Tribunal told the Tenant that they had tested for residual dampness using a damp meter in both the hall and the bathroom but no damp was detected. The Tribunal did however note extensive mould in the hall and water damage to the ceiling around the door frame leading from the hall into the bathroom as well as water staining on the kitchen ceiling above the vent. The Tribunal noted historic damp staining below the bath but no dampness was shown using the damp meter. The Tribunal also obtained an air quality reading in the bathroom which indicated no concerns with the air quality. The Tribunal noted mould spots on the bathroom ceiling

10. The Tenant referred to photographs produced with the application which showed a tile missing in the kitchen. This had not been raised by the tenant during the inspection and no photographs had been taken. The Tenant said that he had retained the tile.

The Evidence

11. The evidence before the Tribunal consisted of:
 - 11.1 The Application completed by the Tenant
 - 11.2 Land Register report relating to the Property
 - 11.3 Screenshots of messages between the Tenant and the Landlord's Agent notifying them of the issues complained about in the Application
 - 11.4 Photographs of the interior of the Property
 - 11.5 Written representation from the Landlord dated 21 June 2022
 - 11.6 The Tribunal's inspection of the Property
 - 11.7 The oral representations of the Tenant

Summary of the Issues

12. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

13. Tribunal made the following findings in fact:
 - 13.1 The Tenant has lived in the Property since 18 February 2019.
 - 13.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 13.3 The tenancy of the Property is managed by the Landlord's Agent.
 - 13.4 The Tribunal in its inspection checked the items which were the subject of the application. The Tribunal observed the following:
 - 13.4.1 Extensive mould on the hall ceiling.
 - 13.4.2 Hall ceiling was damaged and cracked.
 - 13.4.3 Water damage to ceiling around door frame between hall and bathroom.

13.4.4 Water damage to ceiling in bathroom.

13.4.5 Water damage to ceiling in kitchen above vent.

Reasons for Decision

14. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1)(d) of the Act.
15. The Tribunal noted that there was extensive mould in the hall ceiling. There was also water damage to the ceiling in the bathroom and kitchen and around the door frame between the hall and the bathroom. Although the Tenant had made reference to a missing tile on the kitchen wall in the application the Tribunal had not been provided with any evidence that this had been notified to the Landlord in terms of section 14(3)(a) of the Act.

Observations by the Tribunal

16. The Tribunal observed that the light fitting in the bathroom was not a sealed unit and is therefore an inappropriate fitting for such a location.

Decision

15. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the Property does not meet the tolerable standard.
16. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) 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.

