

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision with statement of reasons: Housing (Scotland) Act 2006 Section 24(1).

Chamber Ref: FTS/HPC/RP/21/0939

Craig Cottage, Acoshrigan, Appin, Argyll PA38 4BB (“the property”)

The Parties:-

Mr David Racz, Unit 5-3, The Ziggurat, 60-66 Saffron Hill, London, EC1N 8QX (“The Landlord”)

Tribunal Members – Graham Harding (Legal Member) and Sara Hesp (Ordinary Member)

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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by the Landlord’s representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 14 April 2021 the Tenants Mr Dubhghlas Irbhinn and Ms Heather MacLean complained to the Tribunal that the property failed to meet the repairing standard in that it was:
 - a) Not wind and watertight;
 - b) The structure and exterior of the house including drains, gutters and external pipes were not in a reasonable state and in proper working order;
 - c) The installations for the supply of water gas and electricity and for sanitation and heating water were not in a reasonable state of repair and in proper working order;
 - d) The house did not have satisfactory provision for giving warning if carbon monoxide was present in a concentration that was hazardous to health; and
 - e) The house did not meet the tolerable standard.
2. Specifically, the tenants claimed that the property had a faulty sewage system due to a damaged septic tank that caused sewage to back up into the kitchen

sink and washing machine outlet during heavy rain. They complained that there were dangerous and faulty Velux and skylight windows that required to be replaced. They said that the property suffered from damp and mould and had been infested with slugs and other insects. The tenants also complained that the render on the exterior of the property was cracked and in poor condition. They said that there were no extractor fans in the bathroom or kitchen and no vent for the multi fuel stove as well as no carbon monoxide alarm. They also said there was no affordable heating in the property other than the multifuel stove and two electric heaters. They said that the drainage around the property was in poor condition exacerbating damp.

3. By Notice of Acceptance dated 7 June 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.
4. By email dated 6 July 2021 the tenants withdrew their application to the Tribunal. The Tribunal then determined that it was in the public interest to continue to determine the application and issued a Minute of Continuation dated 13 July 2021.
5. The Landlord's representative, Mr Kevin McGinness submitted a written response by email dated 14 July 2021.
6. A CMD was held by teleconference on 26 July 2021. The Landlord did not attend but was represented by Mr McGinness. Having considered the written submissions and the oral representations made on behalf of the Landlord at the CMD the Tribunal determined that it would be appropriate to inspect the property and thereafter arrange a hearing.
7. Following the CMD the Landlord's representative by email dated 21 July 2021 submitted a report prepared by Richardson & Starling recommending the installation of a chemical damp proof course at the property.
8. The Legal Member and Ordinary (Surveyor) Member of the Tribunal carried out an inspection of the property on 14 September 2021. The Ordinary member prepared Pre-hearing Inspection Summary and Schedule of Photographs and this was issued to the Landlord's representative in advance of the hearing arranged to take place on 21 September 2021.

The Hearing

9. A hearing was held by teleconference on 21 September 2021. The Landlord did not attend but was represented by Mr Kevin McGinness.
10. The Tribunal queried if the sewage system works had been completed and Mr McGinness advised the Tribunal that he had been advised by his client that the works had been completed on 17 September with the exception of the connection of the pump to the electrical supply at the property. Mr McGinness was unable to confirm when the pump would be connected to the electrical supply.

11. Mr McGinness went on to say that the building warrant for the sewage system had been granted on 16 August and a copy had been emailed to the Tribunal administration. He was unable to provide a firm timescale for the issuing of a completion certificate by building control as he was aware anecdotally of some people experiencing significant delays. However, he was hopeful that a completion certificate could be issued within a month or two.
12. Mr McGinness then went on to say that he had been advised by his client that it was his client's intention to demolish the property and rebuild it. He said that there was no prospect of his client re-letting the property in the meantime. Mr McGinness said that he was unable to provide a timescale for the works but said it was a significant project that might not be completed until the autumn of 2022.
13. The Tribunal then had a short adjournment to consider how best to proceed in light of the information provided by Mr McGinness. Following the adjournment, the Tribunal considered the remaining issues forming the basis of the application. Mr McGinness accepted that the Velux windows and the skylight window were in poor condition but suggested it made no sense to replace them if the property was to be demolished. With regards to the heating issues, he explained that there had been discussions with the Tenants who had ultimately decided to retain the multifuel stove as their primary source of heating. The Tribunal noted that Mr McGinness was unaware that the Tenants were currently in the process of vacating the property. The Tribunal also noted that Mr McGinness accepted that there were issues with regards to water ingress from the chimney at the property as well as damp issues and cracks to the render. He explained that this was the reason for his client's decision to demolish and rebuild rather than repair.
14. There was then some discussion as to whether there would be any prejudice to the Landlord should the Tribunal determine to impose a Repairing Standard Enforcement Order. In the event that the property was demolished the Tribunal confirmed it would be open to the Landlord to seek a variation or revocation of any such order in appropriate circumstances.

Findings in Fact

15. The Landlord has carried out repairs to the sewage system at the property. He has obtained a building warrant for these works which have not yet been fully completed.
16. The Velux windows above the kitchen and the skylight above the stairs at the property are in poor condition and not wind and watertight.
17. There are cracks in the render to the external walls of the property and the chimneys.
18. There are high levels of moisture evident in the living room below the left-hand chimney and evidence of damp in the property.

19. A hard-wired carbon monoxide detector has been fitted in the living room at the property.
20. Although not the subject of the application, the landlord has also fitted smoke and heat detectors in accordance with current government guidelines.
21. In addition to a multifuel stove in the living room there are electric panel heaters installed in the living room and kitchen at the property. None of these appliances were tested.
22. The tenants are in the process of removing from the property.

Reasons for Decision

23. The Tribunal has noted that the property will shortly be unoccupied and that it is the Landlord's intention not to re-let or to carry out repairs but rather to apply for planning permission and to demolish the property and build a new house on the site. However, whilst that may well be the Landlord's current plan it remains a possibility that circumstances may change and at the present time no planning application has been made. The Tribunal therefore considers that a cautious and prudent approach is necessary at this time in case the Landlord's plans for some reason do not come to fruition.
24. It was apparent that significant progress had been made with regards to attempting to remedy the sewage problem at the property and once the electrical connection has been completed it should be possible for the local authority to issue a completion certificate for the works if satisfied it complies with the relevant regulations.
25. It was not disputed by the Landlord's representative that there were significant issues with the Velux and skylight windows as well as water ingress and damp at the property all of which would require to be remedied if the property is not demolished.
26. The Tribunal was satisfied that the multifuel stove together with the existing electric panel heaters should provide adequate space heating at the property although the Landlord could perhaps consider installing more modern and efficient electric heaters as the existing heaters are nearing the end of their useful life.
27. The tribunal did not consider that mechanical ventilation was required in the kitchen or bathroom as there was already adequate ventilation in the bathroom and there would also be adequate ventilation in the kitchen once the Velux windows were repaired or replaced.
28. The Tribunal was satisfied that the Landlord had taken steps to comply with regulations by installing a carbon monoxide detector in the living room and did not consider that it was necessary to vent the multifuel stove.

29. The Tribunal considers that it is appropriate to proceed to make a Repairing Standard Enforcement Order ("RSEO") to ensure that the defects in the property are attended to in order that the property meets the repairing standard within a reasonable period of time. In the event that the Landlord goes ahead with the demolition of the property then it would be open to him at that time to apply to the Tribunal for such variation or revocation of the RSEO as he may consider appropriate.

Decision

30. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

31. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

32. The decision of the tribunal was unanimous.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 Harding

Graham Harding
Legal Member

28 September 2021
Date