



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/22/2449

Re: Property at 0/1, 6 second Avenue, Clydebank G81 3AA (registered under title number DMB38775) (“Property”)

The Parties:

Emma Hunter, 0/1, 6 second Avenue, Clydebank G81 3AA (“Tenant”)

Vijay Kamal Gindha, AVG Homes, 279 Castlemilk Road, Rutherglen, Glasgow G44 4LE (“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)(a) and (h) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 22 July 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 she 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)(a) and (h) of the Act. The Application stated that the Landlord had failed to ensure that:
 - The Property was wind and watertight and in all other respects reasonably fit for human habitation.
 - The Property met the tolerable standard.
3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :

- Dampness to be fixed in bedroom, hallway and living room.
4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 4 November 2022.
 5. Prior to the Inspection the Landlord submitted written representations in which they stated that reports and works were pending and that necessary works would be finished within 2 weeks. The Landlord sought a postponement of the inspection and hearing. This was refused. The Landlord also produced a report from Rowallan, Specialist Surveyors dated 5 October 2022 and Wise Property Care dated 27 October 2022.

The Inspection

6. The Tribunal inspected the Property on the morning of 4 November 2022. The weather conditions at the time of the inspection were dry and sunny. The Tenant and Charles Taylor were present at the Property during the inspection as was the Landlord. The Property is a ground floor self-contained 2 bedroomed flat within a 3 storey building.

The Hearing

7. The Hearing took place on 4 November 2022 by conference call. The Tenant and the Landlord were in attendance.
8. The Tribunal noted that in terms of the tenancy agreement the Tenant had lived in the Property since 17 July 2020. The Tribunal asked when the issues complained of first became apparent. The Landlord said his records showed that the issue was raised on 25 January 2021.
9. The Tribunal noted that report from Rowallan found that there was significant condensation in the Property. They said they did not find rising or penetrating damp. The report from Wise Property Care also said that they did not detect rising or penetrating damp. Mr Allan summarised his findings at the inspection. He noted that the front door was swollen with moisture and difficult to shut . He noted evidence of significant dampness on the wall adjacent to the door. Below-surface dampness readings were taken confirming that the wall was saturated. In the Lounge Mr Allan noted penetrating damp on the wall section to the right of the window rising to a height of approximately 6-7 feet. In the Hall Mr Allan noted mould in the cupboard and below-surface dampness along the wall section between the Hall cupboard and the Kitchen door. In the Bedroom at the end of the Hall Mr Allan noted mould and obtained below-surface damp readings along the length of the gable wall which he concluded were at a depth of at least 50mm. On the basis of his findings at the inspection Mr Allan did not agree with the findings of Rowallan and Wise Property Care that there was no evidence of penetrating damp in the Property.
10. The Landlord said that he was keen to see the Tribunal's findings following the inspection and to understand what works required to be carried out.

11. Mr Allan prepared a schedule of photographs which will be issued to the Parties with this Decision.

The Evidence

12. The evidence before the Tribunal consisted of:
 - 12.1 The Application completed by the Tenant
 - 12.2 Land Register report relating to the Property
 - 12.3 Screenshots of messages between the Tenant and the Landlord regarding the issues complained about in the Application
 - 12.4 Photographs of the interior of the Property
 - 12.5 Report from Rowallan Specialist Surveyors dated 5 October 2022
 - 12.6 Report from Wise Property Care dated 27 October 2022
 - 12.7 The Tribunal's inspection of the Property
 - 12.8 The oral representations of the Tenant and the Landlord

Summary of the Issues

13. 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

14. Tribunal made the following findings in fact:
 - 14.1 The Tenant has lived in the Property since 17 July 2020.
 - 14.2 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.
 - 14.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 14.3.1 Damp and mould in the hall.
 - 14.3.2 Front door swollen with dampness.
 - 14.3.3 Mould in hall cupboard.

- 14.3.4 Penetrating damp in the lounge below and to the right of the window.
- 14.3.5 Damp and mould in bedroom at end of the hall.
- 14.3.6 Loose and missing pointing on gable wall.

Reasons for Decision

- 15. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1)(a) and (h) of the Act.
- 16. The Tribunal noted that there was damp and mould in the hall, lounge and bedroom at the end of the hall. There was also mould in the hall and bedroom.

Observations by the Tribunal

- 17. The Tribunal observed that the light fitting in the bathroom was inappropriate for a bathroom.

Decision

- 14. 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 is not wind and watertight and in all other respects reasonably fit for human habitation and does not meet the tolerable standard.
- 15. 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

J.Taylor

J.Devine