



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/23/0116

Re: Property at 7 Ledi Road, Mansewood, Glasgow G43 2BJ (Registered in the Land Register of Scotland under title number GLA237454) (“Property”)

The Parties:

John Lawrence Anunobi, 7 Ledi Road, Mansewood, Glasgow G43 2BJ (“Tenant”)

Govan Law Centre, Orkney Street Enterprise Centre, 18-20 Orkney Street, Glasgow G51 2BX (“Tenant’s Representative”)

George Ford, 66 Priorwood Road, Newton Mearns, Glasgow G77 6ZZ and Helen Flannagan, 9 Ledi Road,, Manswood, Glasgow (“Landlord”)

Tribunal Members :

J Devine (Legal Member); N 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) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 16 January 2023, 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) (a) and (h) of the Act. The Application stated that the Landlord had failed to ensure that:

- The Property is 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 :
 - Ongoing dampness and resulting in mould in the Property
 4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 4 April 2023.
 5. Prior to the Inspection the Tenant's Representative and the Landlord submitted written representations.

The Inspection

6. The Tribunal inspected the Property on the morning of 4 April 2023. The weather conditions at the time of the inspection were dry and overcast. The Tenant was present at the Property during the inspection. The Property is a semi-detached bungalow. The inspection summary with a schedule of photographs is provided along with this Decision.

The Hearing

7. The Hearing took place on 4 April 2023 by conference call. The Tenant was in attendance and was represented by Charis Brooks of the Tenant's Representative. The Landlord was in attendance.
8. The Tribunal asked about the work carried out to the bathroom in February 2022. The Landlord said that there had been moisture leaking from the bathroom into the adjoining living room. He said that he believed that the Tenant had damaged the sealant and grout around the bath. He said that the bathroom had been completely refurbished with a new bath, sink toilet, flooring and wet wall. He said that the walls were stripped back to the brick work. The work had been organised by Countrywide and carried out by Senako. The Tribunal asked when the conservatory was added to the Property. The Landlord said that was approximately 15 years ago. He said that the steps from the conservatory to the garden were installed at the same time. The Tribunal asked about the bay window in the lounge. The Landlord said it has always been there and had been re-roofed approximately 2 years ago. He said that the gutters had been checked in November 2022. The Tribunal asked the converted attic space. The Landlord said that had been done well over 60 years ago.
9. The Tribunal asked the Tenant how many people lived in the Property. He said the occupants were himself and his 2 sons. One son's bedroom was on the ground floor and the other on the upper floor.
10. The Tribunal asked the Landlord when the extractor was fitted in the kitchen. He said that was fitted by Senako in November 2022. The Tribunal referred to the report produced by the Landlord from Peter Cox dated 5 October 2022 and noted

it recommended the installation of a thermosave single room heat recovery ventilation unit. The Landlord said he decided not to proceed with that. He referred to games played by the Tenant which involved water being poured on the floor. He said the moisture was in the air. He said he had told Peter Cox about the games after they produced their report but they did not comment. The Tribunal noted that the report referred to defective rainwater goods and de-bonded render. Then Landlord said that the render was damaged when the Tenant moved the bins and that a builder had looked at the rainwater goods and said they were "alright".

11. The Tribunal asked about the document head "synopsis of visits" by Leslie Payne covering the period 30 December 2019 to 19 September 2020. The Landlord said that at this time the Tenant was asked to stop drying washing in the conservatory.
12. The Tribunal asked about the emails recently sent to the Tribunal about a mould clear removal kit and asked where this was to be used. The Landlord said it was to be applied to the wall of the bedroom adjacent to the kitchen. He said that was the only area where mould had been reported. He said that no date had been arranged for the works.
13. The Tribunal noted that there was no CO detector in the Property. The Landlord said that all required detectors had been in the Property when the tenant moved in. The Tribunal asked when the Property was re-rendered. The Landlord said that was about 8/9 years ago.
14. The Tribunal asked Ms Brooks about the email produced from Pure Maintenance dated 9 September 2022. She said that no specialist reports had been instructed due to cost. She said that the Tenant had instructed Pure Maintenance. She said that their email showed that there are mould spores in the Property and apparent dampness. She said that the Landlord's allegation that any dampness was caused by the Tenant's lifestyle lacked credibility. As regards the reference to games involving water, Ms Brooks said that the Tenant accepts such games take place but they occur once every 6 months and the Tenant protects the flooring by putting down bin liners and towels. She said the Tenant denies in full the allegation that he had damaged the grouting in the bathroom. She said that the document prepared by Leslie Payne lacks credibility as he is a friend of the Landlord. The Tenant said that he did not accept that the games referred to could cause mould. He referred to the timeline produced by the Landlord and said that it contained references to irrelevant issues regarding the Tenant's private life. He said he was willing to contribute half the cost of dealing with the mould.
15. The Tribunal noted that Pure Maintenance referred to a separate report and asked if that was available. Ms Brooks said that she was not aware of its existence. The Tribunal asked how long it took for damp to become evident in the living room after the works were carried out in the bathroom. The Tenant said the works were in February 2022 and the damp was back by June 2022. He said that his son was in hospital twice with breathing problems.

16. Ms Brooks invited the Tribunal to make a repairing standard enforcement order. She said the Parties agree there is dampness and mould in the Property. She said the source was the debate. She said the Landlord had failed to follow the recommendation of Peter Cox. She said that the Landlord had referred to difficulty gaining access to the Property. She said that this had been an issue on 17 March 2023 as no notice was given and there was confusion about the extent of the works. She said that the games involving water were not the main causal factor.

The Evidence

17. The evidence before the Tribunal consisted of:
 - 17.1 The Application completed by the Tenant's Representative
 - 17.2 Land Register report relating to the Property
 - 17.3 Letter from the Tenant's Representative to the Landlord dated 15 November 2022 reporting dampness in the Property.
 - 17.4 Written representation from the Tenant's Representative with supporting documents
 - 17.5 Written representation from the Landlord with supporting documents
 - 17.6 The Tribunal's inspection of the Property
 - 17.7 The oral representations of the Tenant's Representative and the Landlord

Summary of the Issues

18. 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

19. Tribunal made the following findings in fact:
 - 19.1 The Tenant has lived in the Property since 27 September 2018.
 - 19.2 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.
 - 19.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 19.3.1 Damp wall sections in the living room.

19.3.2 Mould on bay window ceiling in living room.

19.3.3 Mould on wall in the conservatory.

19.3.4 Dampness within wall in the conservatory.

Reasons for Decision

20. 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) of the Act but it does meet the tolerable standard as required by Section 13(1)(h) of the Act. The Tribunal noted that there was dampness and mould in the living room and the conservatory. No surface damp readings were obtained within the Property upon testing. There were however below surface damp readings in the living room and the conservatory at the locations identified in the inspection report. It was the Landlord's position that any dampness was caused by the actions of the Tenant. Reference was made to games played by the Tenant involving water. In terms of section 16(1)(b)(i) of the Act the duty imposed by section 14(1) does not require any work to be carried out for which the tenant is liable by virtue of the tenant's duty to use the house in a proper manner. The location of the areas of damp and mould were such that the Tribunal was of the view that games of the sort described were not the cause of the dampness.

Observations by the Tribunal

21. The Tribunal observed that there was no CO detector evident in the kitchen. This was not in accordance with the Scottish Government guidance.

Decision

23. 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.

24. 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.

Legal Member
13 April 2023