

**First-tier
tribunal for
Scotland
(Housing and Property Chamber)**

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: PRHP/RP/16/0261

**27 Winton Loan, Edinburgh, EH10 7AW
("The Property")**

The Parties:-

**Mr. Jerome Sadorge, formerly residing at the property
("the former Tenant")**

**The Catchelraw Trust, Charterhall House, Duns, Berwickshire, TD11 3RE
("the Landlord")**

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

The tribunal consisted of:-

Patricia Anne Pryce	-	Chairing Member
Susan Napier	-	Ordinary Member

Background

- 1. By application comprising documents received between 2 and 10 August, both 2016 the Tenant applied to the Private Rented Housing Panel ("PRHP") (which body was succeeded by the First-tier Tribunal (Housing and Property Chamber) on 1 December 2016) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**
- 2. The application by the former Tenant stated that the Tenant considered that the Landlord had failed to comply with its duty to ensure that the house**

meets the repairing standard and that the said failure was established as follows: -

- (a) The property has serious rising and penetrating damp issues.
- (b) There was a badly fitted wood burning stove.
- (c) Adjoining stores are in neglect and their stone walls are falling down.
- (d) The kitchen sink is bent out of shape and collects water when draining.
- (e) The kitchen units are damp, dirty and neglected.

The former Tenant considered that the Landlord is in breach of its duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
 - (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - (iii) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
3. By Minute dated 17 August 2016 the Convener of the PRHP, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.
 4. The PRHP served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenant.
 5. The Tenant advised the PRHP that the tenancy had terminated on 29 August 2016. The Private Rented Housing Committee ("PRHC") then issued a Minute of Continuation under Schedule 2 Paragraph 7(3) of the Act, having decided that the application should be determined on public interest grounds.
 6. Following service of the Notice of Referral (by letter dated 29 August 2016), the Landlord submitted written representations to the PRHC which included several attachments and confirmed that the Landlord wished to attend the hearing. The Landlord thereafter submitted to the PRHC a survey report by Peter Cox Limited dated 20 September 2016 which detailed recommended

works to be carried out to resolve the dampness issues within the property and an email by John Goffin, Contractor instructed by the Landlord, which detailed the repairs to be carried out to the wood burning stove.

7. The PRHC inspected the property on 4 October 2016. On that date, the PRHC comprised the same Legal Chair but the surveyor member was Charlie Reid-Thomas. The PRHC noted that repointing works were being carried out to the property at the time of the inspection and that a channel was being excavated along the front elevation of the property to alleviate the dampness problem. The PRHC also noted that there were high readings of dampness along the length of the front elevation in the property. A hearing took place on the same date within George House, George Street, Edinburgh. The PRHC decided to adjourn that hearing to obtain further information to allow the PRHC to reach a decision. The PRHC subsequently issued a Direction in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Act. In terms of the Direction, the PRHC required the Landlord to produce written confirmation that both the works recommend within the report by Peter Cox Limited and in the email by Mr. Goffin had been carried out. The Landlord subsequently provided written confirmation to the PRHC that the works had been carried out by Mr Goffin to the wood burning stove. In relation to the dampness issue, the Landlord confirmed that some of the works recommended by Peter Cox Limited had been completed but that the new Tenants would not allow more invasive work to be carried out while they resided in the property. The new Tenants did indicate that they were due to go on an extended holiday in 2017 and would be happy to allow access to the property when they were away to allow any further required works to be carried out.
8. The tribunal inspected the Property on the morning of 27 January 2017. The Landlord was represented by Mr. Henry Trotter, Trustee of the Landlord, and was present during the inspection. There was an observer present at the inspection. The present Tenant of the property allowed the tribunal access to the property.
9. Following the inspection of the Property the tribunal held a hearing at George House, George Street, Edinburgh. Mr. Trotter attended on behalf of the Landlord. There was an observer present at the hearing.

The Hearing

Preliminary Issue

10. The tribunal noted the responses that the Landlord had made to the tribunal in relation to the Direction. In all the circumstances, the tribunal accepted that the Landlord had complied with the Direction.

11. The Landlord, by way of Mr. Trotter, submitted as follows: -

- He confirmed that immediately after the inspection on 27 January 2017 that he had instructed his contractor to return to the property and carry out further repointing to the front elevation to try and eradicate the dampness from that localised area.
- He advised that this specific area was not helped by the present Tenants storing bags of fuel immediately outside the front door which impeded the ability of the property to breathe at this location.

Summary of the issues

12. The issue to be determined is whether the repairing standard has been met in light of what the tribunal observed at the inspection together with the submissions made by the Landlord.

Findings of fact

13. The tribunal finds the following facts to be established: -
- The Tenant who raised the present application left the property in August 2016.
 - The property comprised an end-terrace traditional stone built three apartment cottage located on a private estate in Edinburgh.
 - The property comprises a hallway, kitchen, bathroom, living room and two bedrooms.
 - Repointing works had been carried out to the front elevation of the property to the left of the front door when viewed externally.
 - The levels of dampness measured had decreased since the first inspection and were now within normal range apart from one small localised area to the inside of the front door.
 - The wood burning stove had been repaired.
 - The chimney had been repaired.

Reasons for the decision

14. At the inspection, the tribunal noted that the works mentioned in the application had almost entirely been completed, namely, that the wood burning stove had been repaired and the issue of serious dampness had been addressed through works carried out to the hall cupboard, the creation of a channel along the bottom of the front elevation of the property up to the front door together with repointing of the external front elevation wall. These works had almost eradicated the issue of dampness within the property other than the small isolated patch of dampness located to the left-hand side of the front door internally within the property.

The ordinary member of the tribunal took several photographs which form the Schedule attached to this decision.

The tribunal accepts that the Landlord has made great efforts to carry out the repairs and has, for the most part, succeeded in resolving the repairs issues.

The tribunal also acknowledges that the property is old and of traditional stone construction.

Given all of the circumstances and taking account of the age, character and location of the property, the tribunal is satisfied the house is wind and watertight and in all other respects fit for human habitation as the dampness has all but been eradicated. The tribunal is satisfied that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order as repointing repairs were carried out to the front elevation of the property. The tribunal is satisfied that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order as the Landlord repaired the wood burning stove.

The tribunal decided that it could not consider the complaints about the kitchen units, the kitchen sink or the stores (outbuildings) as these had not been notified to the Landlord prior to the present application. However, the tribunal decided to make observations as noted below.

Observations

While the complaints about the outbuildings do not form part of the present application and therefore cannot be considered by the tribunal, the tribunal notes that the outbuildings are in a state of serious disrepair and represent a health and safety concern. The tribunal would strongly urge the Landlord to either repair or demolish the outbuildings as a matter of some urgency.

The tribunal acknowledges that the Landlord has carried out a large number of repairs to the property, ensuring that the property meets the repairing standard. The tribunal notes that the creation of a ditch along the outside of the property has assisted greatly in alleviating the dampness issues within the property. However, the ditch remains open and unguarded and the tribunal would urge the Landlord to erect some form of guard to prevent potential injury.

Decision

15. The tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.
16. The decision of the tribunal was unanimous.

Right of Appeal

17. **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.**

Effect of section 63

18. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed P. Pryce

Date 27 January 2017

Chairperson

PRHP/RP/16/0261

Appendix 1

27 Winton Loan, Edinburgh, EH10 7AW

Inspection Friday, 27 January 2017 at 1000 - Photographs



Front elevation of cottage



Channel dug along front elevation in front of hall cupboard and living room to the left hand side of front entrance door



Front door and close up of wall to right hand side of front door showing gaps in pointing around door frame and external wall



Damp meter reading taken on the left internal wall adjacent to the front entrance door

PRHP/RP/16/0261 27 Winton Loan, Edinburgh, EH10 7AW – Photos taken 27-1-17



Damp meter reading taken under window in living room



Wood burning stove in living room



Front elevation of cottage showing paving slab entrance to front door, with tenants' materials stored to the right of the door.



Stores (not part of tenancy) adjacent to cottages