



Decision following Case Management Discussion (CMD) of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/RP/20/0497

Re: Property at 9, Woodburn Way, Cumbernauld, Glasgow G68 9BJ (“the property”)

Parties:

Mr Karim Dakhil, residing at the property (“the landlord”)

Tribunal Members:

David Preston (Legal Member) and Ms Lori Charles (Ordinary Member)

Decision:

After making such enquiries as it saw fit the tribunal determined to dismiss the application.

Background:

1. By application dated 2 February 2020 under section 22 of the Housing (Scotland) Act 2006 (“the Act”), Miss Jennifer Cunningham, formerly residing at the property applied to the tribunal on behalf of herself and Mr Kenneth Hutchison for a determination of whether the landlords had failed to comply with the duties imposed by section 14 (1)(b) of the Act.
2. The application stated that the tenants considered that the landlord had failed to comply with the duty to ensure that the property meets the Repairing Standard at the start of the lease and throughout its duration and in particular that the landlord failed to ensure that:
 - a. The property was wind and watertight and in all other respects with it for human habitation;
 - c. The installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and proper working order; and
 - h. The property met the tolerable standard.

3. Specifically, the tenants complained that:
 - i. there was some sort of leak or damage to the conservatory door which caused water to seep into the wood at floor level around the door. There was no heating provided in the conservatory and the door from the conservatory the living room was misaligned leaving a gap above the door.
 - ii. The landlord took more than a reasonable amount of time to repair/replace the boiler which was not fully operational between July 2013 and 2 October 2019.
 - iii. The landlord took more than a reasonable amount of time to locate and fix a leak in the bathroom following boiler works (28 October to 15 November 2019). He then took more than a reasonable amount of time to repair a hole made after the leak was found in the bathroom (15 November 2019 to 15 January 2020).
 - iv. The sealant around the back of the bath was insufficient which caused water to drip from the shower hose down the back of the bath causing damage to floors in the bathroom as well as under the laminate in the hall and cupboard.
 - v. These issues led to a strong smell of damp and mould throughout the property.
 - vi. Landlord attended the property without making tenants aware that he was coming.
4. By Decision dated 12 March 2020, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to a tribunal. Before a Notice of Referral, Inspection and Hearing was issued and following the imposition of the measures imposed by the government to prevent the spread of coronavirus, further procedure on the application was suspended.
5. In a letter to the tribunal sent by email on 4 March 2020 Miss Cunningham advised that the tenants had vacated the property on 14 February 2020. In terms of paragraph 7(1) of Schedule 2 to the Act a tenant is to be treated as having withdrawn an application if the tenancy concerned is lawfully terminated. By Minute of Continuation dated 12 March 2020 a Convener decided that the application should continue to be determined by the Tribunal.
6. By letter and email dated 1 December 2020 the landlord was advised of the present Case Management Discussion ("CMD") to take place by telephone conference call.
7. On 12 January 2021 a CMD was convened by telephone in accordance with the provisions for dealing with business during the COVID-19 pandemic. The landlord attended by telephone.
8. The convener explained that the purpose of the CMD was to identify any issues which might fall to be determined following an inspection of the property. He explained the situation surrounding the tribunal's inability to carry out inspections of the property in view of the restrictions imposed by the pandemic lockdown.

Discussion:

9. Mr Dakhi explained that he had moved into the property on 14 February 2020 following the departure of the former tenants. He explained that he had attended to the repairs to the conservatory before the tenants had left and had found no issues since he had moved in. He intended to remain in occupation of the property. He said that the leak in the bathroom had been fixed and there were no issues in relation to the matters complained of by former tenants.

Outcome

10. The tribunal was satisfied from what it had been told by Mr Dakhil that the property had been removed from the private rented market and that he had occupied it without difficulty almost 12 months since February 2020.
11. The tribunal noted that the letter from the applicant dated 4 March 2020 said that they had submitted the application just prior to moving out of the property as they had been advised that they had a better chance of recovering compensation from the landlord if the matter had been determined by First-tier Tribunal in relation to the Repairing Standard.
12. The tribunal also noted that many of the issues complained about in the application form had been rectified by the landlords some time before the application had been made. It is not the function of the tribunal to make hypothetical findings which might make life easier for former tenants to recover what they regard as compensation.
13. Rule 17(4) allows the tribunal to do anything at case management discussion which may do at hearing, including making a decision and Rule 18 empowers the tribunal to determine proceedings without a hearing.
14. The tribunal determined to dismiss the application.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

D Preston

13 January 2021