

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Chamber Reference number: FTC/HPC/RT/22/2939

Parties:

1. Dumfries and Galloway Council per its employee Ms. Amanda Green, Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street. Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Ms. Joanna Parker, residing at 2B, Dildawn Estate, Kelton, Castle Douglas, DG7 1SE (“the Tenant”) and
3. Mr. William Moultrie, residing at Dildawn House, Kelton, Castle Douglas, DG7 1SE (“the Landlord”), together referred to as “the Parties”.

Property: 2B, Dildawn Estate, Kelton, Castle Douglas, DG7 1SE being part and portion of the subjects registered in the Land Register of Scotland under title sheet number KRK9474.

Tribunal Members

K Moore (Chairperson)

N Allan (Ordinary Member)

Decision

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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (c) 13(1) (f) and 13(1) (h) of the Act and that for the reasons set out below.

1. By application received on 19 August 2022 (“the Application”), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (c) 13(1) (f) and 13(1) (h) of the Act.
2. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as:-
 - i) There is no smoke detector in the living room;
 - ii) There is dampness in the hallway causing plaster to fall off;
 - iii) The toilet is blocked and unusable;
 - iv) There is no Electrical Condition Installation Report (EICR) and
 - v) The front door is not wind and watertight.
3. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the act, intimated to all parties by Notice of Referral, a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 1 November 2022 at 10.00 a.m. and 3.30 p.m., respectively.

Inspection

4. The Inspection took place on 1 November 2022 at 10.00 a.m. at the Property. The Third -party Applicant was represented at the Inspection by Ms. Amanda Green and her colleague. The Tenant was present. The Landlord was present and accompanied by his partner as a supporter.
5. The Tribunal inspected the parts of the Property referred to in the Application namely:-
 - i) The provision of a smoke detector in the living room;
 - ii) The hallway and the other rooms in the Property in respect of dampness;
 - iii) The toilet and
 - iv) The front door.

6. At the Inspection, the Tribunal took dampness meter readings and digital photographs which photographs form the Schedule annexed to this decision.

Hearing

7. Following the Inspection, a Hearing by telephone conference call was held on the same day at 3.30 p.m. The Third -party Applicant was again represented at the Hearing by Ms. Green. The Landlord and the Tenant were both present.
8. The Tribunal then addressed each of the items referred to in the Application and inspected at the Inspection.
9. The Landlord did not dispute that there are issues with the Property and accepted that there is dampness in the hall and the bedroom. He advised the Tribunal that there had been no issues with the Property when the Tenant took entry to the Property. He explained that he intended to install a separate heating and hot water system for the Property and had begun work on this. With regard to the toilet, he stated that he had inspected the toilet when the complaint was first raised by the Tenant and found it to be in order. The Landlord advised that he had been hampered in having work done and having an EICR in place by the Tenant's refusal to allow access and explained that he had taken steps to obtain a warrant for access. In addition, he stated that access was difficult as the Tenant kept dogs and puppies in the Property.

Summary of the Issues

10. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (c) 13(1) (f) and 13(1) (h) of the Act at the date of the Inspection and Hearing.

Findings of Fact

11. Mr. William Moultrie, residing at Dildawn House, Kelton, Castle Douglas, DG7 1SE is the owner of the Property in terms of title number KRK9474 and is the Landlord. Joanne Parker residing at the Property is the Tenant of the Property in terms of a tenancy agreement between her and the Landlord.
12. The Property is a basement flat which forms part of Dildawn House. The Property comprises a living room, a kitchen, a stair and hallway, one bedroom and a bathroom.

13. From the Inspection, the Tribunal found the following in respect of matters specifically complained of in the Application:
- i) There is surface and below-surface dampness in the hallway and the bedroom of the Property with damp readings obtained ranging from “High” to “Saturated”.
 - ii) The plaster in the hallway is falling off the walls;
 - iii) The toilet system is a macerator system which is blocked and appears to be unusable;
 - iv) There is a fully functioning smoke detector in the hallway linked to a fully functioning heat detector in the kitchen. It was noted that there is no smoke detector in the living room;
 - v) The ceilings in the kitchen and bathroom are exposed brick from which mortar debris has fallen;
 - vi) There is a broken sash window frame in the living room of the Property causing it not to operate properly;
 - vii) There are gaps in the frame of the front door;
 - viii) The boiler does not appear to be operative and there appears to be no hot water or heating in the Property;
 - ix) There is no current EICR for the Property;
 - x) The stairway leading from the entrance door down to the basement accommodation does not have a handrail;
 - xi) The light fitting in the bathroom is not suitable for that location.

Decision of the tribunal and reasons for the decision.

14. The Tribunal’s decision is based on the Application with supporting documents, the Inspection and the Hearing.
15. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the extent of the dampness within the Property, the broken sash window in the living room and the poor condition of the external door to the Property are such that the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

16. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations 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, the condition of the toilet system, the boiler and the lack of an EICR are such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
17. In respect of the complaint in terms of Section 13 (1) (f) that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the lack of a smoke detector in the living room is such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
18. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the tolerable standard, the extent of the dampness in the Property, the lack of working sanitation, the lack of heating and the lack of hot water are such that the Property does not meet the tolerable standard and the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
19. The decision is unanimous.

Repairing Standard Enforcement Order

20. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

Appeal

21. In terms of section 46 of the Tribunals (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.

Effect of Section 63

22. 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.

Signed

K Moore, Chairperson

Date 23 November 2022