



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

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

Chamber Ref: Reference number: FTS/HPC/RT/20/0281

Property: 15 Bridge Street, Elgin, Moray, IV30 4DE (“The property”)

Parties:

Moray Council, Moray Council Office, High Street, Elgin, Moray IV30 1BX (“the Applicant”)

Timothy Weller 1/F Block 2, Ngau Au Village, Tung Chung NT, Hong Kong, China and Karen Weller, South Villa, 41 Moss Street, Elgin, Moray, IV30 1LT (“the Respondents”)

Interested Persons:

Monica Millers and Joao Perestrelo, 15 Bridge Street, Elgin, Moray, IV30 4DE (“Interested persons”)

Tribunal Members:

Paul Doyle (Legal Member)

Angus Anderson (Ordinary Member)

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 both the Landlord and the Tenants at the hearing, determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 24 January 2020 the applicant submitted Form A as an interested third party asking for a Repairing Standard Enforcement Order on the basis that the property

fails to meet the tolerable standard. The applicant relies on a Works Notice served on the respondents on 9 May 2019.

2. The applicant says that the house has inadequate ventilation in the kitchen/living room, and so fails to meet the tolerable standard set out in s.86 (1)(c) of the Housing (Scotland) Act 1987, which means that the house fails to meet the repairing standard because of the operation of s. 13(1)(h) of the Housing (Scotland) Act 2006.

3. By letter dated 25 February 2020 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the 2006 Act to a tribunal. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act upon both the Landlord and the Tenants.

4. Following service of the Notice of Referral the Landlord made detailed written submissions. The applicant made further representations in a series of emails in March 2021, after a case management discussion.

5. Case Management Discussions took place on 12 January 2021 and 15 March 2021. In advance of the Case Management Discussion on 15 March 2021, the applicant produced a report following inspection of the property dated 10 March 2021. The respondents' written response reached tribunal members minutes after that hearing concluded.

6. Tribunal members inspected the Property on the morning of 21 July 2021. When the applicant's representative, the Respondents and the interested parties were present. A copy of the ordinary members inspection report is attached hereto.

7. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 10am on 28 July 2021. Mr A Stewart was present for the applicant. Mr A Weller was present for both respondents. Neither of the interested persons participated in the hearing.

Summary of Issues

8. The area of dispute is succinctly summarised by the applicant at section 8 of the application form dated 24/01/2020. There, the applicant says

15 Bridge Street, Elgin fails the tolerable standard as the Living-Kitchen to the property does not have satisfactory provision for ventilation.

9. The Case Management Discussions identified the question to be resolved by this tribunal as

Does a house which has no opening window to the lounge/kitchen, but has an external door and mechanical fan, meet the tolerable standard?

Findings of Fact

10. The tribunal finds the following facts to be established

(a) The respondents purchased the property in 2006. In 1987 the property had been formed as part of the renovation of a larger building (of which the property forms part). The renovation works created 6 flatted dwelling-houses. Planning permission was granted for the development by the applicant. Building warrants were obtained and when the renovation was completed the applicant granted a completion certificate on 18 January 1987.

(b) There have been no alterations to the property which would require planning permission, building warrant or completion certificate since 18 January 1987.

(c) The property is a ground/ basement floor flatted dwelling-house, entering from a courtyard (used for car parking). It forms part of a larger stone-built tenement property. The front door opens straight onto a kitchen/living room, which provides access to the rest of the property. An internal door links the kitchen/living room to an internal hallway providing access to an internal bathroom, an airing cupboard and two bedrooms. Each bedroom has an opening window. Ventilation in the internal bathroom is provided by a trickle ventilating extractor fan (which all parties agree is satisfactory).

(d) The Kitchen/Living room does not have an opening window. It has a double - glazed window made of four fixed panes. Ventilation is provided by an extractor fan in the kitchen area close to the door of the property (which vents to the exterior) and by the door to the property. There is also a vent grille on the outer wall, near to the entrance door, with a corresponding grille on the inner wall, adjacent to the entrance door.

(e) In June 2019 the respondents let the property to the interested parties, who have occupied the property since then. In 2019 the tenant who occupied the property before the interested parties contacted the applicant complaining about condensation in the property. In 2019 the applicant's representative, Mr Stewart, inspected the property. On 9 May 2019 the applicant served two Works Notices on the respondents.

(f) The first Works Notice related to electrical installation inspection, and has been complied with. The second notice relates to ventilation in the property and says

The Moray Council is of the opinion that the property at 15 Bridge Street, Elgin, Moray, IV30 4DE is sub-standard in terms of section 86 of the Housing (Scotland) Act 2006 due to the following

1. The window to the lounge/kitchen is in a state of disrepair with rotten woodwork. There is no opening window to the apartment to provide natural ventilation to the room.

2. The window requires to be repaired or replaced with an openable window to provide natural ventilation.

(g) When the respondents received the works notices, they carried out remedial works. They removed and replaced rotted woodwork but did not replace the window to the livingroom/kitchen. There is still no opening window there.

(h) When tribunal members inspected the property on 21 July 2021, they took damp meter readings. The only area where readings showed excess moisture was one small triangular area adjacent to the front door. The readings are consistent with water ingress through the front door, which can be prevented by renewing the mastic at the side of the door. Although there were signs of historic condensation mould staining, there were no significant signs of excess moisture

(i) The bedrooms, internal bathroom and internal hallway of the property have adequate ventilation. The kitchen/living room extends to 46.1 cubic metres.

(j) "Implementing the Housing (Scotland) Act 2006, Parts 1 and 2. Advisory and Statutory Guidance for Local Authorities - Volume 4 - Tolerable Standard" is a document prepared by the Scottish Government to provide guidance to local authorities on the practical application of s.86 of the Housing (Scotland) Act 1987. That document recommends ventilation of a room similar to the kitchen/living room in the property by way of an opening area of at least 1/40 of the floor area it serves.

(k) The floor area of the kitchen/living room of the property is approximately 20.048 square metres (4.33m x 4.63m). Ventilation providing an opening of 0.50 square metres would meet with the Scottish Government's guidance.

(l) The front door to the property can open and provide a ventilating surface far in excess of 0.50 square metres.

(m) If there are security concerns about ventilating the property by opening the front door, those concerns can easily be met by fixing door limiting stays to the external door.

(n) The combination of the extractor fan in the kitchen/living room and the external door provide satisfactory provision for ventilation to the property within the meaning of s.86 of the Housing (Scotland) Act 1987.

Reasons for Decision

11. The question for the tribunal is whether the property meets the Tolerable Standard. It is beyond dispute that the property does not have an opening window to the kitchen/living room. The property is a two bedroomed ground/basement floor flat. The front door opens onto an open plan Kitchen/living area, which has a corridor off leading to two bedrooms and a bathroom. The bathroom has ventilation provided by

an extractor fan. Adjacent to the front door there is a four paned double-glazed window unit (which is the subject of a works notice dated 9 May 2019).

12. S.86(1)(c) of the Housing (Scotland) Act 1987 says

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

13. Paragraph 6.21 of Implementing the Housing (Scotland) Act 2006, Parts 1 and 2. Advisory and Statutory Guidance for Local Authorities - Volume 4 - Tolerable Standard says

6.21. All apartments, plus the kitchen, should have provision for ventilation. An assessor should use his/her judgement to decide if the provision for ventilation is satisfactory for each individual apartment. The most obvious method of ventilating a room is to open a window. For an apartment with a window, an assessor should consider the ratio of the window opening against the floor area. As a guide, the ratio should normally be at least 1:40 opening to floor area. As with natural light, assessors should use the ratio as a guide alongside their professional judgement. Where the ratio does not meet 1:40, assessors should also take account of the presence of other forms of ventilation such as air vents, open fireplaces and doors which might provide additional air changes in the apartment. A window that provides ventilation should open directly to the outside and not into an adjacent apartment, circulation space or common access route, such as a tenement close.

14. The applicant explains, in a letter to the respondents dated 11 December 2019, that the applicant does not recognise the exterior door to the property as a suitable source of ventilation for two reasons

I would not accept the front door of the property as being suitable ventilator for the apartment as it cannot be left open/ajar for ventilation purpose secure against access by burglars etc

I do not accept that mechanical ventilation alone is a satisfactory method of ventilating this living/kitchen as tenants will not leave the unit operating permanently due to electricity costs.

15. Both of the reasons given by the applicant for discounting the presence of the exterior door as a source of ventilation are irrelevant. S.86 of the 1987 Act requires "Satisfactory" provision for ventilation. The Tolerable Standard is a basic level of repair a property must meet to make it fit for a person to live in. The 1987 Act says nothing about security against burglars or the cost of running appliances which provide ventilation and meet building regulations. In any event, any concerns about security can easily be met by fixing door limiting stays to the exterior door. The Volume 4 Tolerable Standard Guidance quoted at paragraph 13 above states that

assessors should take account of doors where the 1:40 window:floor area ratio is not met. Considering the configuration of this property, having its entrance from a relatively quiet, sheltered, private courtyard, opening the door permits satisfactory ventilation. Whilst this may be considered less convenient than opening a window, it is nonetheless satisfactory. In this property, the occupant has the further option of utilising the extractor fan.

16. There is reference to condensation and mould growth in the submissions from both parties. For the applicant, the argument is that condensation is a symptom of the inadequate ventilation in the kitchen, leading to excess moisture permeating through the flat and allowing condensation and mould to form. The respondent argues that the ventilation is adequate, but the tenants are not managing the moisture by properly ventilating and using the extractor fans. It was not possible to determine from the Tribunal's own inspection or the evidence heard what was the historic cause of the excess moisture which led to condensation and resultant mould. It seems most likely that it was caused by improper heating and ventilation by the occupants and/or deficiencies with the heating and ventilation equipment. However, works were carried out to the extraction systems around November 2020 which rectified existing, previously unknown, faults to both the bathroom and kitchen extractor fans

17. Parties agree that the sole dispute in this case is about the provision of ventilation to one room in the property. That room has a door which opens directly to the courtyard outside the property, a ventilation grille, and an extractor fan.

18. Considering all of the circumstances and having had the benefit of our own inspection, we find the provision for ventilation to the entire property is satisfactory. The property meets the tolerable standard.

Decision

19. The tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

20. There are no grounds for making a Repairing Standard Enforcement Order.

21. The decision of the tribunal was unanimous.

Right of Appeal

22. 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

23. 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.

P Doyle

Legal Member

6 August 2021