

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/17/0138

Sasine Register Search Sheet no: 146095

Gardens Cottage, Milton Bridge, Penicuik EH26 0NY ("The Property")

The Parties:-

Mr Graham Lough, residing at Gardens Cottage, Milton Bridge, Penicuik EH26 0NY ("the former Tenant")

Mr Nicholas Atkins, residing at care of Ben Property, 3 Manor Place, Edinburgh EH3 7DH ("the Landlord")

Tribunal Members: Richard Mill (Legal Member) and Susan Napier (Ordinary Member)

Decision

The Property does meet the Repairing Standard. The Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is not necessary.

Background

1. By way of application received on 10 April 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 24(1)(b) of the Act in respect of the property.
2. In the application the Tenant stated that the Landlord had failed to comply with their duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of the repairing standard put at issue are those contained within Section 13(1)(c).
 - Whether 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. Notices of referral were issued 17 May 2017.
4. During the Tribunal's consideration of the application it was identified that the Tenant had been served with a Notice to Quit. He vacated the Property in early May 2017. Following consideration of these circumstances, the Tribunal issued a Minute of Continuation given that the application raised issues of a health and safety concern. It was in the public interest to consider continuation of the application.
5. The Tribunal proceeded to issue a Direction dated 8 June 2017. This required the Landlord to produce an up to date Test Report in terms of the Private Water Supplies (Scotland) Regulations 2006 in respect of water supply to the Property. A relevant Test Report based upon a water sample taken from the Property on 16 June 2017 was subsequently produced, together with an Expert Report prepared by Anne Johnstone.

Inspection

6. The Tribunal inspected the property on 26 June 2017 at 10.00 am. The Landlord and his wife were present. Also in attendance was the Landlord's solicitor and a representative from his letting agency. A new tenant who had taken up occupation some two weeks before was also present.

Hearing

7. Following the inspection of the property, the Tribunal convened a hearing later the same day at 11.30 am at Ladywood Leisure Centre, 14A Yarrow Court, Penicuik EH26 8HD. The only other participant was the Landlord's solicitor, Lisa Dromgoole.

Summary of Issues

8. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
9. One issue was referred to within the initial application. It was alleged that the current water source and supply is inadequate and unsanitary. Reference was made to test results prior to and during the tenancy exhibiting that the water supply does not meet Scottish legal requirements. This was with specific reference to the excessive lead content in the water. The Property has a private water supply.

Findings in Fact

10. The Tribunal makes the following findings in fact:-

1. The Title to the subjects known as Gardens Cottage, Milton Bridge, Penicuik EH26 0NY is held by the Landlord whose interest is registered in the Sasine Register for the County of Midlothian, Search Sheet number 146095 on 20 August 1998.
2. The Property which is the subject of this Application is a three bedroom rural cottage. It is generally decorated to a high standard.
3. The former Tenant entered into a Short Assured Tenancy Agreement with the Landlord on 18 November 2015.
4. The Tribunal's inspection revealed:-
 - i. The water supplied to the Property appeared clear. There were no obvious signs of deposits of any nature in the water. The water was odourless.
 - ii. There was adequate water pressure within the Property.
 - iii. There was an adequate water supply in the kitchen and bathroom of the Property.
 - iv. The sediment filter and UV filter installed in the Property seemed operable.
6. Reference is made to the Schedule of Photographs taken at the time of the Tribunal's inspection which are attached herewith and referred to for their terms.
7. The application did not raise any concerns other than the supply of water. The Tribunal observed at the time of their inspection that the Property has adequate provision for the detection of fire and carbon monoxide. The Tribunal were also provided with an up-to-date Gas Safety Certificate in respect of the Property.

Reasons for Decision

11. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal at the hearing.

12. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing on 26 June 2017.
13. The Tribunal was satisfied having regard to all of the available evidence and having sufficient information and material with which to reach a fair determination of the reference.
14. The Tribunal relied significantly upon the up-to-date Test Report provided in terms of the Private Water Supplies (Scotland) Regulations 2006. This confirmed that the lead level readings recently taken are within prescribed limits. The Tribunal also had regard to the Report received from Anne Johnstone dated 22 June 2017. She is an environmental consultant. Her Report analysed the general circumstances pertaining to the water supply in the Property and the recent test results. She sets out a clear opinion in conclusion that the private water supply to the Property is fit for purpose in its current condition and does not pose a health risk.
15. The presentation of the water within the Property at the time of the Tribunal's inspection was consistent and in keeping with the test result report and the Report of Anne Johnstone.
16. Anne Johnstone did observe that the water to the Property is likely to be carried via historical lead piping and that improvements in the water quality could be made upgrading the pipework and that she would recommend this. Enquiries were made with the Landlord's representative at the Hearing. It was noted that it is his intention to make further enquiry with a view to carrying upgrading works. The Tribunal would endorse Anne Johnstone's views on upgrading works in the future.

Right of Appeal

17. 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.
18. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the Tribunal at Edinburgh on 30 June 2017 before this witness:-

R Mill

_____ Legal Member

_____ Witness

MARGARET JONASTONE MURRAY Name

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