

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006 Section 24(1)

Chamber Reference: FDS/HPC/RP/17/0038

Title Number: MID24435

Property Address: 7/2 Kings Meadow, Edinburgh, EH16 5JP ("the house")

The Parties:- Miss Joanne Mill, 7/2 Kings Meadow, Edinburgh, EH16 5JP ("the tenant")

Mr John Meek, 41/7 Orchard Brae Avenue, Edinburgh, EH4 2UP ("the landlord")

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

Decision

The Tribunal, having made such enquiries as is fit for the purpose of determining whether the landlord has complied with the duties imposed upon him by Section 14(1)(b) in relation to the property concerned, and taking account of the evidence presented in the written and oral representations, determine that the landlord has complied with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") and dismiss the application.

Background

1. By application received on 02 February 2017, the tenant applied for a determination of whether the landlord has failed to comply with duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the tenant considered that the landlord had failed to comply with his duty to ensure the house meets the repairing standard and in particular

the landlord had failed to ensure compliance with Section 13(1)(a) and (c) of the Act. The tenant's complaint set out the following:

- a. Following upon a leak from his radiator in the living room in May 2016 that damp existed in the living room of the property.
3. In the documentation submitted by the tenant it was established that the tenant had a lease on a short assured tenancy having taking occupation on or around 02 February 2016.
4. The tenant had produced copies of a variety of email correspondence between herself and Northwood Edinburgh Limited the letting agents for the landlord. This included a report from Apex Property Care dated 31 October 2016 regarding the dampness in the living room.
5. The Tribunal consisted of the following members:-
 - a. Mr Mark Thorley – Legal Member
 - b. Lori Charles – Ordinary Member
6. The Tribunal inspected the house on the morning of Monday 10 April 2017. Miss Mill was present within the property. The landlord was represented by Mr Stuart Miller, Northwood Edinburgh Limited.
7. Following upon the inspection the Tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH. Miss Mill was unable to be present. The landlord was again represented by Mr Stuart Miller.
8. Accordingly the matter was dealt with upon the basis of the inspection together with the written representations made by the tenant and the oral representation made at the hearing.

Summary of Issues

1. The issue of whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the landlord had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

The Inspection

1. The Tribunal members examined the area of complaint being the living room of the property.
2. Meter readings were taken from the carpet near to the radiator where the leak had occurred.
3. During the inspection, photographs were taken by an ordinary member and a schedule of photographs is attached to the decision.
4. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

1. The hearing took place at George House, 126 George Street in Edinburgh. The tenant was not present but Mr Stuart Miller the landlord's agent was.
2. Mr Miller acknowledged that the meter readings from the carpet near to the radiator was still high.
3. This may have been a false meter reading caused by an additive from the previously leaking radiator.
4. Mr Miller acknowledged that the solution was either to take a section of the carpet away to be tested in relation to a potential contaminant or to replace the carpet.
5. The property suffered from a leak at the radiator in the lounge. The radiator has been replaced, the carpet still shows a high reading on the protometer even when dry. This appears to be a false reading, potentially caused by an additive from the previously leaking radiator.
6. The property is wind and water tight.
7. The formerly leaking radiator has been replaced and the radiator is working.

Findings in Fact

The Tribunal made the following findings in fact:-

1. The tenant had entered into a lease with the landlord for the rent of the property at 7/2 Kings Meadow, Edinburgh, EH16 5JP.
2. The property is a ground floor property within a stair. The property consisted of a kitchen, bathroom, living room and bedroom.
3. The weather at the time of inspection was sunny and dry.
4. The area affected in the living room did not feel damp, nor was there a smell of damp. However the meter readings for dampness in the particular affected area displayed an unacceptable level of dampness. There appeared to be some contamination of the carpet involved.

Reasons for decision

1. The Tribunal, determining the application had regard to the terms of the application, the findings of the inspection, submission of documents and the oral representations made at the hearing.
2. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a determination of the application.
3. The property is both wind and water tight. The formerly leaking radiator has been replaced and the radiator is now working.
4. There remains in the living room an area of carpet still showing a high reading on the protometer even when it is dry. This appears to be a false meter reading and may have been caused by an additive from the leaking radiator.
5. The application was made to the Tribunal under Sections 13(1)(a) and 13(1)(c)
 - (a) the house is wind and water tight in all other respects reasonably fit for human habitation and
 - (c) 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. Having regard to both of these, the property does

meet the repairing standard. The property is both wind and water tight and the installations (in particular the radiator) are in a reasonable state of repair.

6. The issue surrounds what appears to be the false meter readings contained within the carpet situated near to the formerly leaking radiator. The carpet however cannot be subject to either Sections 13(1)(a) or 13(1)(c) of the Act.
7. The decision of the Tribunal, in considering Section 13(3) of the Act, determines that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act. Accordingly the Tribunal proceeds to dismiss the application.

The decision of the Tribunal was unanimous.

Observations

Although the application has been dismissed in terms of Section 13(1)(a) and Section 13(1)(c) of the Act, if an application were made under Section 13(1)(d) of the Act, consideration would have to have been given to this. The carpet in question is showing a high reading on the protometer even when dry. There is a suggestion of contamination from the additive from the formerly leaking radiator. It appears either the carpet should be replaced or alternatively that the true cause of the contaminant be analysed.

Right of Appeal

A landlord or tenant or third party applicant aggrieved by the decision of the Tribunal may apply 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 from the date the decision was sent to them.

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 date on which the appeal is abandoned or so determined.

These presents type written on this and the five preceding pages are executed by Mark Thorley, Solicitor, 51 South Bridge, Edinburgh EH1 1LL, Chairperson of the Tribunal at Edinburgh on the First day of May Two Thousand and Seventeen:-

M Thorley

...Chairperson

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