



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

Chamber Ref: FTS/HPC/RP/23/0458

Title No: MID142720

69 Corbiehill Road, Edinburgh EH4 5AT (“The Property”)

The Parties:-

Ms Laura Kilby, 69 Corbiehill Road, Edinburgh EH4 5AT (“the tenant”)

Mr David Sharp, 82 Whitehouse Road, Edinburgh EH4 6PD (“the landlord”)

Tribunal Members: Richard Mill (Legal Member) and Andrew Murray (Ordinary Member)

Decision

The property meets the repairing standard. The landlord has complied with the duties imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is not necessary.

Background

1. The tenant has applied to the tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property. The tenant started to occupy the property on 28 February 2017 though has no written tenancy agreement.
2. In the written application the tenant stated that the landlord had failed to comply with the duty to ensure that the property meets the repairing standard according to section 13(1)(h), which requires the house to meet the tolerable standard.

Inspection

3. The tribunal inspected the property on 18 October 2023 at 10.00 am. The tenant permitted entry to the tribunal. The landlord’s interests were represented by his father.

Hearing

4. Following the inspection of the property, the tribunal convened a teleconference hearing at 2.00 pm on 18 October 2023. The tenant joined and participated. The landlord did not participate.

Relevant history

5. The application was supported by a specialist survey report from Wise Property Care dated 10 October 2022. This disclosed that rising damp was found to be present in the property together with evidence of black spot mould. The recommendation contained within the report was to carry out dry wall membrane treatments as specified. This survey report had been sent to the landlord on 27 October 2022, but no action had been taken by him.
6. An initial inspection and hearing had been arranged to take place on 16 August 2023. The tribunal determined to postpone those arrangements as the landlord had intimated that work was scheduled to take place in the property on that day. In the alternative, a Case Management Discussion (CMD) was fixed to take place by teleconference. Both parties participated personally and the landlord was accompanied by Mr Stephen Perrie of Pure Maintenance UK. The landlord accepted that he had been dilatory in his approach to matters. He had instructed Pure Maintenance UK who were present at the property on that day and who were treating the property in respect of the mould problem. However, it was also accepted that there was also a damp problem and that company could not carry out the work. The landlord undertook to seek quotations to carry out all relevant work and expected this to be completed in around 2 months. The tribunal subsequently issued a Direction to regulate further expectations on the landlord.
7. The landlord subsequently emailed the tribunal on 20 September 2023 advising that he had instructed the necessary work to resolve the damp problem and this would be undertaken by Peter Cox. A corresponding detailed report from that firm was produced confirming that a survey had been undertaken on 6 September 2023. This recommended that a DryRoom membrane be installed to the affected wall as specified within the attached plan.

Findings in Fact

8. The tribunal makes the following findings in fact:
 - a. The title to the subjects known as 69 Corbiehill Road, Edinburgh EH4 5AT is held by the landlord in the Land Register for Midlothian MID142720.

- b. The property is ground floor stone built mid terraced lower flat. It is comprised of a hallway, living room with adjoining kitchen, two bedrooms and bathroom.
 - c. Given the type and age of the property it has suffered from rising damp, in particular, in the adjoining hallway wall to number 71. This problem was identified by the tenant some time ago and intimated to the landlord with a supporting specialist report. The landlord failed to act upon this leading to the current application to the tribunal by the tenant.
 - d. The landlord has, with the direction of the tribunal, following the obtaining of his own quotations, instructed relevant work to resolve the rising damp identified. The work was commenced on 23 September 2023 and completed on 14 October 2023. At the time of inspection by the tribunal, the fresh plaster had not yet fully dried out and, as such, the affected wall in the hallway had not been redecorated nor the electric radiator reattached to the wall. The company which the landlord commissioned to undertake the necessary damp works is a reputable contractor. The work seen by the tribunal appears to be to a high standard. The work completed is supported by a guarantee.
 - e. The property has interlinked smoke and heat alarms.
9. Reference is made to the schedule of photographs comprised within the inspection report prepared by the tribunal and attached to this decision.

Reasons for Decision

- 10. The tribunal determined the application having regard to the bundle of papers, together with their observations at the inspection and submissions noted at the hearing.
- 11. The tribunal is 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 inspection and hearing on 18 October 2023.
- 12. The tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the application.
- 13. The specific issue raised in this application relates to damp and mould in the property. The tenant has some additional concerns but these cannot be considered by this tribunal. It is noted that she intends to make a further application in respect of other matters. The tenant accepted that the necessary damp works for the issues which had been causing her concern have now been undertaken.

14. The tribunal has no reason to believe that the damp problem in the property, as previously detected, will continue to be active. On the contrary the tribunal was satisfied that the damp problem in the property has most likely been rectified. It was noted that some redecoration work still required to be undertaken and would expect the landlord to have those carried out when this is possible. The house currently meets the tolerable standard. The tenant accepted this.
15. The tribunal determined that there was no necessity to make a Repairing Standard Enforcement Order (RSEO). The property meets the repairing standard.
16. Whilst there is no necessity to make an RSEO the tribunal would wish to make it explicitly clear to the landlord that there is a clear expectation that the hallway must be redecorated as soon as this is practicable and that the radiator in the hallway is either reaffixed or renewed so as to ensure that there is adequate provision to heat that area of the property.

Decision

17. The tribunal, having made enquiries for the purposes of determining whether the landlord has complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the landlord is now compliant with his said duty and that the property does meet the repairing standard.

Right of Appeal

18. 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.
19. 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.

R Mill

Legal Member

19 October 2023

Housing and Property Chamber First-tier Tribunal for Scotland



Housing

(Scotland) Act 2006: Schedule of Photographs

Property: 69 Corbiehill Road Edinburgh EH3 5AT

Chamber Reference : FTS/HPC/RP/23/0458

Inspection Date: 18 October 2023 - 10.00am

In attendance:

Ms Kilby (tenant)

Mr Mill (tribunal legal member)

Mr Murray (tribunal surveyor member)



1 Front elevation 69 Corbiehill Road Edinburgh



2 The replastered hall wall

Andrew Murray FRICS MIFireE ; Date of report: 18/10 /2023