

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 27

Chamber Ref: FTS/HPC/RP/23/1551

21 Redstone Avenue, Kilwinning, Ayrshire, KA13 7JQ, Registered in the Land Register of Scotland under Title Number AYR53905 (“the Property”)

The Parties:-

Ms Caitlyn Greenwood, 21 Redstone Avenue, Kilwinning, Ayrshire, KA13 7JQ (“the Tenant” and “the Applicant”)

Mr Keith Marwick and Ms Isabel Marwick, 67 Dalry Road, Kilwinning, KA13 7HN (“the Landlord” and “the Respondent”)

Tribunal Members:

Martin McAllister, Solicitor (Legal Member) and Donald Wooley, Chartered Surveyor (Ordinary Member) (“the tribunal”)

Decision

The tribunal made a repairing standard enforcement order in terms of Section 24 (2) of the Housing (Scotland) Act 2006.

Background

1. By application dated 23 March 2023, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act (“the 2006 Act.”)
2. The tribunal inspected the Property on 24 August 2023 and held a hearing on the same day. This decision should be read in conjunction with the decision and schedule of photographs issued on 4 September 2023.
3. On 4 September 2023, the tribunal made a Direction in the following terms:

The Landlord is required to obtain a detailed timber and damp report, prepared by a suitably qualified contractor, which specifically addresses the damp/mould issues within the property. The report should, in particular, comment on the adequacy or otherwise of the insulation, ventilation and heating and provide details of any necessary remedial action required to address the issue. Thereafter the report should be forwarded to the Tribunal for consideration prior to them determining the application.

Response to the Direction

4. The Landlord submitted a report from Rowallen Specialist Surveys dated 5 October 2023. In the accompanying email, the Landlord indicated certain works to the Property which he intended to carry out and others which he was investigating with regard to whether they were possible.

Discussion and Determination

5. The tribunal noted the terms of the report from Rowallen Specialist Surveys dated 5 October 2023 which commented on condensation, ventilation and moisture ingress.
6. The tribunal had regard to the report from Rowallen Specialist Surveys and what it had found at the inspection and it considered that the property does not meet the repairing standard set out in Section 13 of the Act. In terms of Section 24 (2) of the Act the tribunal determined that a repairing standard enforcement order be made as follows:

The Landlord is to resolve issues of dampness and condensation in the Property identified by the tribunal during its inspection on 24 August 2023, supported by the subsequent report by Rowallen Specialist Surveys dated 5 October 2023, by whatever means are appropriate and effective to ensure that the Property is reasonably fit for human habitation.

The tribunal considered it reasonable that the Landlord be given until 8 December to comply with the repairing standard enforcement order.

Reasons

7. The tribunal relied on its findings from the inspection carried out on 24 August 2023 as detailed in its decision of 4 September 2023 and the report of Rowallen Specialist Services dated 5 October 2023.

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.

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.

M McAllister

Martin J. McAllister,
Legal Member
17 October 2023