

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Sections 26 and 27

Chamber Ref: FTS/HPC/RP/24/0642

16C Winton Street, Ardrossan, KA22 8JF, being the subjects registered in the Land Register of Scotland under Title Number Ayr42745 (“the Property”)

The Parties:-

Anna Burns, 16C Winton Street, Ardrossan, KA22 8JF (“the Applicant”)

Andrea Gibson, CHAP, Michael Lynch Centre, 71 Princes Street, Ardrossan, North Ayrshire, KA22 8DG (“the Applicant’s Representative”)

LHP Solutions Ltd, 2nd Floor, 48 West George Street, Glasgow, G2 1BP (“the Respondent”)

Tribunal Members:

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

Decision

The tribunal determined:

(One) that the Landord has failed to maintain the Property to the repairing standard as set out in Section 13 of the Housing (Scotland) Act 2006 and

(Two) that a repairing standard enforcement order (RSEO) be made in terms of Section 24 of the Housing (Scotland) Act 2006.

Background

1. By application dated 9 February 2024, 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 (1A) of the 2006 Act.

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation; that fixtures, fittings and appliances provided by the landlords under the tenancy are not in a reasonable state of repair and proper working order and that the Property does not meet the tolerable standard.
3. The application makes specific reference to the following matters:
 - 3.1 No underlay beneath carpets
 - 3.2 Mould in bedrooms
 - 3.3 Moisture in tenancy although no condensation
 - 3.4 Gaps of 10mm round all windows causing draughts and cold
 - 3.5 Water getting in through gaps
4. On 15 February 2024, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.

Property Inspection

5. The members of the tribunal inspected the Property on 12 June 2024. The Applicant was present and was supported by Julie Baillie of North Ayrshire Council Social Work Department. The Respondent was not present.
6. A schedule of photographs, prepared by the Ordinary Member is attached to this Decision.
7. The weather at the time of the inspection was sunny and warm.

Findings on Inspection

8. The Property is a first floor flat within a tenement. The outer walls are of solid stone construction under a pitched roof clad externally with concrete tiles. The accommodation comprises, living room, two bedrooms, kitchen and bathroom.
9. The tribunal inspected the internal parts of the tenement with the exception of one bedroom and the bathroom.
10. Viewed externally from the rear of the tenement, the gutter contains a considerable amount of vegetation and the stone wall is stained suggesting that the gutter is not allowing rain from the roof to drain and that water is consequently cascading down the wall.

11. The stonework of the rear elevation is in poor condition, badly eroded in places, with evident defects in pointing.
12. Access to the Property is by an internal staircase. The banister on the first section of the stairway has become detached from the wall and is lying on the stairs. The banister on the second section of stair is loose.
13. The Applicant said that she does not have a Gas Safety Certificate.
14. The window in the left hand bedroom does not operate properly. The handle is broken and does not allow the window to fully open.
15. There is a gap between the sill of the left hand bedroom window and the wooden frame.
16. There is evidence of mould on the living room window sill.
17. There is evidence of mould at the side of the window in the left hand bedroom.
18. There is dampness in the floorboards below the window in the left hand bedroom.
19. The kitchen window has a lower fixed light and an upper light designed to open. The upper window light has been taped closed and covered in transparent plastic so that it cannot open. The Applicant said that this had been done because of the draughts coming through the window.
20. The only means of ventilation in the kitchen is the window. The ordinary member of the Tribunal could not carry out any close investigation of the window, including taking readings with a moisture meter, because of the health and safety implications. The window could only be opened by removing the transparent plastic and tape installed by the tenant and using a ladder and/or standing on top of a kitchen unit.
21. The Applicant said that there was no longer an issue with regard to carpet underlay.

Hearing

22. A Hearing was held at Ardeer Community Centre, Stevenston. Neither the Applicant or the Respondent were in attendance. The Applicant was represented by Alister Meek of CHAP who said that he was covering for his colleague Andrea Gibson.
23. It was noted that the Scottish Register of Landlords disclosed that the Respondent is not a registered landlord.

24. The Ordinary Member set out the findings from the Inspection. She said

- (i) that the gutter at the rear elevation was blocked with vegetation,
- (ii) that there was damp staining to the stonework of the rear elevation,
- (iii) that the condition of the stonework of the rear elevation was poor and in need of pointing,
- (iv) that the banister in the common close was missing in one section and loose in another and that this was a significant safety issue for the Applicant and others using the common stair.
- (v) that no specific areas of dampness were found in the Property other than in the floor boards at the left hand bedroom window,
- (vi) that the only ventilation in the kitchen is from the top light of the window but that it had been taped shut and would be difficult to open in a safe manner,
- (vii) that the windows in the rooms that were inspected were wind and watertight,
- (viii) that the left hand bedroom window did not operate properly, its handle was broken and it could not be opened fully,
- (ix) that there was a gap between the frame of the left hand bedroom window and the sill.
- (x) that there were isolated instances of condensation and
- (xi) the Applicant said at the Inspection that she did not have a copy of the Gas Safety Certificate.

25. Findings in Fact

25.1 The Applicant and Respondent are parties to a private residential tenancy agreement dated 1 June 2020.

25.2 The tenancy commenced on 1 June 2020.

25.3 The Property does not meet the repairing standard as set out in the findings from the inspection detailed in paragraph 24.

Repairing Standard Enforcement Order

26. The tribunal determined to make a RSEO in the following terms;

The Landlord is required to:

- 1. Produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.**
- 2. Investigate and remedy the dampness in the floorboards at left hand bedroom window**

3. **Repair or renew the defective window in the left hand bedroom to ensure that it is in good and efficient working order and that there are no gaps between the window frame and the window sill.**
4. **Ensure that the rainwater goods are clear of vegetation and allow water from the roof to drain away.**
5. **Ensure that there is adequate ventilation in the kitchen which is safely accessible and able to be used.**
6. **Ensure that the kitchen window is wind and watertight**
7. **Repair or renew the defective and missing banisters in the common stairway.**

The Landlord is required to carry out the work required by the RSEO before 15 August 2024.

Reasons

27. The tribunal had regard to what it had found at the inspection of the Property.
28. The tribunal had regard to the statutory obligations imposed upon a residential landlord to comply with Scottish Government guidelines with regard to gas safety inspection and certification.
29. The tribunal had concerns about safety aspects in relation to accessing the Property because of the issues with the banisters in the common stair and also the difficulties in accessing ventilation in the kitchen because of the design of the window.
30. The tribunal considered it reasonable to assume that the lack of ventilation in the kitchen would result in condensation in the Property.

Note

31. The tribunal noted the condition of the stonework of the rear elevation. There was no evidence that this was allowing water ingress but the condition of the stonework is such that it is highly possible that it will do so in wet weather. A prudent landlord would deal with this matter to avoid deterioration of the Property and the possibility of water ingress.
32. It was noted that the Applicant had chosen not to attend the Hearing. This was unfortunate because she did not have an opportunity to provide evidence which might have been useful to assist her in advancing her application.

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

M J. McAllister,
Solicitor, legal member of
Tribunal.
20 June 2024