

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/19/2748

31A Louisa Drive, Girvan, South Ayrshire, KA26 9AH (“The Property”)

The Parties:-

MR THOMAS BARRIE residing at 35 Titchfield Road, Troon, KA10 6AN (“the Landlord”)

Miss Jenna Rodgers, formerly residing at 31A Louise Drive, Girvan, South Ayrshire, KA26 9AH (“the Tenant”)

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act determined that (a) as at the date of application to the Tribunal the Tenant did not meet the definition of “tenant” contained in the Act and therefor could not validly apply to the Tribunal; and (b) even had the Tenant been able to make a valid application, the Tribunal would have been satisfied that as at the date of the inspection the Property met the repairing standard as specified in the Act.

Background

1. By application received on 4 September 2019 the Tenant applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application by the Tenant stated that she considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the Property is wind and watertight and in all other respects reasonable fit for human habitation;

- (b) the structure and exterior of the Property are in a reasonable state of repair and in proper working order;
 - (c) the installations in the Property 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;
 - (d) any fixtures, fittings and appliances provided by the Landlord are in a reasonable state of repair and in proper working order;
 - (e) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fires
 - (f) the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health
3. By letter dated 31 October 2019, the President of the Housing and Property Chamber intimated by way of letter incorporating a Notice of Referral that the matter was to be referred to a Tribunal for determination.
 4. Following service of the Notice of Referral the Landlord made written representations to the Tribunal by email dated 18 November 2019. The Tenant made written representations by email on 19 November 2019.
 5. The Tribunal comprising Mr E K Miller, Chairman and Legal Member and Mr A Murray, Ordinary Member inspected the Property on the morning of 10 December 2019. The Tenant was no longer resident in the Property and was not present. The Landlord was present and represented himself.
 6. Following the inspection of the Property the Tribunal held a Hearing at The Malin Court Hotel, Maidens, Girvan, South Ayrshire, KA26 9PB at 11.30am. Neither party was present or represented.
 7. The Tenant's submission was that the Property had been in poor condition when she took it over. She alleged there were numerous issues with a broken boiler, no carbon monoxide alarms, dampness in the second bedroom lying to the rear of the Property. She alleged that the toilet in the en-suite adjacent to the second bedroom leaked and that there was a smell of urine in the bedroom generally. She alleged that the bedroom had previously been a gents urinal that had been converted to a bedroom.
 8. The Landlord's submission, given verbally at the inspection, was that he did not dispute that there were one or two areas of work that were required to be attended to. He accepted that some remedial works had been required to address damp in the second bedroom. However his position was that the Tenant had refused to give access. Upon gaining possession of the Property he had carried out all works required. The Landlord highlighted that as far as he was aware he had not been notified formally by the Tenant nor been given access or an opportunity to rectify matters

until 4 September 2019 when the application to the Tribunal was received. His position was that the tenancy had terminated prior to that date.

Preliminary Issue

9. The Tribunal noted that the Tenant's application to the Tribunal was made on or around 3 September 2019 (it was undated but was received by the Tribunal on 4 September 2019). Both parties had submitted written evidence which showed that notice to quit had been given around the middle of June by the Tenant. Accordingly the tenancy ought to have terminated around the middle of July. It was apparent from the evidence before the Tribunal that the tenancy had continued in some form or another for a little while. It would appear to have moved from a contractual tenancy to a statutory tenancy. Whilst the Tenant had removed from the Property she had not returned the keys and her son retained some access and some items were in the Property.

It appeared that around mid August an incident had occurred at the Property when the Landlord had gone to change the locks, the Landlord having been of the understanding that the Tenant had removed. The Tenant's son and some of his friends had arrived at the Property and an altercation occurred. The police had been called.

Subsequently, there appeared to have been discussions with the relevant benefits agency and the police who both confirmed to the Landlord that the Tenant was not living in the Property and had not right to be there. Accordingly the Landlord had continued and changed the locks. The Landlord confirmed that most possessions had been removed by mid August and anything that was left were things the Tenant simply did not want.

The Tribunal considered matters. It was not entirely clear as to when the tenancy had terminated. Certainly the Tribunal accepted that notice had been given by the Tenant in mid June. The tenancy ought therefore to have continued until mid July only. It appeared that the Tenant had been lax in returning keys and had allowed her son to store items in the Property. However, on balance, the Tribunal was satisfied that the tenancy had been brought to an end by no later than mid August. The Tenant was resident elsewhere and claiming housing support for that other property, no other party was named on the Tenancy Agreement or had a right to occupy the Property and all significant possessions had been removed by mid August. No one else was occupying the Property. On that basis, taken at its best, the Tribunal was of the view on the balance of probabilities that the tenancy had terminated, at the latest, by mid August.

Under Section 22(1) of the Act to make an application to the Tribunal it is essential that the person making the application is a tenant of the property in question. On the basis the Tribunal accepted that the Lease had terminated in mid August the Tenant did not have the locus to submit an application to the Tribunal on 4 September 2019. On that basis alone the

Tribunal was obliged to dismiss the application of the Tenant as being invalid under Section 22(1).

10. In any event, even had the application been made by the Tenant in time the Tribunal would not have taken matters any further. The Tribunal would have had the power under Schedule 2, Section 7 of the Act to continue with the application even once the Tenant had left (assuming that the Tenant had left after the date of application). However, the Tribunal did not view the Property as breaching the repairing standard in any event. The boiler appeared to be in proper working order at the date of inspection and the Landlord confirmed that he had a valid gas safety certificate. There were carbon monoxide alarms present in the Property. There was no evidence of any dampness. The Landlord accepted that there had been evidence of dampness around the second bedroom window. He had checked the pointing, stripped the plaster and sheeted it (and left a gap to the exterior wall to ensure there was no bridge for damp or condensation). On the day of the inspection the wall was dry and in good condition. The Tribunal noted that the carpet in the second bedroom had been replaced. There was no evidence of any smell of urine within the Property. The Landlord advised that the Tenant had had a cat that had urinated in the Property. The Tribunal was unable to determine whether there had been an issue previously here. In any event as at the date of inspection the carpet and the second bedroom generally met the repairing standard. The Tribunal inspected the rest of the Property as a precaution and noted that it was in reasonable order and met the repairing standard. Accordingly even had the Tenant's application been valid the Tribunal would have determined that the Property met the repairing standard at the date of the inspection and no further action would have been taken.

Decision

11. The tribunal accordingly determined that the application by the Tenant was invalid and was dismissed. Even had the application been valid the Tribunal would have determined that the Landlord had not failed to comply with the duty imposed by Section 14(1) (b) of the Act.
12. The decision of the tribunal was unanimous .

Right of Appeal

13. 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.

Effect of section 63

14. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

E Miller

Signed

Date 28/1/2020

Chairperson