

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/19/4033

**Property at 118 Arnage Drive, Aberdeen, AB16 6UR
Land Register Title No. ABN37867
("The Property")**

The Parties:-

**Miss Bridget Fitzpatrick & Mr Amon Rukavina, 118 Arnage Drive, Aberdeen, AB16 6UR
("the Tenants")
(Represented by Miss Natasha Crowe, 41 Stocket Parade, Aberdeen, AB16 5QN)
("the Tenants' Representative")**

**Mr Lukasz Jaskowiak, 4/16 North Leith Mill, Edinburgh, EH6 6JY
("the Landlord")
(Represented by Miss Sharon Love, 4/16 North Leith Mill, Edinburgh, EH6 6JY)
("the Landlord's Representative")**

Tribunal Members – Gillian Buchanan (Legal Member) and Angus Anderson (Ordinary Member)

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) in relation to the Property, and taking account of the evidence led by and on behalf of the parties at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application comprising various documents received on 20 December 2019 the Tenants applied to the tribunal 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 stated that the Tenants 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 house is wind and watertight and in all other respects fit for human habitation.
 - (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - (c) The house meets the tolerable standard.

3. By letter dated 30 December 2019 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
4. On 9 January 2020 the tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenants and the Tenants' Representative.
5. Following service of the Notice of Referral the Landlord, by response dated 24 January 2020 with Appendices A-J attached thereto, made written representations to the tribunal. By letter dated 28 January 2020 the Landlord stated that the Landlord's Representative would attend the subsequent inspection and hearing on his behalf.
6. Following service of the Notice of Referral the Tenants' Representative, by letter dated 12 January 2020 and signed by the Tenant, Miss Bridget Fitzpatrick, made written representations to the tribunal to the effect that she would represent the Tenants.
7. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Angus Anderson, Ordinary Member, inspected the Property on the morning of 20 February 2020. The Landlord and the Landlord's Representative attended the inspection. The Tenant, Miss Bridget Fitzpatrick, was in attendance along with the Tenants' Representative. Photographs were taken and are contained in the attached Schedule.
8. Following the inspection of the Property the tribunal held a hearing at Credo Centre, 14-21 John Street, Aberdeen, AB25 1BT and heard from the Tenants' Representative as well as from the Landlord and the Landlord's Representative. The Tenant, Miss Bridget Fitzpatrick, was present along with a supporter.
9. At the hearing the tribunal allowed although late written representations of the Tenants' Representative received by email on 11 February 2020 and of the Landlord received by letter dated 10 February 2020.
10. The Tenants' Representative submitted as follows:-
 - a. That a couple of days before moving into the Property the Landlord advised that there was a small leak in the garage that had not been investigated.
 - b. That the Tenants advised the Landlord prior to signing the tenancy agreement that furniture from the Tenants' previous address would be stored in the garage.
 - c. That the Property was ideal for the Tenants and they offered to pay more rent to secure the tenancy.
 - d. That within a couple of weeks of moving in the garage was found to be leaking quite a lot of water.
 - e. That the leaking has been the constant since February 2019 with the water accumulating in the garage every time it rains.
 - f. That the water can sometimes extend down the passageway within the garage.
 - g. That repairs have been attempted by the Landlord cleaning out the gutters and applying sealant.
 - h. That contractors have attended.

- i. That none of the repairs have made any difference to the leaking.
- j. That the electrical socket on the rear wall of the garage is hazardous due to the water.
- k. That the Tenants felt trapped in the tenancy having paid 6 months rent up front.

11. The Landlord's Representative submitted as follows:-

- a. That there was a puddle on the floor of the garage when the Tenants viewed the Property on 22 January 2019 and the Tenants were advised of the leak.
- b. That previously the Landlord had contacted a contractor, Mr Barrack in November 2018. He advised that the leaking was due to the garage being too low in the ground and the sealant between the wall and the concrete base being wet and degraded. He was to remove and replace the sealant in drier weather.
- c. The Tenants were advised that Mr Barrack would carry out repairs in March 2019.
- d. That the Tenants did not mention what the garage would be used for.
- e. That if the Landlord had known the garage was to be used to store furniture, the lease would not have been entered into.
- f. The Landlord attended the Property in March 2019 in response to a message from the Tenants received on 18 March 2019.
- g. The Landlord contacted Mr Barrack who now could not attend until July 2019 and other contractors were sought.
- h. It was difficult for the landlord to find anyone to assist given that damp is a known problem with this type of structure.
- i. One contractor, "Dillon", advised the issue was with the roof where he saw a break which he bonded with fibreglass on around 13 April 2019. The Landlord did not attend the Property when that repair was effected. The contractor did not send any photos of the completed work and the Landlord sought confirmation from the Tenant that the work had been completed prior to paying the contractor.
- j. The Landlord heard nothing more until 13 June 2019 when further contact was made by the Tenants to the effect that the garage was leaking.
- k. The Landlord attended a few days later and saw the work done by "Dillon" which was not what was expected and there is a dispute with him.
- l. The Landlord attended to the external sealant replacement at the end of June having been directed on what to do by Mr Barrack. The external work was done at that time only. The internal work was not undertaken at this time as stored items inside the garage prevented this.
- m. There was a further report of leaking on around 21 July 2019. The Landlord attended on around 3 August 2019 and sealed the garage internally.
- n. On around 12 August the Landlord was advised that there was still water leaking.

- o. A new contractor could not be found. Mr Barrack advised he did not want to deal with further repairs on account of the Tenants' representative's behaviour. The Landlord had difficulty in finding an alternative contractor. Subsequent recommendations ranged from reconstructing part of the garage, swapping doors, putting on a new roof and adding a second skin.
 - p. The Tenants' Representative suggested Aberdeen Home Improvements as a possible contractor. The Landlord got in touch with Aberdeen Home Improvements on 2 September 2019. A representative thereafter attended. He said the door and sealant were fine. To rule out possible leaks he advised to add a second roof and guttering which was done early in October 2019.
 - q. Nothing more was heard until 26 November when the Tenants advised the garage was still leaking. The representative of Aberdeen Home Improvements was asked to attend again which he did on 10 or 12 December 2019. He concluded that the water was coming up through the foundations and cannot be fixed. He advised having a surveyor inspect. He concluded that the garage should not have been built where it is due to the foundations being lower than soil levels. He was not willing to do further work.
 - r. The survey has not yet been instructed.
 - s. The Landlord bought the Property in 2016 and lived there for around 18 months.
 - t. The Landlord has leased the Property to previous tenants.
 - u. The tenant that occupied the Property prior to the Tenants notified the Landlord of the garage leaking in around mid October 2018.
 - v. From investigations on Google Maps the garage was built between 2012 and 2016. The Landlord considers the garage could have been second-hand when it was built by the previous owners.
 - w. The Tenants offered to pay rent up front, they were not asked by the Landlord to do so.
12. By email and letter dated 10 March 2019 the Landlord advised the tribunal that the Tenants' tenancy of the Property had ended on 8 March 2020 and the Tenants had removed therefrom.
13. By email dated 12 March 2020 the Tenants' Representative confirmed that the tenants had removed from the Property.

Summary of the issues

14. The issues to be determined are:-
- (a) Whether the garage of the Property is wind and watertight.
 - (b) Whether the garage is in a reasonable state of repair and in proper working order.
 - (c) Whether the garage meets the tolerable standard.

Findings of fact

15. The tribunal finds the following facts to be established:-
- (a) That the Landlord is the heritable proprietor of the Property.

- (b) That the Tenants became the tenants of the Property on 1 February 2019 in terms of a Private Residential Tenancy Agreement dated 28 January 2019.
- (c) That the Property includes a garage.
- (d) That the garage is susceptible to the ingress of water causing a puddle to form on the floor of the garage towards the rear.
- (e) That the extent of the water ingress is in excess of that which is to be expected of a garage that is in a reasonable state of repair.

Reasons for the decision

16. The tribunal attended the Property on the morning of 20th February 2020. The Tenant, Miss Bridget Fitzpatrick, and the Tenant's Representative were present along with a supporter and allowed access. The Landlord and the Landlord's Representative were present. It was cold and overcast during the inspection. There had been moderate rainfall overnight, before the inspection.
17. The Property is located in a mainly residential area, around two miles north west of Aberdeen city centre. It is an end terraced, two storey house built originally on behalf of the local authority or housing association. The subject of the application is the garage located on site, and the inspection was restricted to this garage. The garage is a light-weight steel framed structure, clad externally with single skin steel profile sheeting. Internally, there is a layer of polystyrene insulation with a further layer of foil insulation applied to finish the interior surface. The roof and rear gable of the garage have been over clad with corrugated fibre sheets within the past twelve months. There are pvc gutters which discharge on the ground outside the front of the garage. The garage appears to have been constructed on a concrete slab foundation. The main structure appeared to be around 10 years old.
18. The garage was being used for storage of household items and outdoor/garden items and this limited the internal inspection of the structure. The left-hand wall is constructed along the apparent boundary, less than 0.5m distant and this restricted the exterior inspection.
19. Internally, there was a puddle on the surface of the floor, at the rear left side of the garage. The puddle was around 1.5m by 0.5m and was in contact with the rear wall. It appeared to be receding in size. There was no evidence of water dripping from the roof. The junction of the floor and wall structure had been sealed with black mastic. Externally, it was seen that the ground level was around 30cm higher than the internal floor level along the rear wall of the garage. The earth of the surrounding garden is held back by sloping paving slabs. Some water was visible on the concrete slab, where it projected beyond the garage walls.
20. There is a moderately sized, non-residential building off site, to the rear of the Property. The gutter of this building was choked with vegetation and had a section of the guttering missing.
21. The definition of "house" in Section 194 of the 2006 Act includes any garage which is or is capable of being occupied and enjoyed together with the living accommodation. The Repairing Standard therefore applies to the garage.
22. Whilst the tribunal accepted that a garage would not be expected to be as wind and watertight as the associated living accommodation and that what would be considered to be a reasonable state of repair relative to a garage would inevitably be different and less onerous than that which would be considered appropriate relative to the living accommodation, nonetheless the

tribunal determined that the extent of the water ingress into the garage fell short of that which be required to meet the Repairing Standard.

Decision

14. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
15. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
16. The decision of the tribunal was unanimous.

Right of Appeal

17. **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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Effect of section 63

18. **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.**

G Buchanan

Signed

Date 17 March 2020

Legal Member