



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

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

Chamber Ref: Reference number: FTS/HPC/RP/21/1622

Property: 212 Main Street, Lennoxton, Glasgow, G66 7ES ("The property")

Parties:

MacLean Davidson, residing at 212 Main Street, Lennoxton, Glasgow, G66 7ES ("the Applicant")

Bridgeport investments Limited, a company incorporated under the Companies Acts and having their registered office at Unit C New Carvel Buildings Warstock Road, Kings Heath, Birmingham, West Midlands, England, B14 4RT ("the Respondent")

Tribunal Members:

Paul Doyle (Legal Member)

Nick Allan (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 offered by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 29 June 2021 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.

2. . The applicant maintains that there is a failure to meet the repairing standard, and in particular that:

(a) The house is not wind and watertight and in all other respects reasonably fit for human habitation because windows and doors require repairs.

(b) The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair nor in proper working order.

(c) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair nor are they in proper working order because there are faults with the bath.

(d) The fixtures and fittings provided by the respondent under the tenancy are not in a reasonable state of repair nor are they in proper working order.

And that the house does not meet the tolerable standard.

3. On 23 July 2021 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. Following service of the Notice of Referral the Landlord and the applicant made written further representations as the application progressed. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 31 August 2021. The applicant was present and was unrepresented. The respondent did not attend but rested on written representations made on 11 August 2021.

6. Following the case management discussion, the tribunal suggested that the respondent should consider

(i) Instructing a SELECT, NICEIC OR NAPIT registered electrician to provide an Electrical Condition Installation Report (EICR) following a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any areas categorised C1 or C2 to ensure the installation and apparatus is fully functioning and meets current regulatory standards.

And

(ii) Installing interlinked smoke and heat detectors within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

7. Tribunal members inspected the property during the morning of 5 October 2021. The Tenant was present but was not represented. The landlord was neither present nor represented. During the inspection on 5 October 2021, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

8. On 4 October 2021 the respondent produced a satisfactory EICR dated 16 August 2021.

9. Following the inspection of the Property, the Tribunal issued the following direction on 5 October 2021.

The Respondent is required to:

(a) Produce all roofing reports, estimates for roof repairs, and specification of works, prepared within the last 6 months, for the roof above the property at 212 Main Street, Lennoxtown, ("the property") within 21 days of the date of service of this direction.

(b) To prepare and lodge with the tribunal a schedule of works anticipated to the roof above the property together with a timescale for those works within 21 days of the date of service of this direction.

10. On 26 October 2021 the respondent complied with the direction and lodged relevant roofing reports and estimates.

11. The Tribunal held a hearing by telephone conference at 10am on 22 November 2021. The Tenant was present but was not represented. The landlord was neither present nor represented

Summary of the issues

12. The issues to be determined are

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of Fact

13. (a) The respondent is the heritable proprietor of the flatted dwelling-house at 212 Main Street, Lennoxtown, Glasgow ("the property"). On 29, July 2016. The respondent let the property to the applicant.

(b) The property is a modern second floor flat entering from a common passage and stair. A central hallway provides access to all the rooms. The property has two bedrooms, and open-plan lounge & kitchen space, and an internal bathroom.

(c) The respondent has fitted smoke and heat detectors in the property, but they are not interlinked and the property does not have a CO2 monitor.

(d) The internal doors throughout the property have been swollen by moisture and no longer fit properly.

(e) At the start of November 2021, the respondent's contractor carried out repairs to the property's bathroom, which included replacing a broken bath panel.

(f) Throughout the property, there are signs of water ingress. The ceiling plaster finish in each room is cracked. There are water stains visible on the ceiling in the living room and streak marks consistent with water ingress on the walls throughout the property.

(g) The hall carpet is water stained and needs to be replaced.

(h) To the front of the exterior of the property there is a sloping roof. To the rear of the property, immediately above the living room and kitchen, there is a flat roof, which features a balcony, decking, and artificial grass.

(i) The property is a top storey flat. There is not another flatted dwelling-house immediately above the property. On the other side of the common stair, there is a property one storey higher, which is situated to the side of this property.

(j) The property has suffered from water penetration through the flat roof above the lounge/kitchen area for some time. The respondent has obtained estimates for repair to the roof of the property. It is most likely that the roof is owned in common with other proprietors on the stair. Repair that is required to the property is likely to be a common repair, responsibility for which should be divided amongst the proprietors affected.

(k) There is an up-to-date satisfactory EICR for the property. There is nothing wrong with the electrical system. A broken bath panel has been replaced. No other repairs are required to the bathroom.

Reasons for decision

14. (a) Tribunal members inspected this property at 11am on 5 October 2021. It was a dry but overcast, autumn, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property. A satisfactory EICR was produced in advance of the inspection.

(b) The applicant told tribunal members that he was in regular contact with the respondent's agent, and maintenance work has been carried out, but his greatest concern was water ingress.

(c) Tribunal members could see smoke detectors and heat sensors fixed to the ceiling throughout the property, but it was obvious from inspection that there was no CO2 monitor. A simple test of smoke detectors disclosed that the system for detecting smoke, heat and CO2 is not properly interlinked.

(d) To comply with The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, the property requires interlinked smoke and heat detectors and a CO2 monitor. Although that is not part of this application, it is in the respondent's interest to remedy the defects in the smoke and heat detector system.

(e) Immediately on entering the bathroom within the property, tribunal members could clearly see that the bath panel was damaged; there were holes at each end of the panel. Tribunal members were reassured by an email exchange between the parties (produced prior to the hearing) which indicated that the bath panel had been replaced since the date of inspection.

(f) At the start of the hearing, the tenant confirmed that he accepted that there is no defect with the electrical system within the property, and that the replacement of the bath panel resolved the original complaint about the sanitary suite within the bathroom.

(g) The tenant confirmed that the sole issue remaining in this application is the question of the damage caused by water ingress, and that the documentary evidence coupled with tribunal members inspection points towards a flaw in the flat roof above the property.

(h) On inspection, tribunal members could clearly see water staining to ceilings and walls throughout the property. Tribunal members opened and closed various internal doors throughout the property, and each of them was swollen by moisture. The carpet in the central hallway of the property bears significant water staining.

(i) The documents produced by the respondent, together with tribunal members observations, confirm that water has been leaking into this property because of a defect in the flat roof above the property.

(j) The real burdens in the title deeds for the property empower the respondent to convene a meeting of coproprietors and enter into a common repairs scheme.

(k) The respondent has got bogged down by the belief that the property factor who manages the common parts of the larger building (of which this property forms part) should be organising the repair. Those concerns are now largely academic because a repair is necessary to stop further damage from water ingress in this property.

(l) The weight of reliable evidence tells us that water is seeping into the interior of the property because of the defect in the flat roof above the property. With that simple finding of fact, we have to find that the house is not watertight and that the structure and exterior of the house is not in a reasonable state of repair. Those conclusions mean that this property cannot meet the requirements of section 13 (1)(a) and (b) of the 2006 Act.

(m) The property does not, therefore, meet the Repairing Standard and a Repairing Standard Enforcement Order (RSEO) is necessary.

(n) On the facts as we find them to be, the installation for the supply of electricity is without defect, so that the property meets the requirements of section 13(1)(c) of the 2006 Act. Now that the bath panel has been replaced, the fittings and fixtures provided by the landlord are in a reasonable state of repair, so that the property meets the requirements of section 13(1)(d) of the 2006 Act.

(o) What is left of this application is a complaint that the property does not meet the tolerable standard. S.86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as follows

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(p) This property suffers water ingress because it has a leaking roof. There are no other relevant defects in the property, so that, at today's date, the property meets the Tolerable Standard. Amendments are expected to the definition of tolerable standard next year. It is expected that those amendments will include a requirement for interlinked smoke and heat detectors which are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(q) We therefore repeat the suggestion that the respondent should take urgent steps to ensure that the property benefits from interlinked smoke and heat detectors which comply with the 2019 regulations.

15. The tribunal therefore make a repairing standard enforcement order requiring the landlord to

(a) Carry out all necessary repairs to the flat roof above the property, to prevent further water ingress, and thereafter

(b) Repair or replace the internal doors, and

(c) Repair and clean, or replace, the hall carpet, and

(d) Redecorate the inside of the property to remove the signs of water staining.

16. Because the repairs to the roof might involve reaching agreement with neighbouring proprietors for a common repair scheme, we have allowed a period of four months to complete the works required by the RSEO.

Decision

17. The tribunal accordingly determined that the respondent has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

18. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

19. The decision of the tribunal was unanimous.

Right of Appeal

20. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

21. 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.

P Doyle

Signed

23 November 2021

Legal Member