

Housing and Property Chamber
First-tier Tribunal for Scotland



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

STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24(1) OF THE
HOUSING (SCOTLAND) ACT 2006

Chamber Ref: FTS/HPC/RP/23/3420

Re: Flat B, 15 Barnton Street, Stirling, FK8 1HF, being the subjects registered in the Land Register of Scotland under Title Number STG18383 ("The Property")

The Parties:-

Miss Larissa McMullen-Kerr, residing formerly at 15B Barnton Street, Stirling, Stirlingshire, FK8 1HF ("The Tenant")

and

Mr Rajinder Singh, residing at 45 Rutherford Drive, Kirkintilloch, Glasgow ("the Landlord")

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 Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlord has not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal comprised: -

Mr. Andrew Cowan, Legal Member, and
Mr. Kingsley Bruce, Ordinary Member (Surveyor)

Background

1. By application dated 27th September 2023 (hereinafter referred to as “the Application”) the Tenant applied to the Tribunal for determination as to whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.
2. The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure the House meets the Repairing Standard and, in particular the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

13(1) a. The house is wind and watertight and in all other respects reasonably fit for human habitation;

13(1) h. The house meets the tolerable standard.

3. The Tenant has stated, within the application, details as to why they consider the Landlord has failed to meet the Repairing Standard. The Tenant has intimated to the Landlord a list of defects which they consider the Landlord required to repair in order to bring the Property up to the Repairing Standard. A summary of the issues brought forward by the Tenant, which have been intimated to the Landlord, is that there are two water leaks into the Property. Specifically, there is water ingress into the living room of the property and into the bedroom of the Property,
4. This application was accepted by the Chamber President on 13th October 2023 and was referred for the Tribunal's consideration.
5. By letter dated 21st November 2023 issued to both parties the Tribunal advised they

would inspect the property, and hold a hearing in relation to the Application, on 19th January 2023.

6. By email dated 8th January 2024 the Landlord advised the Tribunal that the Tenant had vacated the Property. He further advised that he did not intend to relet the Property and that now intended to sell the Property.
7. By email dated 12th January 2024 the Tenant confirmed that she had vacated the Property. Accordingly, under Schedule 2 Paragraph 7(1) of the Act, the Tenant is to be treated as having withdrawn the application under Section 22(1) of the Act.
8. The tribunal then considered the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act.
9. The Tribunal were concerned that the averments in the application suggest that the Property is not wind and watertight and may not be habitable. In the circumstances the Tribunal intimated to the Landlord that they wished to proceed with the inspection of the Property, and the hearing in relation to the application, which had been previously intimated to the Landlord as scheduled to take place on 19th January 2024.
10. The Tenant is no longer a party to proceedings.
11. The Tribunal decided to continue to determine the application.

Property Inspection

12. The Tribunal inspected the property on 19th January 2024. The Landlord was present

at the time of the inspection. Photographs were taken during the inspection by the Tribunal. Copies of the photographs taken by the Tribunal are attached as a schedule to this report.

The Hearing

13. A hearing had been intimated to all parties and was held on 19th January 2024 at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling FK7 7RP.

14. The Landlord attended the hearing.

15. At the start of the hearing the Tribunal outlined their observations from their inspection of the property. By reference to the specific list of complaints raised by the Tenant in relation to each room in the property, the Tribunal had noted: -

Lounge

The Tribunal noted evidence of previous water ingress at the ceiling level of the Lounge. That water ingress had caused damage to the ceiling and the wall of the Lounge. At the time of the inspection the weather was dry and it could not be determined whether water ingress was ongoing.

Bedroom

The Tribunal had noted evidence of previous water ingress at the ceiling level of the rear bedroom of the Property. That water ingress had caused damage to the ceiling and the wall of the Bedroom. There was no evidence of recent water ingress.

External

The Tribunal noted from an external view of the front façade of the building in which the Property is situated ("the building") that the gutters and drainpipes of that tenemental property were in disrepair. The gutters had vegetation growing in them and one of the down pipes from the gutters was broken. There was evidence of rainwater staining around the window of the Property at the areas where there had been previous water ingress into the lounge.

16. The Landlord accepted the Tribunal's observations and did not seek to challenge their views following the inspection.
17. The Landlord explained that the owner of the flat situated above the Property had discovered (and subsequently repaired) a broken waste pipe immediately above the bedroom of the Property. The Landlord showed the Tribunal an email from the owner of that Property which confirmed that repairs to that broken pipe had been completed in November 2023. The Landlord confirmed that following that repair there had been no further water ingress into the bedroom of the Property. The Tribunal were satisfied from their inspection of the Property, and from the evidence of the Landlord, that the cause of the previous water ingress to the bedroom of the Property had been identified and repaired. There is no continuing failure to meet the Repairing Standard in relation to this part of the Applicant's complaint.
18. Taking account of their observations from the inspection of the Property, the Tribunal are of the view that water ingress to the Lounge at the Property is most likely to be caused as a consequence of a failure to properly maintain the gutters and rainwater down pipes of the building. The Landlord explained at the hearing that he had made

reasonable efforts to have necessary works carried out at the building to have these defect rectified. These areas of the building were, however, owned in common with other proprietors of the building and the Landlord lacked the rights to carry out necessary works without the consent of those other proprietors. The Landlord had spoken with owners of other properties within the building (and one other resident had tried to obtain the necessary consents to carry out repair works) but those efforts to obtain agreement to carry out works to the common parts (including the gutters and rainwater goods) had not been successful.

19. The Tribunal had a copy of the Landlord's title to the Property and noted that roof and gutters of the building were owned in common by the proprietors of the building.
20. In terms of Section 16 (4) and Section 16 (5) of the Housing Scotland Act 2016:
 - (4) A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.
 - (5) For the purpose of subsection (4), in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary rights.
21. The Tribunal accepted that the Landlord lacks the necessary rights which would have allowed him to complete necessary works to the common parts of the building. It was further accepted that the Landlord had taken reasonable steps to acquire those rights. A majority of owners in the building have not consented to necessary works to repair gutters and other rainwater goods of the building. Accordingly, the Landlord is treated

as not having the necessary rights to carry out the works. There is therefore an exception to the Landlord's repairing duty in relation to this matter and there is no failure by the Landlord to meet the Repairing standard in relation to this matter.

Findings in Fact

22.

- a) The Landlord and the Tenant were parties to a private residential tenancy agreement in respect of the Property at Flat 215B Barnton Street, Stirling.
- b) The Landlord is the registered Landlord in the Scottish Landlords Register in relation to the Property.
- c) There is no continuing water ingress into the bedroom at the Property. The cause of previous water ingress into that bedroom has been identified and necessary repairs have now been completed.
- d) There has been water ingress into the lounge of the Property.
- e) Until the necessary works are completed to the gutters and rainwater goods of the building, it is likely that there will be further water ingress at the lounge of the Property.
- f) The Landlord lacks the necessary rights to carry out and complete required works to the common parts of the building in which the Property is situated. There is an exception to the Landlord's repairing duty in relation to the water ingress into the Lounge at the Property and there is no failure by the Landlord to meet the Repairing standard in relation to that matter.

Decision

23. The Tribunal accordingly determined that the Landlord has not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

24. The decision of the Tribunal is unanimous.

Right of Appeal

25. A Landlord, tenant or Tenant 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.

Right of Appeal

26. 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.

A Cowan

Chairperson
Andrew Cowan

Date 22nd January 2024



Pre-hearing inspection summary and schedule of photographs



15B Barnton Street, Stirling

Address: 15B Barnton Street, Stirling, FK8 1HF

Reference number FTS/HPC/RT/23/3420

Tribunal members *Kingsley Bruce, (Surveyor/Ordinary Member) Andrew Cowan (Legal Member)*

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 11:30am on Friday 19 January 2024. Also in attendance was the Landlord: Mr Rajinder Singh, the Third Party was not present or represented.

The items raised in the application and subject of the inspection are summarised as follows:

1. Water Ingress at front of building (affecting livingroom):

Noted evidence of water ingress causing damage to plasterwork and decoration around bay window area and to the ceiling. It was apparent that repairs to the ceiling have been undertaken previously, consistent with treatment of timber decay (dry rot or similar) and also consistent with notice of potential liability registered for the subject property.

From external inspection defects were apparent to rainwater fittings resulting in discharge of water to the external face of the front wall, in the area of internal water damage/water staining and moss growth around a front projection or decorative ledge/balcony detail, to the bay window, which would indicate that the issue causing damage internally is ongoing.

2. Water damage internally to rear rooms.

Damage to decoration/plasterwork arising from water ingress from the flat above noted, surfaces were tested with an electronic moisture meter which indicated slightly elevated levels of moisture, but did not appear to indicate ongoing ingress.

Kingsley K Bruce
Ordinary (Surveyor) Member
First-Tier Tribunal for Scotland
23 January 2024

Appendix 1

Schedule of photographs taken during the inspection on 19 January 2024

Water damage to front rooms (internal)





External fabric- defects evident to rainwater fittings and external indications of water damage.





Rear Rooms (internal)





