



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/23/3646

Re: Flat 1, 88 West Clyde Street, Helensburgh G84 8BB (registered under title number DMB61270) (“Property”)

The Parties:

Kerr Aitchison, formerly Flat 1, 88 West Clyde Street, Helensburgh G84 8BB and now 1/1, 140 West Princes Street, Helensburgh G84 8BH (“Tenant”)

Rusk Realty Ltd, 4 Royal Crescent, Glasgow G3 7SL (“Landlord”)

McArthur Stanton, 15-17 Colquhoun Street, Helensburgh G84 8AN (“Landlord’s Representative”)

Tribunal Members:

Joan Devine (Legal Member); Nick Allan (Ordinary Surveyor Member)

DECISION

The Tribunal determined that 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. The Tribunal therefore will not issue a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 12 October 2023, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that they believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (a) and (h) of the Act. The Application stated that the Landlord had failed to ensure that:
 - The Property is wind and watertight and in all other respects reasonably fit for human habitation.
 - The Property met the tolerable standard.

3. The Tenant made the following complaints in the application and in the notification communications to the Landlord:
 - Damp patches on bedroom walls.
 - Signs of mould in bedrooms.
 - Wallpaper in bedrooms peeling due to dampness.
 - Water ingress in living room.
4. On 1 November 2023 the Tenant advised the Tribunal that the tenancy had terminated on 26 October 2023 and that he had left the Property on 15 October 2023. By Minute of Continuation dated 24 November 2023 the Tribunal determined to continue to determine the application.
5. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 14 March 2024.
6. On 20 February 2024 TLT LLP, Solicitors, acting on behalf of the landlord, lodged a written representation and photographs of the Property.

The Inspection

7. The Tribunal inspected the Property on the morning of 14 March 2024. The weather conditions at the time of the inspection were cloudy and wet. The Property is a 1st floor flat with 3 bedrooms. Victoria Bowe of the Landlord's Representative was present at the inspection as was Mark Oswald of TLT, Solicitors.

The Hearing

8. The Hearing took place on 14 March 2024 at Victoria Halls, Helensburgh. The Landlord was represented by Victoria Bowe of the Landlord's representative and Mark Oswald of TLT Solicitors. Ms Bowe told the Tribunal that the water ingress in the bedroom at the back of the Property was caused by a burst pipe in the flat two above the Property which occurred in August 2023. She said that when the Landlord was carrying out the necessary works to rectify the damage from the water ingress they installed a new kitchen in the Property. Ms Bowe told the Tribunal that the windows in the Property had been re-aligned and re-sealed in February 2024. Ms Bowe told the Tribunal that the Factors for the Property had ingathered funds from owners to have a tenement condition survey carried out.
7. The Tribunal explained that a damp meter had been used to take readings in each bedroom and the living room of the Property. All readings were at an acceptable level other than in a localised area to the right of the window in the second bedroom on the right as you enter the Property.

The Evidence

8. The evidence before the Tribunal consisted of:

- 8.1 The Application completed by the Tenant.
- 8.2 Land Register report relating to the Property
- 8.3 The Tribunal's inspection of the Property
- 8.4 The oral representations of the Landlord's Representative.

Summary of the Issues

9. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on him by Section 14(1)(b).

Findings in Fact

10. Tribunal made the following findings in fact:
 - 10.1 The Tenant lived in the Property between 15 February 2023 and 15 October 2023.
 - 10.2 The tenancy terminated on 26 October 2023.
 - 10.3 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 10.4 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 10.4.1 There is a localised area of dampness to the right of the window in the second bedroom on the right as you enter the Property

Reasons for Decision

11. Following its inspection and the hearing, the Tribunal determined that the Property does meet the repairing standard as required by Section 13(1)(a) and (h) of the Act.
12. The Property is wind and watertight and in all other aspects reasonably fit for human habitation. The Property does meet the tolerable standard. The area of dampness in the second bedroom was of such a localised nature that it did not cause concern.

Decision

25. The Tribunal determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

26. The Tribunal therefore will not make a repairing standard enforcement order.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J. Devine

**Legal Member
14 March 2024**