

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Housing (Scotland) Act 2006 Section 24 (1)

Reference number: FTS/HPC/RT/19/3280

Re: Property at 126 Lumley Street, Grangemouth, FK3 8BL (“the Property”)

The Parties:

Mr John Goodbrand (“the Tenant”)

Mr Bart Schelfhout, 34 Craigton Road, London, SE9 1QS (“the Landlord”)

Falkirk Council - Private Sector Team, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”)

Jewel Homes, (“the Letting Agent”)

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Greig Adams	-	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, determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application received on 17th October 2019, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has 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 Third Party stated that it was considered that the Landlord had failed to comply with his duty to ensure that the House met the repairing standard in that the house is not wind and watertight and in all other respects reasonably fit for human habitation. In particular, the complaints consisted of: -
 - a) Windows needed to be repaired or replaced;
 - b) Plasterwork to be repaired; and
 - c) Electric shower to be repaired or replaced.
3. By minute dated 4th November 2019 the President intimated a decision to refer the application under Section 23(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 the Landlord, the Tenant and the Landlord's Agents dated 15th November 2019.
5. A date was set for both the inspection and hearing on 6th January 2020. It was deemed by the Tribunal appropriate to postpone the hearing at the request of the Landlord. The Landlord emailed the Housing and Property Chamber on 20th December 2019 stating that the postponement was necessary for two weeks to allow for the installation of the windows.
6. A further date was set for the inspection and hearing on 25th February 2020. A postponement request was received from Kate Smith, Private Sector Officer on behalf of the Third-Party Applicant. The request stated that Ms Smith would not be able to attend due to pre-arranged work commitment. The Tribunal did not accept this as significant grounds for a postponement given that full reasons were not provided for her non-attendance or why, with the full resources of Falkirk Council, that another person could not either have attended the work commitment she had or attend the hearing and inspection.
7. On 25th February 2020, the Tribunal attended for the inspection along with Ms Vicky McGuire from Jewel Homes.

The Inspection

8. The Tribunal attended the property on the morning of 25th February 2020. Ms Vicky McGuire from the Letting Agent. The Tenant's partner was present to allow entry to the House. It was a cold dry day during the inspection.

9. The House is a three-storey town house style end terrace property. The Property is located within Grangemouth. It is in an urban setting. The accommodation comprises of a sitting room, four bedrooms, a kitchen, a bathroom, a living room and hall. Access to the House is via a direct entry front door. The Property also has access by a backdoor through a gated garden. There are six other similar houses in the block.
10. The Property was occupied and furnished.
11. The windows were inspected first. All the windows were in good condition. There were two windows in the living room. Both were seen to be in good condition but one could not be opened as it was locked. The Tenant's partner did not know where the key was kept and was not able to assist the Tribunal with opening the window.
12. The Shower was inspected next. The Tenant's partner informed the Tribunal that the shower had been replaced and there were no outstanding issues regarding it.
13. The plasterwork around the back door was inspected next. It appeared to have been repaired leaving only a superficial crack.
14. While in the main bedroom the Tribunal observed that there was a substantial amount of mould on the wall to the right of the window. This did not fall within the application.
15. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

17. The hearing took place at Westfield Park Community Hall, Westfield Street, Falkirk. Only Ms Vicky McGuire from the Letting Agent was present.
18. The windows were discussed first. The Tribunal found the windows to be in good condition and that the ground floor one had been replaced. The living room window that could not be opened was discussed. The Tribunal concluded that, on balance, it was reasonable to assume that window could be opened had the key been there as all the other windows could be opened. The Tribunal was satisfied that the repairing standard had been met as the other window in the room was able to be opened.
19. The shower was discussed next. It was noted that the Tenant's partner had stated that the matter was resolved. No further action need be taken with regard to the shower.

20. The cracked plasterwork was discussed next. It was clear that the rendering has been redone. It was noted that there was a small crack. It was observed that due to water coming from the guttering that the rendering around the windows to the rear of the property needed to be redone. The Letting Agent noted this and will raise it to the Landlord's attention.
21. It was observed that the smoke alarms needed to be tested. Some worked but it was not clear if they all did. The Letting Agent took an undertaking to ensure that they were inspected and fixed or replaced if needed.
22. The Tribunal also observed that in the main bedroom the wall to the right of the window had a significant amount of damp on it. The Letting Agent noted that there had been specialist reports that indicated that the wall in the bedroom and one in the living room needed to be stripped back and treated. She would look to progressing this. As it does not fall part of application at hand, the Tribunal explained to the Letting Agent that it cannot force the Landlord to take action but note it as an observation and point of concern.

Summary of the issues

23. The issues to be determined are:-
- a) Whether the windows needed to be repaired or replaced;
 - b) Whether the plasterwork to be repaired; and
 - c) Whether the electric shower to be repaired or replaced.

Findings of fact

24. Having considered all the evidence, the Tribunal found the following facts to be established:-
- a) There was a tenancy relationship between the Landlord and the Tenant;
 - b) The shower had been fixed to meet the repairing standard;
 - c) The plasterwork at the back door had been repaired to meet the repairing standard; and
 - d) The windows had been fixed or replaced to meet the repairing standard albeit that one was not able to be opened in the living room the other window in that room was able to be opened to allow the repairing standard to be met.

Reasons for the decision

25. The Tribunal determined the application having regard to the terms of the application, the written representations received prior to the hearing, the

findings of their inspection and the evidence of the Tenant and Landlord's Agents.

26. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
27. The Tribunal was satisfied that all the points raised in the application had been dealt with by the Landlord and that there were no outstanding issues. The Tribunal was satisfied that the Repairing Standard was met and that no further orders were necessary.

Decision

- (a) The Tribunal accordingly determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal did not need to issue any further orders.
- (c) The Tribunal did not need to take any further action.
- (d) The decision of the Tribunal was unanimous.

Observations

It was observed by the Tribunal that:-

- a) The wall to the right of the window in the main bedroom had a significant amount of damp;
- b) The rendering around the outside of the rear windows needed redone due to water coming from the gutter. It may be that the gutter needs to be cleared; and
- c) The fire alarms need to all be checked to ensure that they are all in working order.

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.

G Miller

G Miller, Chairperson and Legal Member

4th May 2020