

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

Chamber Ref: FTS/HPC/RP/18/0464

Property: Flat 2/2, 6 Brachelston Street, Greenock PA16 9AD, registered in the Land Register under Title Number REN91854 ('The House')

The Parties:-

Liam Reford, residing at Flat 2/2, 6 Brachelston Street, Greenock PA16 9AD ('the Tenant')

Fernando Spella, Unit 2- 3a -7 Pantai Panorama Condominiums, Kuala Lumpur ('the Landlord')

Castle Estates, 14 Union Street, Greenock PA16 8JJ ('the Landlord's agent')

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are 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 house concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of:-

Mary-Claire Kelly, Chairing and Legal Member

Debbie Scott, Ordinary Member (surveyor)

Background

1. By application dated 18th January 2018, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) 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.
2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
 - (a) *the house is wind and water tight and in all other respects reasonably 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.*
3. The application by the Tenant specified that the said failure was established as follows:

“Windows are very draughty and flat gets very cold during winter months. Reported guttering is blocked and allows water to penetrate flat, as it shows as mark on flat roof.”
4. The Tenant submitted as part of the application various email correspondence between the Tenant and the Landlord’s agents spanning the period from 18th July 2017 to 17th November 2017 and a copy lease.
5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 22nd January 2018 following a decision to refer made by the Convener of the First-tier Tribunal on 11th January 2018.
6. Prior to the hearing the Tenant lodged additional written representations comprising a letter, email correspondence between the Tenant and the Landlord’s agents spanning the period from 23rd January 2018 to 8th February 2018 and several photographs. On 30th March 2018 the Landlords’ agents submitted written representations and an Energy Performance Certificate in respect of the house dated 1st July 2016.

Inspection

7. The tribunal inspected the house at 10am on 30th April 2018. The Tenant was present at the inspection. Azriel Hargreaves, a joint tenant was also present. The Landlord was represented at the Inspection by Neil Woodhead, a Director of Castle Estates. Catherine McGugan, an employee of Castle Estates was also present.
8. Photographs were taken by the tribunal during the Inspection. Copies of the photographs are attached as a schedule to this Statement of Decision.

Hearing

9. Following the inspection, a hearing took place at Gamble Halls, 44 Shore Road, Gourock. The Tenant was present at the hearing. The Landlord was represented by Neil Woodhead, a Director of Castle Estates. Catherine McGugan, an employee of Castle Estates was also present.

10. At the hearing the tribunal confirmed that the lease which had been submitted by the Tenant was valid and dealt with each of the issues specified in the application in turn:-

Windows

The Tenant gave evidence that the windows throughout the house are draughty and as a result the house can be very cold. The Tenant confirmed that a joiner had recently attended the property and carried out some works to the windows. The Tenant thought that the windows moved excessively in the wind. The Tenant advised the tribunal that he requires to keep the heating in the house switched on for longer than is reasonable due to the draughts from the windows. The Tenant advised the tribunal that his partner had a history of asthma and he was concerned that the condition of the windows was affecting her health. The Tenant confirmed that in his view works carried out to the windows had not been effective in preventing draughts from the windows.

The Landlord's agent gave evidence that after they received a complaint from the Tenant regarding the windows, a joiner was instructed to inspect the windows and carry out any necessary works. The Landlord's agent confirmed that neoprene seals on the bay window in the bed-sitting had been replaced. The joiner had reported that the other windows were usable, and no additional repairs were required. The Landlord's agent gave evidence that in his view the windows were fully functional and

met the repairing standard. He gave evidence that the windows were of a similar style and condition to others within the tenement building.

Water ingress

The Tenant gave evidence that there had been water penetration into the bed-sitting room following a storm in November 2017. The Tenant advised that there had been an earlier issue with water penetration as a result of the gutters being blocked. The Tenant confirmed that works had been undertaken to the roof and he stated that the issue had now been resolved.

The Landlord's agent gave evidence that there had been a repair to the roof guttering in May 2017. He advised that as the roof is a common part the repairs were carried out by the property factor. The Landlord's agent advised that the water ingress which had occurred in November 2017 was caused by heavy winds dislodging slates. He confirmed that the necessary remedial works had been carried out.

Summary of the issues

11. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the Landlord has complied with the duty imposed by sections 13(1)(a) and (b) of the Act.

Findings in fact:-

12. The tribunal find the following facts to be established:-
 - a. The house is a 2nd floor tenement flat in a block of six flats. The house is of traditional stone construction and is approximately 100 years old. The house is entered via a communal stairway. The house comprises a bed-sitting room, hall, kitchen, and bathroom.
 - b. The Tenant has resided in the house since October 2016. The Tenant resides with a joint tenant, Azriel Hargreaves. The Tenant signed the current lease agreement with the Landlord on 14th October 2017. The lease purports to be a Short Assured Tenancy Agreement. Castle Estates are named as the Landlord's agents in the lease agreement. The rent payable in terms of the lease is £320 per calendar month

- c. The registered owner of the property is Fernando Spella.
- d. In terms of emails submitted by the Tenant spanning the period from 18th July 2017 to 17th November 2017 the tribunal were satisfied that those issues identified at paragraph 3 above were properly intimated to the Landlord's Agents.
- e. There have been two incidents of water ingress into the property. Due to a blockage in the roof guttering water penetrated the ceiling in the bed-sitting room. A repair to the roof guttering was carried out in or around May 2017. In November 2017, following inclement weather slates were dislodged and water penetrated the ceiling in the bed-sitting room. Remedial works were instructed by the property factor.
- f. At the time of the inspection there was no evidence of water ingress into the house.
- g. The windows throughout the house are double glazed. The windows throughout the house are of a considerable age but continue to function satisfactorily. The windows throughout the house have satisfactory seals.
- h. The house has an Energy Efficiency Rating of Band D, which is the average rating for Energy Performance Certificates in Scotland.

Reasons for the Decision

- 13. The tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.
- 14. The tribunal was only able to consider those items which formed part of the intimated application.
- 15. The tribunal noted damp staining to the ceilings within the living room and kitchen. Both areas were tested with a damp meter and were dry at the time of the inspection.

16. The Tenant and the Landlord's agents gave evidence that there was no longer water ingress into the house. Accordingly, the tribunal determined that there was no breach of the repairing standard in terms of section 13(1)(a) of the Act.
17. The tribunal noted the Tenant's evidence that the windows in the house were uncomfortably draughty. The tribunal considered that the Tenant was genuine in his evidence. The tribunal took time to inspect all the windows within the house. The tribunal noted that the windows were of considerable age and were likely to require ongoing maintenance. However, at the inspection the tribunal found no evidence that the windows were not wind and watertight.
18. The tribunal took into account the Landlord's agent's evidence that a joiner had carried out repair works to the windows and had confirmed that the windows were functioning and that no repairs were required. In all the circumstances the tribunal considered that the windows were in a reasonable state of repair.
19. The tribunal took into account the Energy Performance Certificate which had been submitted by the Landlord's agents and which gave the house a rating of band D which is the average rating in Scotland and their examination of the windows.
20. Accordingly, the tribunal considered that there had been no breach of the repairing standard in terms of section 13(1)(b) of the Act.

Decision

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

The Tribunal proceeded to dismiss the application.

Right of Appeal

A landlord, tenant or third party applicant 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.

M C Kelly

Chairperson

✓

Date

14th May 2018

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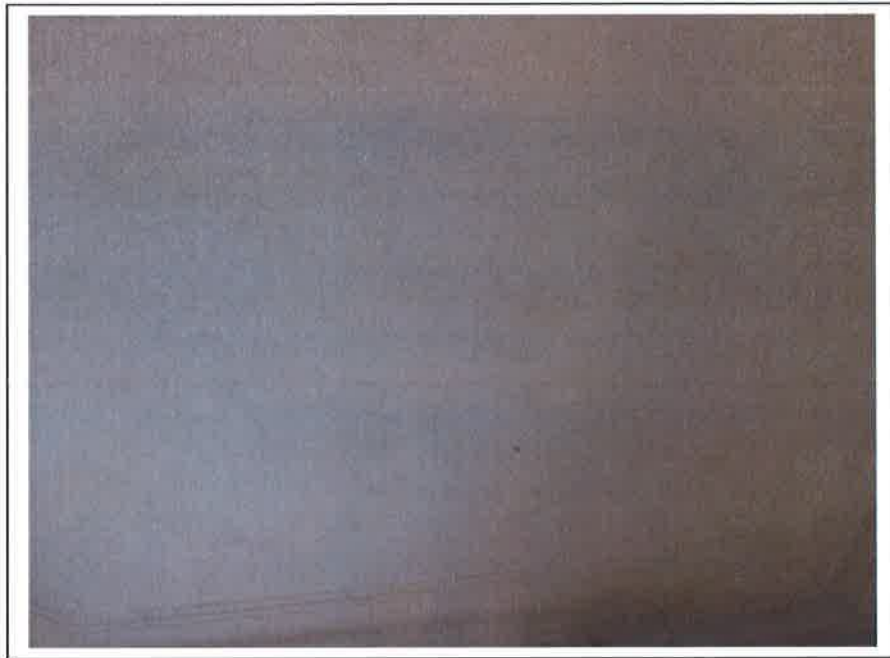


Rear elevation



Weathered windows require ongoing maintenance

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Historic damp staining within living room, tested dry with damp meter at inspection.



Historic damp staining within kitchen, tested dry with damp meter at inspection.

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Internal windows showing draught proofing