



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act

Case Reference FTS/HPC/RP/22/3168

Property at 29/1, Iona Street, Edinburgh, EH6 8SP (“the Property”)

Mr. Sonam Gray residing at the Property (“the Tenant”)

Ms. Joanna Wendy Mellish residing at 9 St. Mary's Place, Edinburgh, EH15 2QF (“the Landlord”) per her agents, Professional Property Letting, 200 Gorgie Road, Edinburgh EH11 2NX (“ the Landlord’s Agents”)

Tribunal Members – Karen Moore (Legal Member) and David Godfrey (Ordinary Member)

Decision

The Tribunal dismissed the Application without Order.

Background

1. By application received between 31 August 2022 and 20 September 2022 (“the Application”), the Tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (h) of the Act being the statutory Tolerable Standard and states that the work required to meet the statutory Tolerable Standard is “painting the property”. The application included copy correspondence between the parties and photographs of the Property.
2. The Application was accepted by the Tribunal Chamber and an Inspection and Hearing were fixed for 9 December 2022, which date was intimated to the Parties and referred to the Tribunal.
3. Neither Party submitted further representations to the Tribunal.

Inspection and Hearing

1. The Inspection took place on 9 December 2022 at 10.00 a.m. at the Property. The Tenant was present. The Landlord was not present and was represented at the Inspection by Ms. Charlotte Gray and her colleague Danika Lamb of the Landlord's Agents
2. The Tribunal inspected the parts of the Property referred to in the Application namely the paintwork and décor throughout the Property. At the Inspection, the Tribunal took dampness meter readings and digital photographs which photographs form the Schedule annexed to this decision.

Hearing

3. Following the Inspection, a Hearing by telephone conference call was held on the same day at 14.30 p.m. The Tenant was present. The Landlord was not present and was by Ms. Charlotte Gray.
4. The Tenant advised the Tribunal that the Landlord had offered and promised to decorate the Property when he became the tenant but had repeatedly failed to do so which caused him distress, leading him to make the Application.
5. On behalf of the Landlord, Ms. Gray advised the Tribunal that the Landlord's Agents had not been engaged by the Landlord when the tenancy began and so she could not comment on the offer to decorate. However, she stated that, in her professional opinion, the Property did not require to be redecorated and that some of the marks on the walls could be removed by cleaning with a damp cloth. Ms. Gray advised the Tribunal that, in her view, the Tolerable Standard is a basic standard of habitation and does not include decoration. She advised the Tribunal that the Landlord had obtained a quote for full decoration on 17 November 2022, but, as the quote was £1,700.00, the Landlord had decided not to proceed with it. She confirmed that the Tenant had been advised of this.

Summary of the Issues

6. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Section 13(1) (h) of the Act at the date of the Inspection and Hearing.

Findings of Fact

7. Ms. Joanna Wendy Mellish residing at 9 St. Mary's Place, Edinburgh, EH15 2QF is the owner of the Property in terms of title number MID138965 and is the Landlord. Mr. Sonam Gray residing at the Property is the Tenant of the Property in terms of a tenancy agreement between him and the Landlord.
8. The Property is a basement flat which comprises a living room with kitchen, a hallway, one bedroom and an internal bathroom.
9. From the Inspection, in respect of matters specifically complained of in the Application, the Tribunal found that the décor in the Property is marked in places, that there are cracks in the plasterwork to the wall in the hall at ceiling level and that there is slight condensation in the bathroom.

Decision of the tribunal and reasons for the decision.

10. The Tribunal's decision is based on the Application, the Inspection and the Hearing and the documents lodged by the Landlords.
11. The complaint set out in the Application is that the Property does not meet the Repairing Standard in respect of Section 13(1) (h) of the Act being the statutory Tolerable Standard because the Property requires to be painted.
12. The statutory definition of " tolerable standard" is that a house meets the tolerable standard 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;
 - (ca) has satisfactory thermal insulation;
 - (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 [or waterless closet] available for the exclusive use of the occupants of the house and suitably located within the house;
 - (fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
 - (g) has an effective system for the drainage and disposal of foul and surface water;
 - (ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;
 - (h) has satisfactory facilities for the cooking of food within the house;
 - (i) has satisfactory access to all external doors and outbuildings;
 - (j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire and
 - (k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health.
13. The standard of décor in the Property is not a relevant criterion which can be considered by the Tribunal. Accordingly, although the Tribunal has no reason to doubt that the Landlord offered to decorate the Property, her failure to do so is not a breach of the legislation. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
14. Accordingly, the Tribunal dismissed the Application without Order.

15. The decision is unanimous.

Appeal

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.

Effect of Section 63

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.

Signed

K Moore

Karen Moore, Chairperson

Date 13 December 2022