

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/17/0048

Re: Property at 12 Napier Road, Killearn, G63 9PA (“the property”)

The Parties:-

Miss Martha MacKenzie, residing at the property (“the Tenant”)

Mr Andrew Baillie, 72 Rofant Road, Northwood, Middlesex, HA6 3BA (“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, and taking account of the evidence presented and the written and oral representations, determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised:-

Mrs Nicola Weir, Legal Member

Mr Andrew McFarlane, Ordinary Member

Background

1. By Application received on 8 February 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the property meets the Repairing Standard by reference to an attached email and photograph. Submitted with the Application was an email to the Tribunal dated 6 February 2017; a photograph showing sewage overflowing from a drain on the driveway; a copy of a Report from Scottish Water dated 3 February 2017; a copy of the Tenancy Agreement

between the Parties and copies of email exchanges between the Tenant and Landlord dated between 13 August 2014 and 25 August 2014, 17 October 2016 and 22 October 2016, 3 January 2017 and 3 February 2017 and also between each of the Parties and Scottish Water between the later dates stated. Said email exchanges between the Parties constituted proof that the Tenant had notified the Landlord of required repairs prior to submitting the Application. In respect of the work needing to be done, the Tenant stated in her Application:- "sewage+plumbing required, waste water/putrid mold to be pumped out and repair work undertaken to avoid this happening again". The documentation submitted with the Application specified plumbing issues resulting in waste water and sewage collecting under the solum of the property, sewage spilling out from a drain in the driveway of the property and concerns regarding electrical cables being submerged in water and the landlord not having undertaken electrical testing/certification in respect of the property.

2. Further to her Application, the Tenant thereafter submitted additional emails and documentation to the Tribunal in respect of various matters concerning the tenancy, namely:- email dated 15 February 2017 regarding the Landlord's intention to increase the rent; email dated 17 February 2017 regarding the Landlord's intention to terminate the tenancy; email dated 21 February 2017 regarding the lease, the Notice to Quit, the payee in respect of the rent payments being deceased, that no Tenant Information Pack or Electrical Safety Certificate was given to her by the Landlord and providing an update concerning the repair issues in that the Landlord had arranged for the removal of the stagnant water from the solum of the property and for an open drain to be sealed on 20 February 2017; email dated 3 March 2017 attaching a copy email from the Tenant to the Landlord of the same date about the absence of a Tenant Information Pack including an Electrical Safety Certificate; email dated 4 March 2017 confirming the Tenant's wish to bring the issue of the lack of an Electrical Safety Certificate within the scope of her Application to the Tribunal and attaching 3 pages (pages 2, 3 and 4 only) of such a certificate; email dated 7 March 2017 enclosing the AT6 served on the Tenant; email dated 15 March 2017 confirming that the Landlord had not sent her any further correspondence concerning the extent of the Electrical Safety Certificate; and email dated 21 March 2017 again confirming that there had been no further correspondence in relation to the Electrical Safety Certificate. Said email of 3 March 2017 constituted proof that the Tenant had notified the Landlord regarding the lack of an Electrical Safety Certificate, allowing that matter to form part of her Application to the Tribunal.
3. On 21 March 2017, a Convener of the Tribunal, acting under delegated powers, made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral dated 5 April 2017 in terms of Schedule 2, Paragraph 1 of the Act was thereafter served upon both the Landlord and the Tenant.

4. On 12 April 2017, the Tenant submitted a further email to the Tribunal enclosing an email from the Landlord confirming that he was sending her a Carbon Monoxide alarm with instructions as to where to place it and that the electricians were to be checked on 21 April 2017. On 17 April 2017, a further email was submitted by the Tenant attaching a photograph showing the stagnant water gathered under the solum which she said had been taken on 20 February 2017.
5. Following service of the Notice of Referral, written representations were received from both the Tenant, on 19 April 2017, and the Landlord, on 24 April 2017. The Landlord confirmed that he wished to attend the Hearing. The Tenant confirmed that she did not wish to do so.
6. On 25 April 2017, the Tribunal issued a Notice of Direction dated 24 April 2017 to the Parties in terms of Schedule 2, Paragraphs 2(1) and 3(1)(b) of the Act and Regulation 20 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the Regulations") requiring the Landlord to produce to the Tribunal by 8 May 2017 an up to date and satisfactory Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT); documentation or other information detailing the works carried out to the property on the Landlord's behalf around 20th February 2017 and the extent to which the issues raised by Scottish water on 3 February 2017 had been addressed; and documentation or other information evidencing the Landlord's title to the property as it appeared to the Tribunal from the Register of Sasines that the last infert proprietor of the property was a Gordon John Lyth who had acquired title in 1968. The Landlord fully complied with this Notice of Direction by submitting all requested documentation to the Tribunal on 5 May 2017. His response included a further copy of his written representations which had been received by the Tribunal on 24 April 2017 but had not been seen by the Tribunal Members until after their Notice of Direction had been issued.
7. The Tenant thereafter submitted further emails to the Tribunal, namely:- an email dated 7 May 2017 attaching emails between herself and the Landlord regarding termination of the tenancy and the Landlord's intention to have the property valued, with a view to selling it; an email dated 9 May 2017 containing further written representations from the Tenant in response to the Landlord's written representations which she had only been sent the day before; and an email dated 9 May attaching an email from the Landlord enclosing Tenant Information Pack. On 11 May 2017, the Tenant submitted three further emails, containing further representations, copy emails and a further photograph, all from the Tenant's joint tenant and partner, Donald MacDonald. These last emails were forwarded to the Landlord by email by the Tribunal on 15 May 2015 (the morning of the Inspection and Hearing).
8. The Tribunal inspected the property on the morning of 15 May 2017. The Tenant, Mr Donald MacDonald (the Tenant's joint tenant and partner), the Landlord and his wife, Mrs Baillie (supporter) were present during the

inspection. At the end of the Inspection, further written representations from the Tenant were passed to the Tribunal. It was explained to the Tenant and Mr Donald MacDonald that the Tribunal would hear oral submissions from the Parties on the late representations and would make a decision at the outset of the Hearing as to whether the late representations would be allowed in or not. The Tenant and Mr Donald MacDonald said that they were not intending to attend the Hearing. They were reminded of the location and time of the Hearing should they change their minds and decide to attend.

9. Following the inspection of the property, the Tribunal held a Hearing at Killearn Village Hall, 5 Balfour Road, Killearn, G63 9NL. The Landlord was present and gave evidence. His wife, Mrs Baillie, was present as supporter and to take notes but took no part in the proceedings.

The Inspection

10. At the time of the inspection, it was raining. The Tribunal noted that the house is a detached villa constructed around the 1970s and later extended. The property was accessed from Napier Street at the front and the Tribunal carried out their inspection on the ground floor of the property, the solum viewed from a hatch in an understair cupboard and the ground at the rear and front of the property. The inspection revealed the following:-

- (a) The drainage below the kitchen sink appeared to be in good order and repair, with no signs of leakage or blockage and no smell was detected.
- (b) The solum viewed from an open hatch in an understair cupboard in the hall appeared to be in order, with no sign of water in the solum and no smell was detected.
- (c) In the rear garden, the cover at the head of the drain and the manhole cover on the line of the drain appeared to be in order, with no visible leakage or signs of blockage at either.
- (d) The cover on the line of the drain in the driveway at the front of the property appeared to be in order, with no visible leakage or sign of blockage.

A schedule of photographs taken during the inspection is attached to this Statement of Decision and executed as relative hereto.

The Hearing

11. At the Hearing, the Tribunal had before it a copy of the Application, all supporting documentation and all written representations and other documentation received from the Tenant and Landlord in advance of the Hearing, all as referred to above.

12. As a preliminary issue, the Tribunal had noted that the Tenant had submitted late representations within the period of 5 working days prior to

the date of the Hearing. In particular, the Tenant had submitted emails attaching other documents on 9 and 11 May 2017 and further written representations on the morning of the Hearing. The representations of 9 May 2017 had been forwarded to the Landlord and the Tribunal was prepared to consent to these representations being allowed in as they were primarily responding to the Landlord's written representations which had only been forwarded to the Tenant by the Tribunal on 8 May 2017 (already within 5 working days of the Hearing). However, the Tenant's further written representations of 11 May 2017 and those submitted on the morning of the Hearing had not been seen by the Landlord in advance of the Hearing. The Landlord was shown these representations and asked by the Tribunal if he had any objection to them being allowed in. The Landlord did object and referred to the number of procedural items lodged by the Tenant in the run up to the Hearing. The Tribunal considered the issue, and, having regard to Regulation 49 of the Regulations, decided not to consent to these further written representations being allowed in. Accordingly, the additional representations and documents submitted on 11 May 2017 and on the morning of the Hearing were not permitted in and were thereafter disregarded by the Tribunal. This decision was conveyed to the Landlord.

13. The Landlord proceeded to give evidence and answered questions from the Tribunal. The Tribunal noted at the outset that the Landlord had produced evidence of his title to the property in compliance with the Notice of Direction issued by the Tribunal. In response to the Landlord's enquiry as to why some of the earlier correspondence issued by the Tribunal had made reference to both himself and a Gordon John Lyth as Landlord, the Tribunal explained that, from the Register of Sasines Search obtained by the Tribunal from Registers of Scotland, it had appeared that Gordon John Lyth was the last infeft proprietor of the property. It was also noted by the Tribunal that the Landlord had produced an up to date and satisfactory Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) dated 21 April 2017, again in accordance with the Notice of Direction. The Landlord clarified that the Tenant had not initially raised the issue of the lack of a Carbon Monoxide alarm. Rather, the Landlord himself had realised this and rectified the matter immediately by sending an alarm to the Tenant. The Tribunal noted that a number of other matters concerning the tenancy had been raised by the Tenant in her correspondence with the Tribunal but that these did not involve the Repairing Standard and were therefore outwith the remit of the Tribunal.

14. As regards the plumbing and sewage issues raised by the Tenant in her Application, it had been noted by the Tribunal from their inspection of the property earlier that these issues appeared to have been resolved. The Tenant had conceded in her written representations that works had been carried out subsequent to her Application and that she was not currently experiencing the problems she had intimated in her Application. However, it was clear from her written representations that she was not satisfied that the repairs issues had properly been resolved and was of

the view that these were repeat problems which may well occur again. Nor was the Tenant satisfied concerning the length of time (a month) it had taken for the Landlord to arrange for the stagnant water to be removed from the solum, which, in her view, had subjected her family to unacceptable health risks and smell. The Tribunal noted that the photograph that the Tenant had submitted, showing the stagnant water gathered under the solum, had been taken on 20 February 2017 before the water was removed later that day. The Tribunal noted that the Landlord had submitted lengthy written representations detailing his position in relation to these repairs issues and including his various emails and text messages, communicating with the Tenant, Scottish Water, his contractor from Aqua Clear and Stirling Council Environmental Health department over the relevant period. The Landlord referred to his written submissions. He felt that he had responded appropriately to the repairs issues reported to him by the Tenant, given the facts available to him at the time. He conceded that, in hindsight, he should probably have involved Scottish Water in October 2016 when the sewage first spilled out of the drain in the driveway at the front of the property. He confirmed that neither he, nor the Tenant, had contacted Scottish Water at that time. He had instead instructed his contractor from Aqua Clear to attend and clear the blockage which was causing the sewage to leak out of the drain. He believed that this had resolved the problem until it arose again in January 2017. As regards the Tenant's concerns that the flooding of the solum was a repeat problem, the Landlord explained that, over 2 years previously, in 2014, the solum had indeed flooded. However, he explained that the cause of this was different. On the previous occasion, there had been a split in a pipe connected with the downstairs toilet and this had caused sewage to leak into the solum. The Landlord advised that this was put right at that time by the plumber who had installed the toilet and that there had been no further problems from this source.

15. As regards the delay in having the water pumped out of the solum between 20 January 2017, when the Tenant reported this to him and 20 February 2017, the Landlord submitted that this was not down to him. He explained that he had responded appropriately to the repairs issues reported to him, as per his written representations. This included communicating with Scottish Water but they did not rectify the problem with the sewer until 8 February 2017. There was uncertainty as to whether the sewer backing up outside was causing pressure in the system and contributing to the water leaking into the solum from under the kitchen sink or whether these matters coincidentally occurred around the same time. He further explained that there was a problem identifying the origin of the leak into the solum and that there was contradictory information following an inspection by Environmental Health on 8 February 2017 as to whether or not the leak into the solum had been fixed by the Landlord's contractor sealing a pipe situated under the floor of the kitchen. Environmental Health were in the solum that day and issued no formal order requiring an immediate clean-up of the water. Nor did they make such an order on a further visit to the property on 16 February 2017. The Landlord referred to the fact that Environmental

Health are the public health experts and that if they had felt that there was a major health issue, they would have made a formal order on one of those occasions. The Landlord stated that the mere occurrence of an event is not a breach of a landlord's duty in connection with the Repairing Standard and that he considered that he had acted reasonably as a landlord in resolving matters. As regards the Tenant's stated concern that the same problems might recur, the Landlord stated that all repairs had been done and the solum was clear and dry, with no evidence of further leaks. Scottish Water had rectified the problem with the sewer outside the property. Accordingly, in his view, there should be no recurrence, although this could not be guaranteed.

16. As regards the Tenant's assertion that Scottish Water had found three defects in pipework using CCTV whereas the Landlord's contractor had only sealed one pipe defect, the Tribunal noted the terms of the Report from Scottish Water dated 3 February 2017 (which referred to more than one defect in pipes) and asked the Landlord about this. The Landlord referred to the dye testing carried out at the kitchen sink and the CCTV investigations carried out by his contractor, in conjunction with Environmental Health, and that only one defect could be identified. He referred again to the subsequent Environmental Health inspection in the solum on 16 February 2017, after his contractor had sealed the join between the kitchen sink waste pipe and the pipe below and that no further leakage into the solum was detected. The Landlord also mentioned that his contractor had twice during the relevant period removed a build-up of grease from the kitchen trap, suggesting improper use by his tenants. The Landlord also stated that Scottish Water had refused to produce their CCTV footage but that, if they were referring in their Report to defects in pipes below the manhole in the rear garden, these pipes are deeper than the solum and that any leakage from them would not therefore enter the solum. The Landlord thought that the Tribunal would have lifted this manhole cover during the inspection. When asked by the Tribunal about the possibility of those pipes being backed up from the sewer blockage, the Landlord conceded that the backed-up water inside the pipe might then be higher than the solum. The Landlord then summarised by submitting that Scottish Water had accepted responsibility for and rectified the blocked sewer and that this excepted him from the landlord's repairing duty in respect of the sewage leaking out of the front drain in terms of Section 16(4) of the Act [landlord lacking necessary rights of access or otherwise]. If the blocked sewer had also caused the waste water to flood into the solum, then he was also excepted from the repairing duty in that respect in terms of Section 16(4). If, however, these two issues were unrelated, the Landlord submitted he was still excepted from the repairing duty in respect of the water leaking into the solum as that may have been caused by the tenants putting grease down the sink, in terms of Section 16(1)(b) of the Act [improper use of the property]. In any event, if he was subject to the repairing duty in Section 14 in respect of these matters, the Landlord's position was that he had met this duty.

17. The final comment that the Landlord wished to add was that he intended to claim from the Tribunal the fee charged by his solicitor for providing him with the copy title deeds to comply with the Notice of Direction. This was on the basis that the title search information originally obtained by the Tribunal had been wrong or incomplete. The Tribunal advised the Landlord that the Tribunal is entitled to make such investigations in terms of the Act and Regulations but that this was a matter for him and would not be dealt with by the Tribunal today.

Findings in Fact

18. The property is a detached villa located at 12 Napier Road, Killearn, G63 9PA.

19. The Tenant has occupied the property since around 2013 with her joint tenant and partner and their three young children. She currently occupies the property under a Tenancy Agreement dated 15 November 2016 which is for a term of 6 months. The Landlord had served a Notice to Quit in Form AT6, purporting to bring the contractual tenancy to an end on 14 May 2017. The Tenant disputed that a Short Assured Tenancy had been validly created and therefore claimed that the Form AT6 was invalid.

20. The Landlord holds title to the property as an Executor of the late Marion Baillie whose title to the property was recorded in the General Register of Sasines for the County of Stirling on 29 December 1971.

21. The Tenant notified the Landlord of the repair issue concerning sewage leaking out of a drain in the driveway at the front of the property on 3 January 2017 and of the repair issue concerning stagnant water gathering in the solum of the property and the associated bad smell on 20 January 2017. There had been a previous instance of the solum flooding in 2014 and a previous instance of the sewage problem in October 2016, both of which were dealt with by the Landlord at those times.

22. The Landlord resides in England. On being notified of both issues in January 2017, the Landlord engaged regularly with the Tenant, his contractor, Scottish Water and Stirling Council Environmental Health department by email and text messages, copies of which he had produced in his written representations to the Tribunal. The Landlord sought to get Scottish Water to rectify the blockage in the sewer external to the Property as quickly as possible. Scottish Water did so but not until 8 February 2017. This timescale was outwith the Landlord's control.

23. The Landlord instructed his contractor to investigate and carry out the necessary repairs to rectify the issue of the water leaking into the solum of the property. The Landlord cooperated with Environmental Health and instructed his contractor also to do so. The source of the leak was identified as being the join between the kitchen sink waste pipe and another pipe under the kitchen floor. The Landlord's contractor sealed the join in the pipes and this stopped the leak into the solum to the

satisfaction of Environmental Health. The Landlord's contractor thereafter arranged to remove the water which had gathered in the solum. This work was completed on 20 February 2017. The Landlord kept the Tenant informed throughout. Although there was a period of one month between the solum issue being notified to the Landlord by the Tenant and the stagnant water being removed from the solum, this was not an unreasonable timescale in the circumstances. The Tenant and her family were subjected to an unpleasant smell and inconvenience during that period. However, the Landlord coordinated matters between the various parties throughout the period. Nor was it a straightforward matter to identify the cause of the water leaking into the solum and whether this was connected to the blocked sewer.

24. The sewage and plumbing repairs issues detailed by the Tenant in her Application to the Tribunal have been rectified. No outstanding repairs issues were identified on inspection of the property by the Tribunal.
25. The issue of the lack of Electrical Safety certification added subsequently by the Tenant to her Application to the Tribunal has been resolved by the Landlord producing to the Tribunal an Electrical Installation Condition report (EICR) and Portable Appliance Test (PAT) dated 21 April 2017.
26. The Landlord had supplied a Carbon Monoxide Alarm to the Tenant, with instructions as to where it should be located, on 12 April 2017 and a Tenant Information Pack to the Tenant on 9 May 2017.
27. Other matters raised by the Tenant in her written representations concerning other aspects of the tenancy are outwith the remit of the Tribunal.

Reason for decision

28. The Tribunal considered the repairs issues set out in the Application and noted at the Inspection and Hearing.
29. The sewage and plumbing issues have been rectified and up to date and satisfactory Electrical Safety certification produced. In the Tribunal's view, there is no breach of the Repairing Standard in that 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 in terms of Section 13(1)(b) of the Act and the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order in terms of Section 13(1)(c) of the Act.
30. In the Tribunal's view, the Landlord completed the works required in order to meet the Repairing Standard within a reasonable time of being notified of the repairs issues by the Tenant and therefore had not failed to

comply with the duty to repair and maintain in terms of Section 14(1)(b) of the Act.

Decision

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

32. The decision of the Tribunal was unanimous .

Right of 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.

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.

N Weir

Signed.... Date: 1 June 2017
Nicola Weir, Legal Member of the Tribunal

Housing and Property Chamber
First-tier Tribunal for Scotland



Glasgow, 1 June 2017

This is the Schedule of Photographs referred to in the foregoing Statement of Decision
of even date herewith. N Weir Legal Member of the Tribunal

Property Address

12 Napier Road Killearn G63 9PA

Case Reference

FTS HPC RP 17 0048

Schedule of Photographs taken during the
inspection by tribunal members on 15May
2017



1. Front Elevation



2. Drainage below Kitchen Sink



3. Drainage Below Kitchen Sink



4. Solum viewed from hatch in floor in Understair Cupboard



5. Solum looking from hatch towards rear



6. Cover at head of drain in rear garden



7. Manhole cover on line of drain in rear garden



8. Cover on line of drain in driveway at front of property

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