

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 (1)

Chamber Ref: PRHP/RP/16/0369

**Property at Cleuchhead Farm, Bonchester Bridge, Hawick, TD9 9SX
("The Property")**

The Parties:-

**Miss Maria Termaat, residing at the Property
("the Tenant")**

and

**Mr Stuart Fisher, Bush of Ewes Farm, Ewes, Langholm, Dumfriesshire,
DG13 0HN
("the Landlord")**

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Mr Mike Links (Ordinary Member) (Surveyor)**

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 concerned, determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 23 November 2016, the Tenant applied to the 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 ("the Act").
2. The application by the Tenant stated that she considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (i) The Property is wind and watertight and in all other respects reasonably fit for human habitation in terms of section 13(1)(a) of the Act; and
 - (ii) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order in terms of section 13(1)(c) of Act;
3. Specifically, the Tenant stated on her application form that from June 2016 the water supply to the Property had been unusable due to E. coli and lead poisoning. An inspection by the Environment Services Department of Scottish Borders Council had revealed the contamination complained of. As a result of that report, the Tenant had been advised not to use the tap water in the Property for cooking or washing. She was especially vulnerable to contamination given that she suffers from Multiple Sclerosis and non-Hodgkin's lymphoma.
 4. The Convenor of the Housing and Property Chamber decided to refer the application to the Tribunal on 1 December 2016 in terms of section 23(1) of the Act.
 5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 23 December 2016.
 6. An inspection and hearing was scheduled for 10am on 3 February 2017. At the request of the Tenant's representative, the hearing was postponed for reasons of ill-health on the part of the Tenant.
 7. In response to the Notice of Referral, the Landlord sent the Tribunal a report dated 10 January 2017 detailing the progress which had been made in providing a clean water supply to the Property. By letter dated 15 May 2017, the Landlord sent a hand-written letter to the Tribunal stating that the Property had successfully been connected the public mains supply following works being carried out and having obtained the consent of Scottish Borders Council and Scottish Water. The Tenant, however, did not withdraw her application. It was therefore necessary for the Tribunal to verify the information provided to it by the Landlord.
 8. A new date for an inspection and hearing was convened following further intimation to the parties dated 12 May 2017. The Tribunal inspected the Property at 10.00 am on 16 June 2017. The Tenant was present at the inspection and allowed entry to the Tribunal. She was unaware that the inspection was due to take place as she had not been informed by her representative. The Landlord was not present during the inspection.
 9. At the inspection, the Tenant explained that she required to attend a medical appointment and would therefore be unable to attend the hearing

convened for 11.30 later that morning. While at the Property, she confirmed that the Property had indeed been connected to the mains water supply, that the water supply was therefore safe and free from contamination. She also confirmed that there were no issues regarding the Property being wind and watertight. Apparently, that claim on the application form had been made by her representative in error.

10. Following the inspection of the Property, the Tribunal held a hearing at the Heart of Hawick, Tower Mill, Kirkstile, Hawick at 11.30am. Neither the Tenant nor the Landlord attended the hearing. The Tribunal considered the written representations submitted by the parties as outlined above, together with the evidence obtained from the Tenant at the inspection.

Summary of the issues

11. The issue to be determined is whether the Landlord has met his obligation to comply with Repairing Standard in respect of the Property as required by section 14(1) of the Act. The particular aspects of this issue to be determined by the Tribunal are in relation to the water supply to the Property as detailed above.

Findings of fact

12. The Tribunal finds the following facts to be established: -

- The Tenant took residency of the Property on 13 January 2012 following missive of let signed on 24 December 2011. The tenancy was a short assured tenancy which has continued by operation of tacit relocation until the present date.
- The Tenant has notified the Landlord via her representative of the repair issues affecting the Property.
- The water supply to the Property had previously been via a private well in common with 16 other dwellings in the vicinity.
- In June 2016, Scottish Borders Council Environmental Services carried out testing of samples of the water supply and found it to be contaminated with E. coli bacteria and unsafe levels of lead.
- As a result of that test, the Tenant was advised not to use the water for cooking or for washing.
- The Tenant has spent almost a year without a safe, clean mains water supply to the Property.
- Further tests were carried out to the water supply at the instance of the Landlord and, following discussions with Scottish Water and Scottish Borders Council, the Property was successfully connected to the mains water supply in May 2017.

The inspection of the Property revealed the following:

- The Property is a substantial two storey, stone built farmhouse cottage which is over 100 years old.
- The mains water flowed normally through the kitchen taps.

- There are no issues regarding the Property being wind or watertight.

13. Given the hidden nature of the defect which had affected the Property, and given that it had been resolved by the time of the inspection, no schedule of photographs has been produced.

Decision

14. In light of the findings above, the Tribunal accordingly determined that, as at the date of the inspection, the Landlord no longer failed to comply with the duty imposed by Section 14 (1)(b) of the Act in respect of section 13(1)(c) of the Act. No decision was required in respect of section 13(1)(a) of the Act given that a complaint under that section had been introduced in error. No further action on the part of the Landlord is therefore required.

15. The decision of the Tribunal was unanimous.

Right of Appeal

16. A landlord or tenant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

17. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

M O'Carroll

Signed

Date: 19 June 2017

Legal Member and Chair