

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Statement of Reasons: Housing (Scotland) Act 2006 Section 24**

**Chamber Reference: FTS/HPC/RP/23/2044**

**Re: Property at 8 Woodside Terrace, Cardenden, Lochgelly KY5 0LZ (“the Property”)**

**The Parties:**

**Kathleen Reilly, 1 Inchdairnie Cottage, Inchdairnie, Fife KY50UL (“the Landlord”)**

**Pawel Kwiatowski, 8 Woodside Terrace, Cardenden, Lochgelly KY5 0LZ (“the Tenant”)**

### **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 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**

**Greig Adams Ordinary Member (surveyor)**

## Background

1. By application dated 22<sup>nd</sup> June 2023, 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 the landlord had failed to comply with the duty to ensure that the house meets the repairing standard. The application contained a letter from the tenant to the landlord with proof of postage dated 5<sup>th</sup> April 2023. The letter specified that the said failure was established as the following repairs were outstanding:
  - *Hall: vinyl damaged; worn out carpet [risk of slipping]*
  - *Kitchen: Gap between wall and ceiling; Worn out furniture [impossible to clean properly]; Gas cooker doesn't work properly and worn out [impossible to clean properly]; Unacceptable gaps between cooker and furniture [impossible to clean properly]*
  - *Bedroom 1: No insulation cable for main light; Worn out carpet [risk of slipping]*
  - *Bedroom 2: Worn out carpet [risk of slipping]*
  - *Bathroom: Damp and mould*
  - *External: Fascia to front and rear to be replaced; Fence is broken between numbers 8 and 6; The protective wall between numbers 8 and 6 is damaged; Impossible to use driveway safely [risk of wall collapse]; Unacceptable level of Lichen and Moss on the roof; Holes in the rear gutter; Sharp rusted poles stick out from the ground in the rear garden; Broken slabs in the driveway*
  - *Attic: pest control needed [wasp nest]*
  - *Other: Pest control needed [mice, carpet beetles]; No Energy Performance Certificate; No Legionella Risk Assessment*
3. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 28<sup>th</sup> August 2023.
4. The applicant previously submitted an application under reference number FTS/HPC/RP/22/2485 to the Tribunal in respect of the same property 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 previous application was submitted on 26<sup>th</sup> July 2022. A Repairing Standard Enforcement Order was issued on 9<sup>th</sup> February 2023 in respect of that application. Due to the landlord's failure to carry out the repairs specified a rent relief order was issued on 22<sup>nd</sup> June 2023. The First-tier Tribunal wrote to Police Scotland on 25<sup>th</sup> August 2023 requesting that they consider prosecuting the landlord due to her failure to comply with the RSEO.

5. The Tribunal noted that there was an overlap a number of items in the present application and the subject matter of the previous application. The Ordinary Member had also dealt with the earlier application and identified items which had been adjudicated under that application.

### **Inspection and hearing**

5. The Tribunal inspected the house on the morning of 2<sup>nd</sup> October 2023. A hearing took place at the Vine Conference Centre, Dunfermline at 11am on 2<sup>nd</sup> October 2023. The tenant was in attendance at the inspection and hearing. The tenant had requested a Polish interpreter who was in attendance at both the inspection and the hearing. The landlord did not attend the inspection but was in attendance at the hearing with her supporter Isobel Hill.
8. Photographs were taken during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
9. The property is a two-storey semi-detached house. The accommodation comprises on the ground floor: entrance hall, living room, kitchen to rear with access to the rear garden. The first floor comprises: bathroom, two bedrooms and upper landing. There are private front, side and rear gardens. There is a gas fired central heating system. To the rear of the property there is an area of decking with steps leading down to the rear garden.
10. At the inspection and hearing the Tribunal considered each of the items specified in the application.
12. Vinyl floor covering in the hall: At the inspection 2 small holes were noted in the vinyl flooring near the front door. The tenant advised that in his view there was big rip in the vinyl which had caused a trip hazard. This was clearly not the case. The Tribunal enquired regarding pets that the tenant had in the property. The

tenant confirmed that he had a presa canario mastiff dog. This is a large breed of dog. The tenant gave evidence that his dog was not responsible for any damage to the carpets or vinyl in the property. He stated that the dog was disabled and does not walk much as a result. The tenant advised that he also had a giant continental rabbit in the property. He stated that this animal was always caged and therefore could not have caused any damage to the floorings throughout the property.

13. Carpet in the hall and bedrooms 1 and 2: During the inspection the carpets in the bedroom were observed to be frayed at the edges where they met the skirting boards and threshold bars with minor ruffling noted. The carpets in the bedrooms had threshold bars fitted at the doorways. The carpet on the stairs was observed to be loose in places. The tenant stated at the hearing that his girlfriend had slipped on the carpet on the stairs. He gave evidence that as a result she attended hospital and was treated for a soft tissue injury to her rib, ankle and knee. She had now made a full recovery. The landlord advised that she had not been aware of this incident. She stated that the carpet had been fitted six months before the tenancy commenced in January 2020.
14. Kitchen: Gap between wall and ceiling: During the inspection it was observed that there was a gap between the wall and the ceiling. The tenant stated that this caused a problem with bugs able to go through the gap. The Tribunal noted that this issue had been adjudicated in the previous application reference number FTS/HPC/RP/22/2485. In paragraph (h), page 5 of the statement of decision dated 9<sup>th</sup> February 2023 it was noted that there was a cosmetic issue with the join at the top of the kitchen wall and ceiling which gave a ragged appearance. The issue was determined to be purely cosmetic and *it was determined that the repairing standard was not engaged.*
15. Kitchen cabinets/furniture: During the inspection the fitted kitchen was observed to be in a reasonable condition and in proper working order. Some staining was noted to the back of a base cupboard. At the hearing the tenant stated that he had difficulty opening and closing the cupboard doors and that they did not operate smoothly. The landlord stated that a new kitchen had been installed in the property just before the tenant moved into the property.
16. Gas cooker and gaps between cooker and furniture: The cooker was in a used condition. It was not possible to ascertain during the inspection whether

it was in proper working order. There was a small gap between the cooker and the worktop on either side of the cooker. The tenant stated that the gap meant that food got trapped down the sides of the cooker which was causing problems with mice. He stated that the oven was so covered in grime that it produced a smell when he used it. He stated that the temperature controls in the oven were defective. The landlord stated that the cooker had not been changed at the time when the new kitchen was installed.

17. Bedroom 1: No insulation cable for main light: The Tribunal observed that the outer sheath on the pendant light cable had slipped down leaving the insulated 2 cores exposed. The landlord stated that she had instructed an electrician to carry out work at the house in January 2023. The landlord stated that the electrician contacted the landlord after they had been to the property and said that they would not go back to the property due to the aggression of the tenant's dog and the attitude of the tenant. The tenant did not accept that he had behaved in a way that would cause the electrician to refuse to come back to the property.
18. Bathroom: Damp and mould: During the inspection a small patch of mould growth was observed in the corner of the bathroom beside the bath and shower and also to various sealant junctions. The tenant stated that the problem with mould had arisen after the landlord had cleaned out the gutters and fixed the toilet. The landlord advised that she had not been aware of the issue.
19. External: Fascia to front and rear: The Tribunal noted that this issue had been looked at during the course of the previous application and was determined in the decision dated 9<sup>th</sup> February 2023. The Tribunal did not consider it necessary to add to the decision previously taken in relation to this complaint.
20. Fence is broken between numbers 8 and 6: The Tribunal observed that the fence was metal and several of the posts were corroded, including a post that had snapped through. At the hearing the landlord stated that the issue had been caused by the tenant's dog jumping against the fence. The tenant stated that as his dog is heavy he had not taught him to jump as he wanted him to avoid jumping as this could cause physical issues. He disputed that any part of the damage to the fence was due to his dog.

21. The boundary wall between numbers 8 and 6 is damaged/Driveway: The Tribunal observed that the property sits above the neighbouring property. There is a retaining wall bounding the property which divides the front garden of the properties and which retains the higher ground level. The retaining wall is constructed in a single width solid brick except for the front section which has been formed in a half thickness concrete block. The half block thickness concrete blockwork wall was noted to be out of plumb/vertical alignment with a uniform rake (lean) from top to bottom arising from horizontal pressure from the higher ground being exerted against the wall. The extent of the deviation appeared to fall outside the one third rule for wall stability, i.e., the centre of gravity of the wall appeared to sit outside of the middle third of the wall creating concern over the structural stability of these parts. The brick construction retaining wall was noted to be affected by individual bricks that had spalled i.e., the surface of various brick had delaminated and fallen from the wall as a result of moisture penetration and subsequent freeze and expansion of moisture within the pores of the bricks. The property has an area to the front with paving slabs. One of the paving slabs was cracked. The tenant stated at the hearing that his neighbour had told him not to use his water hose in the area as she was worried about the wall collapsing. He stated that there was a definite dip in the driveway. The landlord stated that the area at the front of the property was not designed to be used as a driveway as the pavements had not been lowered and drop kerbs were not installed. She stated that the tenant did not in any case own a car. The tenant confirmed that he did not own a car so would not have been using the driveway for that purpose.
22. Lichen and Moss on the roof: The Tribunal did observe moss growth to the roof. The tenant advised that the level of moss and lichen was problematic as it caused a mess.
23. Holes in the rear gutter: No holes were observed in the rear gutter during the inspection. It was noted that the condition of the gutters and downpipes had been covered in the previous application. They were the subject of an RSEO, following which the gutters had been cleaned.

24. Sharp rusted poles stick out from the ground in the rear garden: During the inspection it was observed that there were two rusted poles sticking out of the grass in the rear garden.
25. Wasps' nest in the attic: The tenant advised that three wasps' nests had been discovered in the attic to the property. He had since contacted the local authority, Fife Council. The pest control department had attended the property and resolved the issue with the wasps' nests. The tenant confirmed that this aspect of the application had therefore been resolved.
26. Infestation of mice and carpet beetles: During the inspection no evidence of infestation by mice or carpet beetles was observed. At the hearing the tenant advised that the number of mice in the property had increased after a tree had fallen into a river at the rear of the property. The tenant stated that neighbours had thrown food waste into the water, and this had caused an increase in the number of mice. The tenant thought that mice were getting into the property through a ventilation fan in the kitchen. The tenant had put down mouse traps in the property and reported that he caught a small number of mice periodically. The tenant stated that after works were carried out to the electrics in the house he noticed that he was affected by carpet beetle bites.
27. Other evidence at the hearing: Parties confirmed that prior to the tenant moving into the property he had resided at another property owned by the landlord. The landlord advised that no rent had been paid by the tenant since January 2023. The landlord had previously received rent direct from the DWP. She believed that the rent continued to be paid to the tenant direct but he was not paying any money to her. She stated that rent arrears at present are £3800. The landlord stated that she could not afford to carry out some repairs as the tenant was refusing to pay rent, The landlord stated that she intended to sell the property. She stated that she had instructed a plumber and an electrician to attend the property to carry out repairs. On both occasions the tenant's behaviour had prevented repairs from being carried out. The landlord believed that the tenant had raised the issue of repairs after a notice to quit was served on him in September 2022 and that prior to that date he had not had an issue with the condition of the

property. The tenant disputed that he had prevented any repairs from being carried out.

### **Summary of the issues**

25. 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)(c) and (d) of the Act.

### **Findings in fact: -**

26. The tribunal find the following facts to be established: -

- a. The tenant and the landlord entered into a tenancy agreement with a commencement date of 1<sup>st</sup> February 2020.
- b. The monthly rent payable in respect of the house is £475
- c. The tenant submitted a previous application to the Tribunal under reference FTS/HPC/RP/22/2485. This application was also in respect of an alleged breach of the repairing standard.
- d. The Tribunal in the previous application made a determination in respect of the gap between the kitchen wall and ceiling; the fascia on the exterior of the house; the gutters and downpipes and the condition of the electrical installations amongst other items.
- e. The fitted kitchen in the property was in a reasonable state of repair and in proper working order.
- f. The carpets in the two bedrooms and the vinyl on the hall floor were in a reasonable condition.
- g. The carpet on the stairs was loose and represented a tripping hazard.
- h. The insulation/outer sheath on the pendant light in one of the bedrooms had dropped slightly exposing the wiring.
- i. There was a small patch of mould in the corner of the bathroom and to sealants provided at junctions within the bathrooms.
- j. The fence to the side of the property separating the property from number 6 Woodside Terrace was corroded and in a poor state of repair.
- k. The wall between the properties at number 6 and 8 Woodside Terrace showed evidence of damage and deterioration in condition.

- l. There was moss present to the roof the property however, the roof was considered nonetheless to be in a reasonable state of repair and wind and watertight.
- m. There was no evidence of holes in the rear gutter
- n. Two rusty polls protruded from the rear garden and represented a hazard to those using the rear garden.
- o. There was one broken pavement slab in the area to the front of the house.
- p. The local authority had taken action since the application was submitted to resolve any issue with wasps' nests in the attic of the property.
- q. There was no evidence of a mouse infestation at the property
- r. There was no evidence of a carpet beetle infestation at the property

### **Reasons for the Decision**

- 27. The Tribunal determined the application having regard to their observations at the inspection, the bundle of papers which had been available to parties prior to the hearing which included written representations from the tenant and the evidence of parties at the hearing.
- 28. The Tribunal was only able to consider those items which formed part of the intimated application.
- 29. The Tribunal determined that it would not adjudicate on those items which had previously been determined under application reference FTS/HPC/RP/22/2485, namely the gap between the kitchen wall and ceiling and the external fascia. The Ordinary member had inspected the property and sat on the previous Tribunal. The Tribunal noted that there was an outstanding RSEO in respect of the previous application and a letter to the Crown Office regarding prosecution had been sent. The Tribunal would in any event have reached the same decision on those items as the previous Tribunal.
- 30. It was evident from the inspection that the carpet on the hall stairs was loose and a tripping hazard however, the Tribunal found the other floor coverings to be in reasonable state of repair.
- 31. The Tribunal accepted that the insulation/outer sheath on the pendant light had slipped down however it determined that this was a minor repair and did not

amount to a breach of the repairing standard. The Tribunal noted that the electrics in the property were all the subject of the previous application in terms of which the RSEO required an up to date Electrical Installations Condition Report to be prepared.

32. The Tribunal determined that the small areas of mould in the bathroom was caused by condensation and did not constitute a breach of the repairing standard.
33. The Tribunal was unable to test the gas cooker in the property but accepted that there may be an issue with its function due to its age and appearance.
34. The Tribunal considered that the gap between the cooker and the worktops was typical and did not constitute a repairs issue. The Tribunal did not consider that the staining to the rear of the cupboard in the kitchen constituted a breach of the repairing standard.
35. It was evident from the inspection that the fence was in a poor state of repair. The fence was metal and showed signs of corrosion. The Tribunal determined that this damage could not have been caused by the tenant's dog jumping against the fence.
36. The Tribunal was satisfied from the inspection that the rusty poles sticking out of the rear garden were a hazard to those using the area.
37. The Tribunal noted some damage to the wall bordering number 6 Woodside Terrace. The Tribunal was not able to establish from the inspection whether there was a risk of collapse and determined that further investigation was required. The Tribunal noted that the only other issue in relation to the area at the front of the property was a cracked paving slab which was not an issue that breached the repairing standard.
38. The Tribunal noted that there was moss and lichen on the roof and that small amounts of moss may occasionally fall from the roof due, for example to the activity of birds. However, the Tribunal determined that this did not breach the repairing standard and the roof was wind and watertight and in a reasonable condition.
39. The Tribunal found no evidence of holes in the rear gutter and no evidence of mouse or carpet beetle infestation. The tenant's evidence in relation to the

infestations was brief and unconvincing whilst a lack of supporting evidence was submitted to the tribunal.

40. The Tribunal was satisfied that the issue with wasps nesting in the attic was resolved due to intervention by the local authority.
41. The Tribunal did not consider that the lack of an Energy Performance Certificate and legionella risk assessment in the absence of any further submissions that there was an issue with the quality of the water or that there were issues arising from the energy performance which impacted on the tenant resulted in a breach of the repairing standard.
42. The landlord stated that she had not been aware of many of the issues raised in the application. In her view the tenant was seeking to inflate the level of disrepair as he was not happy that a notice to quit had been served. She had done little work to the property in recent months and relied on the issues which she stated had arisen when tradespeople attended the property as explanation for that.
43. The Tribunal found the evidence of both parties at the hearing lacked credibility as they were focused on discrediting each other. As a result the Tribunal relied heavily on their findings at the inspection in determining the application

## **Decision**

The Tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

## **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: 22nd September 2023



**8 Woodside Terrace, Cardenden,  
Lochgelly KY5 0LZ  
“the Property”)**

# **SCHEDULE OF PHOTOGRAPHS**

Chamber Reference: FTS/HPC/RP/23/2044



1 Front Elevation of Property.



2 Moss growth to roof.



3 Poor paintwork to fascia.



4 Vinyl to entrance corridor.



5 2 No. small punctures through entrance corridor vinyl flooring.



6 Example of frayed and loose carpet floor covering to staircase.



7 Gap where coving removed within Kitchen.



8 Gap where coving removed within Kitchen.



9 Staining to backpanels within kitchen units.



10 Staining to backpanels within kitchen units.



11 Staining to backpanels within kitchen units.



12 Gap between worktop and cooker.



13 Internals of oven.



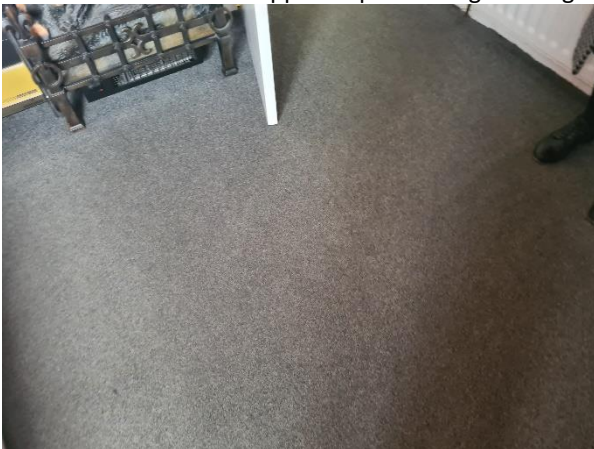
14 Gap between worktop and cooker.



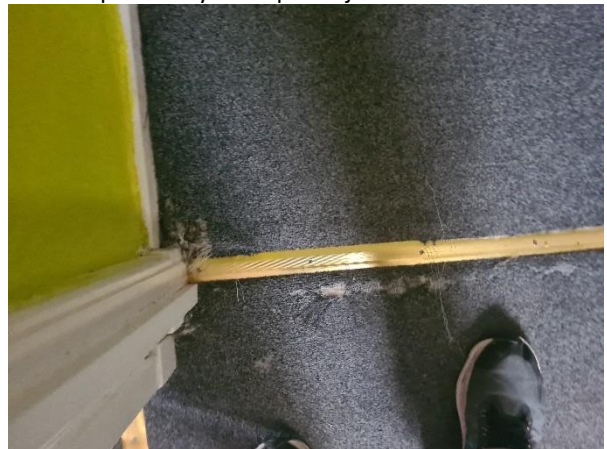
15 Outer cable sheath slipped at pendant light fitting.



16 Example of frayed carpet adjacent to threshold.



17 View of carpet floor covering within Bedroom 1.



18 Example of frayed carpet adjacent to threshold.



19 View of carpet floor covering within Bedroom 2.



20 View of minor ruffling to carpet.



21 Mould growth to rear corner at ceiling of Bathroom.



22 Moisture meter readings.



23 Moisture meter readings.



24 Psychometric data.



25 Condensation recorded at rear corner of ceiling in area of mould growth.



26 Condensation recorded at rear corner of ceiling in area of mould growth.



27 Minor mould growth at sealant.



28 Minor mould growth at sealant.



29 Minor mould growth at sealant.



30 Wasp nest within attic.



31 Area of complaint to rear gutter.



32 Corroded metal upright to boundary fence.



33 Movement evident and block wall out of plumb at boundary.



34 Movement evident and block wall out of plumb at boundary.



35 Spalling bricks to brick retaining wall.



36 Cracked paving slab.



37 Paving slabs.



38 Paving slabs.



39 Gate.



40 Decoration to fascia.



41 Metal posts to rear garden area.