

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



**Decision with Statement of Reasons 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/23/1250**

**Re: Property at 1 King Street, Lossiemouth, Morayshire, IV31 6QA ("the Property")**

**Parties:**

**Laing Leasing Ltd, 6 Market Square, Oldmeldrum, Aberdeenshire, AB51 0AA  
("the Landlord"); and**

**Angela Brannigan, 1 King Street, Lossiemouth, Morayshire, IV31 6QA ("the Tenant")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the Act.**

**Background**

- 1** By application to the Tribunal, the Tenant sought an order against the Landlord on the basis that they had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2** The application stated that the Tenant considered the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard and in particular that the Landlord had failed to ensure:-
  - (i)** The house is wind and watertight and in all other respects reasonably fit for human habitation;

- (ii) 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;
  - (iii) The installations in the house 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;
  - (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
  - (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;
  - (vi) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and
  - (vii) The house met the tolerable standard.
- 3 In summary the Tenant stated that the property suffered from damp and mould, the heating system was faulty, the window in the kitchen did not open, a water tank had been installed that was extremely old and not in line with current regulations, the extractor fan in the bathroom required replaced, plaster work in the bathroom required to be fixed, the oven was broken, the kitchen extractor fan above the cooker was broken, the blind fittings were broken, the Landlord had not provided any up to date energy performance certificate and electrical installation condition report and the property did not comply with the statutory requirements for detection of fire. There were also other minor repairs required in the property.
- 4 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the parties under Schedule 2, Paragraph 1 of the Act. An inspection was scheduled for the 20 September 2023 with a hearing set for later that day.

### **The Inspection**

- 5 The Tribunal inspected the property at 10.30am on 20<sup>th</sup> September 2023. The tenant was in attendance and permitted access. Mr Neil Duffus was present on behalf of the Landlord. It was dry and sunny with showery weather in the preceding 24 hours.
- 6 The dwelling is the ground floor flat within a two-storey detached building which was constructed upwards of 100 years ago but appears to have been substantially modified and refurbished around 30 years ago. The building

contains two flats in total. The property is in a mixed residential and commercial area within Llossiemouth town centre.

- 7 The main outer walls are of solid stone, part blockwork construction, harled externally. The roof is pitched and slated. Space heating is provided by a mixture of storage heaters, wall mounted and floor standing electric heaters. The windows are timber framed and double glazed and appear to date from the time of refurbishment.
- 8 The accommodation comprises on the ground floor: hallway, lounge, bedroom 1, bedroom 2, bathroom with WC and kitchen. There is a ground floor entrance vestibule which is shared with the upper flat.
- 9 The inspection followed the "list of faults" contained within the tenant's submission of 5<sup>th</sup> September, 2023.
- 10 The whole property was inspected in relation to damp and mould. Mould growths were evident to the walls and ceilings of most areas within the flat, particularly the north-facing rooms (lounge and bedrooms) but also in the bathroom. The mould was particularly prevalent in the bedrooms, around the corners of the rooms. Slight mould was noted to the timber linings of the kitchen ceiling. Moisture levels were taken using a Protimeter Surveymaster moisture meter. Slightly above average readings (17-22%, Amber) were found to the internal surfaces throughout the lounge, bedrooms and bathroom. Slightly higher readings (23-30%, Red) were found to some corner areas in these rooms. High readings (70-100%, Red) were found to the lower corners of the window ingoos of the lounge and bedrooms and to the soffit of the lounge window. There was a corresponding visible stain to the lounge soffit, indicating previous water ingress. Further red readings (99%) were found to the linings behind the WC. There was a dehumidifier, belonging to the tenant, in the bathroom.
- 11 Parts of the electrical installation were inspected. There were some slightly loose sockets and fittings in the kitchen. The washing machine and tumble dryer do not have accessible isolation switches. The main consumer unit had an RCD and miniature circuit breakers and had a test label dated 13<sup>th</sup> June, 2023. There is a further fuse box for the storage heaters; there were wires connected to it, but the unit was switched off. The cover over the fuses was missing. No test documentation was provided.
- 12 There were storage heaters in the hall and lounge. These were not operational at the time of the inspection. There was a floor standing oil filled heater in the lounge, supplied by the landlord. The wall mounted heaters within the bedrooms had been removed and replaced with floor standing oil filled radiators provided by the landlord. There was a wall mounted fan heater in the bathroom which was operational during the inspection. There was no fixed heating in the kitchen.
- 13 The cupboard light was confirmed by the tenant now to be remedied.

- 14 The extractor fan within the bathroom was found to be operational. It incorporates a run-on timer.
- 15 The window in the kitchen was found to operate as designed. This window does not have a trickle vent. The remaining windows were inspected in connection with the mould and dampness issue. All of the windows could be opened and had provision for partial, secure closure, to allow for ventilation, i.e. a second stage on the latches. However, most of the windows had corroded and stiff mechanisms and consequently, had loose handles. Most windows had trickle vents.
- 16 The kitchen cooker hood was found to be operational. It was not clear if this vented externally or was of the recirculation type.
- 17 The wall linings within the bathroom were damaged next to the access hatch to the left of the WC and there was impact damage to the plasterboard above the WC. There was blistering of the plasterboard to the right of the WC.
- 18 The oven was reported by the tenant to be remedied.
- 19 There were smoke alarms within the lounge and hallway and a heat detector in the kitchen. These were tested and found to be operational and interconnected.
- 20 There were no carbon burning appliances within the property. Therefore, no carbon monoxide alarm is required.
- 21 The replacement hot water cylinder was inspected. There were no obvious defects.
- 22 The blind tracks and some blinds were present. There were mould growths to the blinds.
- 23 There were several items on the list that were not specified within the application, i.e. wardrobe door handle, WC seat, kitchen firefighting equipment, bathroom lighting, shower riser rail and guttering. However, during the Tribunal's overall external inspection, it was apparent that there were leaks from some of the joints, with wet areas to the north wall and vegetation growth to the north gutter.
- 24 Photographs were taken during the inspection and are included in the attached schedule.

### **The Hearing**

- 25 The hearing took place following the inspection in Elgin Sheriff Court. The Landlord was represented by Mr Neil Duffus. The Tenant was also present. For the avoidance of doubt the following is not a verbatim account of the

hearing, but a summary of the submissions from the parties in terms of those matters relevant to the Tribunal's determination of the application.

- 26 The Tribunal then took the parties through the findings of the inspection and asked for their submissions on each.

*Electrical installation condition report/energy performance certificate*

- 27 The Tribunal asked Mr Duffus whether the electrical installation condition report was available. Mr Duffus advised that this had been undertaken in May of this year, but due to IT issues the electrician had been unable to produce the report. Mr Duffus would undertake to submit this. Mr Duffus further advised that the energy performance certificate did not require to be updated due to the age of the building.
- 28 The Tenant advised that the storage heaters and electrical sockets had been sparking. The Tribunal noted that there had been a slight movement in some of the sockets, however they all appeared to be intact with no other defects identified. The Tenant further noted that there were no isolator switches for the appliances. She would have expected this to be picked up in the electrical installation condition report. The Tenant was also unsure if the lighting in the bathroom was compliant with regulations. They were recessed lights and she understood the lighting in the bathroom was supposed to be covered. Mr Duffus advised that the lights were all up to the required standard. He again made reference to the electrical installation condition report which would have picked up any items that did not meet the required standard so that these could be addressed.

*Damp and mould/heating system*

- 29 The Tenant advised that she had been reporting the issues with damp and mould throughout the tenancy, since she moved in back in 2013. There was a significant smell of damp. The landlord at the time had explained that this was due to the property having laid empty for around six months before she moved in. The Tenant had continued to report the damp and mould throughout the tenancy. Timber specialists had been out to inspect the problem but it still persisted. The Landlord had purchased the property and took over the lease in 2015.
- 30 The Tenant confirmed that the storage heaters had been disconnected in May 2023 following an incident whereby sparks were evident from one of the heaters. The Tenant had therefore ceased use of the heaters as a result. The Landlord had provided standalone oil filled heaters as a replacement. The Tenant had been told by the Landlord to keep the trickle vents on the windows constantly which she had done. She would also open the windows to try and address the damp and mould. The Tenant had bought a dehumidifier which was running constantly from when she got up in the morning to around 11pm. Around 10 to 13 litres of water were removed on a daily basis.

- 31 The Tenant advised that she was quite surprised that the Landlord had provided the standalone heaters. She had queried whether this was a temporary or permanent solution. She did not think the heaters were effective. They could be a secondary system, but were insufficient for the size of the property. There were also impractical, as nothing could be placed within a metre of the heaters, and they were costly to run.
- 32 Mr Duffus advised that he had instructed a report from a damp specialist and had been advised that 90% of the damp and mould was caused by condensation. He could provide a copy of the report to the Tribunal if required. The Tenant had failed to adequately ventilate the property by keeping windows open. He did not reside in the area, but he had contacts who had confirmed that the windows were always closed when they travelled past the property. The trickle vents were stuck shut.
- 33 Mr Duffus confirmed that he had disconnected the storage heaters after sparks were evident. He had sought advice on what his legal obligations were and had been advised that the provision of three standalone oil heaters would be sufficient to heat the property, taking into account its size. This is what had been provided to the Tenant. The original storage heaters were inefficient and the oil filled heaters were much more effective. Mr Duffus advised that he was not aware if there was any insulation in the walls of the property.

*Kitchen window/oven/extractor fan*

- 34 The Tenant advised that the window in the kitchen window would not open for years however this had been repaired in May 2023. The windows were all in a similar condition. They did open and close but the mechanisms were quite stiff and the Tenant required to use WD40 on a regular basis. They also needed painted. Mr Duffus advised that the windows were in adequate condition. He conceded that they were old windows, but they did not require replaced at this time.
- 35 The Tenant confirmed that both the oven and the extractor fan in the kitchen was now working. The latter had previously been very intermittent. Mr Duffus confirmed that the extractor fan was working. If there were any issues these would have been picked up by the electrician when he undertook the electrical installation condition report in May 2023.

*Water heater*

- 36 The Tenant advised that she was unaware of how the water heater worked. There was an immersion switch in the kitchen but no boost function. The Landlord had fitted the water heater, and it appeared to date back to 1981.
- 37 Mr Duffus confirmed that the water heater had been removed from a property the Landlord owned in Inverurie and fitted in the Tenant's property. It was a

like for like replacement. The Tenant denied this was the case, explaining that the new heater looked substantially different to the old one.

*Bathroom extractor fan/plasterwork*

- 38 The Tenant advised that the fan in the bathroom had worked when she moved in. However the Landlord had replaced it with one that was less efficient. A new fan had been installed in May 2023. It was better but not fully effective. If the Tenant was not using the dehumidifier in the bathroom water would be streaming down the walls.
- 39 The Tenant confirmed that there was an indentation in the plasterboard behind the toilet in the bathroom. It looked as if someone had fallen against the wall. It had happened on a day a plumber was out to the property to carry out work. He was replacing a toilet seat and the mark behind the toilet was consistent with an object of that shape and size. The plaster was cracked and crumbling.
- 40 Mr Duffus had nothing to add regarding the issues in the bathroom. The extractor fan worked effectively.
- 41 Although not part of the application, the Tribunal noted that the shower had been fitted in such a way that it was difficult to adjust the height. The Tenant confirmed this. The shower had been replaced by the Landlord and the pole was now too close to the shower unit. Mr Duffus confirmed that the shower was set high so that it could be used by anyone.

*Smoke/heat detectors*

- 42 The Tribunal confirmed it had tested the smoke and heat detectors. They appeared to be operational and interlinked. The parties confirmed agreement with this.

*Blind fittings*

- 43 The Tenant advised that she had purchased new blinds the year before as she had wanted to replace the current ones which had some mould on them. However the tracks for the blinds were broken and she was unable to install the new ones. The Landlord had refused to discuss this with her. He told her to throw out the current blinds if she wanted new ones. The tracks had a square clip at the top which had broken due to being brittle. The Landlord required to install new fittings and clips with a tracking system. The new blinds did not come with tracking. It was upsetting knowing that she had purchased new blinds but was unable to install them. There was a lack of privacy as a result. The Tenant confirmed that the blinds were in the property when she moved in.
- 44 Mr Duffus confirmed that he was not prepared to travel to the property to change the blind mechanisms. The Tenant should have bought a complete

blind to enable her to hang them. It was not the Landlord's responsibility to change the tracks and blind fittings. The Tenant disputed this, noting that the blinds were part of the fixtures and fittings under the lease.

### *Gutters*

- 45 The Tribunal discussed its observations regarding the gutters. It was noted that the gutters at the back of the property were blocked. The Tenant confirmed that she had reported issues in the past regarding the gutters at the front of the property, and someone had inspected it however had found no issues. Mr Duffus confirmed that he could arrange for someone to take a look at the gutters.

### **Additional representations**

- 46 Following the hearing the Tenant submitted additional documentation for consideration by the Tribunal. Having reviewed said documentation the Tribunal noted that it related to historical issues and was therefore not relevant to the Tribunal's determination of the application. For the avoidance of doubt the Tribunal must determine the application based on the present condition of the property.

### **47 Findings in Fact**

The Tribunal found the following facts to be established:-

- 48 The Tenant took up occupation of the property in 2013. In 2015 the Landlord purchased the property and entered into a tenancy agreement with the Tenant dated 24<sup>th</sup> and 25<sup>th</sup> October 2015. In terms of Clause 19 of the said tenancy agreement the Landlord undertook to maintain any fixtures and fittings provided by the Landlord under the tenancy in a reasonable state of repair and in proper working order.
- 49 There is currently no up to date electrical installation condition report for the property provided to the Tribunal or Tenant. It cannot therefore be said that the electrical installations are in a reasonable state of repair and in proper working order.
- 50 The storage heaters were disconnected by the Landlord in May 2023. Wall mounted panel heaters in the bedrooms have also been removed. The storage heaters and wall mounted panel heaters were present in the property when the Tenant commenced occupation. The Landlord has provided the Tenant with three standalone oil filled heaters as a permanent replacement.
- 51 The property suffers from damp and mould. There are a number of possible causes for this, some of which cannot be fully established from the Tribunal's inspection nor the representations from the parties. However, the previous issues with the kitchen window, bathroom fan, removal or serviceability of heaters and current dampness in the lounge and bedroom window ingoos and faulty rainwater goods will have contributed to the problem.



- 52 The water heater cylinder was previously replaced by the Landlord. It is in proper working order.
- 53 Although the windows can all now be opened and closed, the mechanisms are stiff in operation and the handles are worn and loose. The windows are not in a reasonable state of repair.
- 54 The kitchen cooker hood is in proper working order.
- 55 The oven in the kitchen has been replaced and is in proper working order.
- 56 The extractor fan in the bathroom is in proper working order.
- 57 The plasterwork in the bathroom behind the toilet is not in a reasonable state of repair.
- 58 Neither the blinds, nor the blind tracks, are in a reasonable state of repair. The blinds and blind tracks were provided by the former Landlord at the commencement of the tenancy and are part of the fixtures and fittings under the said tenancy agreement.
- 59 The property has satisfactory provision for detecting fires. There are smoke and heat alarms that are interlinked. A carbon monoxide detector is not required.

### **Reasons for decision**

- 60 The Tribunal determined the application having regard to the terms of the application, the written representations and the findings of the Tribunal's inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 61 Based on its findings in fact the Tribunal was satisfied that there were a number of issues that had been addressed by the Landlord. However there were outstanding matters that remained a cause for concern.
- 62 Of most serious concern to the Tribunal were the allegations of damp and mould. It was clear from the Tribunal's inspection that this was present in the property based on the damp readings and evidence of staining and marking. The tolerable standard forms part of the Repairing Standard and is therefore a relevant consideration for the Tribunal. Section 86(b) and (ca) of the Housing (Scotland) Act 1987 provides that a property must be substantially free from damp. The findings of the inspection did not satisfy the Tribunal that the property meets this statutory test. The Tenant had indicated that the previous energy performance rating for the property, as per the certificate she was

provided with, was G which indicated to the Tribunal that there could be underlying matters that required to be addressed. Whilst the gutters had not been mentioned in the application, the Tribunal was of the view based on the inspection that these could be a source of water ingress with the resultant cause being damp and mould.

- 63 The Tribunal did not accept that the severe damp and mould in the property was solely a result of the Tenant's failure to adequately ventilate the property. The Landlord had confirmed that a damp specialist had produced a report but as at the time of writing the Tribunal has yet to have sight of this.
- 64 Whilst the Tribunal noted that the Landlord had sought advice on the replacement heating system, the Tribunal did not agree that the provision of standalone oil filled heaters to replace the existing storage heaters was sufficient to comply with the Landlord's obligations, both contractually and in terms of the Repairing Standard. The property had been let with storage heating and wall panel heaters. If that heating system failed it was incumbent on the Landlord to repair or replace it on a like for like basis. Based on its professional opinion the Tribunal was not satisfied that three oil filled heaters were sufficient to heat a property of this size.
- 65 The Landlord had indicated that an electrical installation condition report had been undertaken in May 2023, however as at the time of writing the Tribunal has yet to have sight of this. The Tribunal cannot therefore be satisfied that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order. The Tribunal found it difficult to accept the Landlord's explanation for why the report had yet to be provided to the Tenant. It did not appear credible that the Landlord's electrician would still be having IT issues some four months after the report was undertaken that would prevent it from being issued. The Tribunal will therefore require sight of the report in order to consider whether or not the electrical installations comply with the Repairing Standard.
- 66 The Tribunal accepted that the blinds had been provided at the start of the tenancy along with the tracking. They therefore formed part of the fixtures and fittings which the Landlord was responsible for maintaining and it was clear from the Tribunal's inspection that they were not presently in a reasonable state of repair. On that basis the Tribunal concluded that this amounted to a breach of the Repairing Standard.
- 67 Finally with regard to the bathroom, the Tribunal, having had sight of the plasterwork behind the toilet, was not satisfied that this was in a reasonable state of repair and therefore compliant with the Repairing Standard.
- 68 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:

- (i) In respect of 13(1)(a), the house is not wind and watertight and in all other respects reasonably fit for human habitation;
- (ii) In respect of section 13(1)(b), the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;
- (iii) In respect of section 13(1)(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order;
- (iv) In respect of section 13(1)(d) the fixtures and fittings provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order; and
- (v) In respect of section 13(1)(h), the house does not meet the tolerable standard.

69 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal "must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard". The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is eight weeks.

70 The decision of the Tribunal was unanimous.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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 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 determined.

R O'Hare

3 November 2023

**Legal Member/Chair**

**Date**