

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/23/1552

47 Carron Place, Irvine, North Ayrshire, KA12 9NF, registered in the land Register of Scotland under Title Number AYR45180 (“the Property”)

The Parties:-

Ms Kelly Clarke, 47 Carron Place, Irvine, North Ayrshire, KA12 9NF (“the Tenant” and “the Applicant”)

Mr Christopher Boyce and Mr Alex Bruce, 12 Hillcrest Drive, Stevenston, KA20 3AW (“the Landlord” and “the Respondent”)

Tribunal Members:

**M McAllister, Solicitor (Legal Member) and D Wooley, Chartered
Surveyor (Ordinary Member) (“the tribunal”)**

Decision

The tribunal determined to make a repairing standard order (RSEO) in terms of Section 24 (2) of the Housing (Scotland) Act 2006 (“the 2006 Act.”)

Background

1. By application dated 16 June 2023, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act. The application is in terms of Section 22 (1) of that Act.
2. The Applicant and Respondent are parties to a short assured tenancy agreement in respect of the Property.
3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight

and in all other respects reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that 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 and that any fixtures, fittings and appliances provided under the tenancy are in a reasonable state of repair and in proper working order.

4. Specifically, the application states that the Property does not meet the repairing standard in a number of aspects:

4.1 Floorboards throughout the Property are unstable and impact on pipes underfloor. In some instances this causes doors to jam in a closed position.

4.2 Stairs are unsteady and bend when used.

4.3 The front, back and patio doors are not wind and watertight and cannot be locked securely.

4.4 External and internal doors do not align with doorframes and there are issues opening and closing them.

4.5 The loft is not wind and watertight and water leaks from the loft into the bedroom when it is raining.

4.6 There are bird nests in the loft and at least one bird nest in one of the bedrooms.

4.7 The bath/shower drain leaks through the living room ceiling.

4.8 The toilet is not attached to the wall and frequently fails to flush.

4.9 The sink is not attached to the wall correctly and the bath taps are loose.

4.10 Kitchen walls are crumbling.

4.11 The kitchen radiator has shifted and is not correctly attached to the wall.

4.12 The kitchen cupboards and counters are not secured to the walls or floor and move when used.

4.13 The kitchen sink is not fully attached to the wall.

4.14 There is water damage and mould growth throughout the Property which affects all four bedrooms, the kitchen, bathroom and living room.

4.15 The garden has an area that has dipped in height in an area where it is believed that there are pipes supplying the Property and neighbouring properties.

4.16 The roots of a tree in the garden are lifting slabs and causing a garden shed to lift on one side.

4.17 The garden fence is in disrepair and is not a secure boundary.

Inspection

5. The tribunal inspected the Property on 13 October. The Tenant was present. Mr Christopher Boyce was present.
6. A copy of a schedule of photographs prepared by the Ordinary Member is attached to this Decision.

Findings on Inspection

7. The property comprises a two storey end terrace/corner dwelling originally built by and on behalf of the former Irvine Development Corporation and now in private ownership. The outer walls are of shuttered concrete “no fines” construction and the roof is shallow pitched, clad with concrete tiles. The accommodation comprises living room, four bedrooms, kitchen and bathroom.
8. Weather conditions at the time of inspection were dry, relatively cold and windy.
9. The flooring was randomly weight tested throughout the property. It is level and well supported throughout with no significant run or structural distress. Some differential movement between the laminate floor covering and the concealed floor boards is evident although consistent with this style of covering. At the upper floor landing there is a small area of flooring where if, heavily pressed, contact with a concealed pipe is audible.
10. Access to the upper floor is taken via a timber stair. Below the stair is a storage cupboard and the underside of the stair treads is enclosed by plasterboard lining following the pitch of the stair. Each tread was weight tested all are adequately supported. Evidence of several “creaking steps” was noted particularly towards the base of the stairs although this is not considered to be structurally significant.
11. The front single glazed timber door is functional although displays evidence of general wear commensurate with its age and design. There is no door check at the base of the opening and as a result, a visible gap below the door of approximately 15mm is evident when in the closed position. A temporary draught excluder has been fitted as a protective measure.
12. The rear door is of PVC double glazed design. When in the closed position, the door is wind and watertight. If pressure is applied to the base of the external face a “gap” will appear confirming that the base element of the locking mechanism is not engaging with the door frame. An “external wire” passes through the door opening over the base of the door frame and may be a contributory factor.
13. There are double glazed “French doors” leading from the living room to the rear garden. They were tested and established to be functional, adequately supported and capable of locking and unlocking when in the closed position. The doors appear wind and watertight.
14. The French doors originally opened on to an area of timber decking a section of which has now been removed. This has created a “drop” of approximately 400mm between the base of the door and external ground level exposing a formerly concealed timber support (see photograph 10 on attached schedule). This is not within the original application and therefore forms no part of the

Tribunal's decision. It does however represent a "health and safety issue" requiring attention.

15. Within the loft space there is evidence of significant damp staining and previous water ingress specifically affecting the area immediately below the valley gutter. While still providing adequate support, the timber beam immediately below the gutter displays evidence of localised rot. Externally the roof is generally in a condition commensurate with its age and design.
16. No evidence of nesting birds was visible and no "birds' nests" were identified in any of the bedrooms.
17. There is no evidence of any recent or historic damp affecting the living room ceiling nor of any leak around the bath/shower.
18. The WC and cistern are adequately secured to each other and anchored to the floor by screws. There is no significant movement affecting this fitting and the wash hand basin is also adequately secured.
19. When pressure was applied to the hot tap at the bath slight movement was noted. It is however fully functional and does not move during normal use.
20. No evidence of "crumbling walls" was identified in the kitchen. There is a small area of what appears to be bossed plasterwork behind wallpaper immediately above the 13 amp power point in the utility area on the mutual wall with the kitchen. This is not considered significant.
21. The radiator in the kitchen is well supported and shows no evidence of any significant movement. The kitchen base units, work tops and sink unit are adequately supported, stable, functional and in fair condition.
22. There is no visible evidence of mould in the house and moisture readings taken within the property identified no evidence of damp likely to breach the repairing standard. Readings taken with a "Protimeter" varied between "green & amber" in the fourth bedroom which is currently housing a relatively large dog cage. They are not at a level considered significant in terms of the repairing standard.
23. Externally the garden is in places slightly uneven although there is no evidence of any significant "sinking". Cracking noted to the concrete floor-slab of the garden shed does not breach the repairing standard, its roof is well secured and the walls are reasonably plumb. Having regard to age and design the building is in fair condition.
24. Garden fencing is functional. The mutual fence with the adjoining property, 45 Carron Place, displays evidence of movement and is supported by temporary bracing. It is likely that, in the absence of additional support, more significant repairs may become necessary in the event of significant strong winds in the future.

The Hearing

25. A Hearing was held at Ardeer Community Centre at 12.30 pm on 13 October 2023. The Landlord was present. The Tenant was not in attendance and was represented by Mr Alister Meek.
26. The tribunal noted the written representations which had been submitted by the Landlord. The Landlord was advised that much of the representations dealt with matters which were not relevant to the application and covered issues with the tenancy which were separate from consideration of whether the Property met the repairing standard. It was noted that the Landlord's position was that some of the items complained of by the Tenant did not come under the repairing standard.
27. The Landlord stated that he had attempted to get access to carry out repairs but that this was refused by the Tenant. The tribunal noted from the inspection that the Tenant did not accept this. The tribunal came to no view on the matter.
28. The Ordinary Member summarised the findings from the inspection which had taken place earlier in the day and which are detailed in this Decision.
29. The matter of the application stating that at least one birds' nest was present in a bedroom was discussed. Mr Meek said that this was represented to him by the Tenant who said that a bedroom could not be used as a consequence. The tribunal noted that, at the inspection, the Tenant stated that this was never part of her application and that she was referring to nests in the loft.
30. The Landlord said that he had been prepared to carry out a repair to the back door to ensure that the locking mechanism worked properly but that access was denied to his contractor. Mr Boyce said that, although he was prepared to carry out a repair, he did not consider that this fell into his obligation to maintain the Property to the repairing standard because the door had been damaged. It was pointed out that the tribunal had no evidence of this and could come to no view.
31. The Landlord disputed that there was water ingress in the loft space.
32. The Landlord disputed that any issue found at inspection in relation to the front door formed part of the Tenant's application and should consequently not be included in any repairing standard order.

33. Findings in Fact

- 33.1 There is water ingress to the loft space at the area of the valley gutter.
- 33.2 The locking mechanism of the base of the rear door of the Property does not engage properly with the door frame.
- 33.3 The front door of the Property has a gap at the bottom and it is not wind and watertight.

Reasons

34. The tribunal had inspected the Property and the schedule of photographs is referred to. It relied on what it had found at the inspection.
35. The tribunal did not accept the Landlord's representations that its findings in relation to the front and rear door and the water ingress were not part of the repairing standard.

Disposal

36. The tribunal determined to make a repairing standard enforcement order in the following terms:

The landlord is required to

- 36.1 Investigate and repair water ingress at the valley gutter on the roof ensuring that it is in a wind and watertight condition. Any reports, quotations or receipts in respect of any repairs should, if available, be forwarded to the Tribunal for consideration.**
- 36.2 Investigate and repair the defective locking mechanism at the base of the rear door ensuring that it is in a reasonable state of repair and in proper working order.**
- 36.3 Investigate and complete all necessary repairs around the base of the timber front door, ensuring that it is in a reasonable state of repair and in a wind and in a watertight condition.**

The tribunal determined that the RSEO required to be complied with by 7 December 2023.

37. The tribunal discussed the need for access to the Property to carry out repairs and Mr Meek stated that he would be prepared to assist in this regard and liaise with the Tenant, if the Landlord contacted him to advise when access would be required.
38. The tribunal reminded the Landlord of the provisions of Section 28 A of the Act if he encountered difficulties in achieving access to carry out repairs.

Note

39. The tribunal noted that, although not part of the application, there were health and safety issues in relation to the access from the French Doors and that a responsible landlord would address the issue.

The tribunal determined that the RSEO required to be complied with by 7 December 2023.

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.

M J. McAllister,
Legal Member
17 October 2023