



**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 60(5) of the  
Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/23/3624**

**34C Hunter Street, Airdrie, ML6 6NR ('The Property')**

**Colin Arnold and April Arnold, formerly 34C Hunter Street, Airdrie, ML6  
6NR ("The former Tenants")**

**Jim Melvin, Coatbridge CAB ('The former Tenants' Representative')**

**Mr Stephen Black, 7 Bankhead Place, Airdrie, ML6 8JN ("The Landlord")**

**Tribunal Members – Jacqui Taylor (Legal Member) and Nick Allan  
(Ordinary Member)**

**1. Background**

1.1 The former Tenants leased the Property from the Landlord in terms of the Short Assured Tenancy between the parties.

1.2 The former Tenants applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

**2. Application**

The application by the former Tenants dated 10<sup>th</sup> October 2023 stated that they considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. They advised that the Property is not wind and watertight and in all other respects reasonably fit for habitation; the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order and the Property does not meet the tolerable standard.

In particular the application stated that the work that needed to be carried out was as follows:

2.1 The windows and main door are not wind and water tight.

2.2 The shower is broken.

2.3 There is extensive mould growth in the bathroom and one of the bedrooms.

2.4 The bath is not properly fitted.

2.5 The kitchen units are insecure.

2.6 The gas boiler is condemned.

### **3. Notice of Acceptance**

On 30<sup>th</sup> October 2023, Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that she had considered the application, comprising documents received on 12<sup>th</sup> October 2023, and she referred the application under Section 22 (1) of the Act to a Tribunal.

### **4. Minute of Continuation.**

The Tribunal received confirmation from the former Tenants' Representative that the tenancy of the house has been terminated, and acknowledged that under Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 ("The Act"), the former Tenants are to be treated as having withdrawn the application under Section 22(1) of the Act. The Tribunal then considered whether the application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act. The Tribunal, in terms of their decision dated 28<sup>th</sup> December 2023, determined that as the application detailed matters that are health and safety concerns they would continue to determine the application.

### **5. Inspection**

The Tribunal, attended at the Property at 10.00 am on 29<sup>th</sup> January 2024.

The Landlord was present at the inspection.

The former Tenants did not attend the inspection.

The Property is a top floor four bedroom flatted property in a block of six flats.

The Tribunal inspected the repairs detailed in the application and found as follows:

#### **5.1 The windows and main door are not wind and water tight.**

The windows were UPVC double glazed windows and there was no evidence of water ingress or draughts entering the windows and the window surrounds throughout the Property.

The front door of the Property is an internal wooden door and not directly exposed to wind or rain. The draught and weather proof strips were correctly in place and there was no evidence of draughts or water ingress.

#### **5.2 The shower is broken.**

The shower was working correctly at the inspection.

#### **5.3 There is extensive mould growth in the bathroom and one of the bedrooms.**

There were areas of black mould on the bathroom ceiling and wall. There were also areas of black mould on the rear bedroom ceiling and wall.

Mr Allan tested these areas with a damp meter and no surface damp readings were obtained. However, below surface readings of dampness were detected but they were not of a level to give concern to the Tribunal.

5.4 The bath is not properly fitted.

The bath unit was inspected and found to be secure.

5.5 The kitchen units are insecure.

The kitchen units were inspected and found to be secure.

5.6 The gas boiler is condemned.

The gas boiler was operating correctly at the inspection. The radiators and water were hot.

## **6.Hearing**

This case called for an inperson Hearing at Glasgow Tribunal Centre at 11.45 on 29<sup>th</sup> January 2024.

The Landlord attended.

The former Tenants did not attend.

In connection with the matters detailed in the application the Landlord advised as follows:

6. 1 The windows and main door are not wind and water tight.

Mr Black advised the Tribunal that all of the windows and the front door operated correctly. He explained that the window units had been sealed externally.

6.2 The shower is broken.

Mr Black confirmed that the shower operated correctly.

6.3 There is extensive mould growth in the bathroom and one of the bedrooms.

Mr Black advised that the black mould was condensation and had been caused by the former Tenants use of the Property.

6.4 The bath is not properly fitted.

Mr Black confirmed that the bath was secure.

6.5 The kitchen units are insecure.

Mr Black explained that the front section of one of the kitchen drawer units had been loose but he had repaired it.

6.6 The gas boiler is condemned.

Mr Black provide the Tribunal with a copy of the Gas Safety Certificate dated 10<sup>th</sup> May 2023. The Certificate confirmed that the gas installation was satisfactory and all items passed with the exception of the Flue Gas Analysis as the readings were too high. The Certificate stated the installation was 'At Risk' but that no CO was being emitted into the Property and the boiler may need replacement due to its considerable age. At the request of the Tribunal

the Landlord phoned Walker Gas Services and spoke to the office manager. The conversation was on speaker phone. She explained that the expression 'at Risk' means that the system is at risk of failure due to its age.

## **7. Decision**

7.1 The Tribunal determined:

- (a) The windows and main door of the Property are wind and water tight.
- (b) The shower, bath and kitchen units are in a reasonable state of repair and proper working order.
- (c) The black mould in the Property was, on the balance of probabilities, caused by condensation and was not a result of the Property not being water tight.
- (d) The boiler was operating correctly at the inspection and it is in a reasonable state of repair and proper working order. The Gas Safety Certificate is satisfactory even though it states that the boiler will require replacement.

7.2 The Tribunal accordingly determine that the Landlord has not failed to comply with the duties imposed by Sections 13(1)(a), 13(1)(d) and 13(1)(h) of the Act, in relation to the matters detailed in the application, for the reasons stated.

7.3 The decision of the Tribunal was unanimous.

**8. 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.

# J Taylor

Signed

Chairperson

Date: 31<sup>st</sup> January 2024