

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

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

**STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24(1) OF THE  
HOUSING (SCOTLAND) ACT 2006**

Case Reference FTS/HPC/RP/23/2841

Property at 18 West Benhar Road, Harthill, Shotts, ML7 5PB ("the Property"), being the subjects registered in the Land Register of Scotland under Title Number LAN82740.

The Parties: -

Mr Alban Barley-Jones, 18 West Benhar Road, Harthill, Shotts, ML7 5PB ("The Tenant"),

And

Mr Jesmond Sathiya Kumar and Mrs Shyla Sathiya Kumar, both residing at 4, Etna Court, Armadale, EH48 2TD ("The Landlords")

**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 Landlords have complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act, and has determined to make a Repairing Standard Enforcement Order ("RSEO").

The Tribunal comprised: -

Mr. Andrew Cowan, Legal Member, and  
Ms. Lori Charles, Ordinary Member (Surveyor)

**Background**

1. By application dated 19th August 2023 (hereinafter referred to as "the Application") the Tenant applied to the Tribunal for determination as to whether the Landlords had

failed to comply with the duties imposed by section 14(1)(b) of The Housing (Scotland) Act 2006.

2. The Application stated that the Tenant considered that the Landlords had failed to comply with the duty to ensure the House meets the Repairing Standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

13(1) a. The house is wind and watertight and in all other respects reasonably fit for human habitation.

13(1) b. 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.

13(1) c The installations in the house for the supply of water, gas and electricity and sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.

13(1) d. Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

13(1) h. The house does not meet the tolerable standard.

3. The Tenant has provided within the Application details as to why he considers that the Landlord has failed to meet the Repairing Standard. By letter, emailed to the Landlord on 26<sup>th</sup> July 2023, the Tenant had intimated to the Landlords a list of defects which the Tenant considered the Landlords required to repair in order to bring the Property up to the Repairing Standard.
4. A summary of the issues which were intimated to the Landlords, and which were referred to in the Application are:-
  - a. The house is not wind and watertight due to cavities and missing insulation, and issues with lead flashing on the roof of the Property. There is dampness and mould throughout the Property.

- b. The chimney at the property was not capped and was causing water ingress into the Property.
  - c. Solar Panels on the roof of the Property were poorly installed and did not operate correctly. When operated the system connected to the solar panels caused the electrical supply to the Property to short circuit.
  - d. The Landlord has not exhibited an Electrical Installation Completion Certificate ("EICR") in relation to the Property.
  - e. The driveway at the Property has collapsed in places.
5. The Application was accepted by the Chamber President on 12<sup>th</sup> October 2023 and was referred for this Tribunal's consideration.
6. By letter issued to all parties on 24<sup>th</sup> October 2023 the Tribunal advised they would inspect the property on 8<sup>th</sup> December 2023 at 10am. Parties were advised that a hearing would then be held at 11:45am on the same date at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. Parties were invited to complete a form indicating whether they wished to attend the hearing to make oral representations and/or submit written representations. The Landlord did not return the form to the Tribunal and did not lodge any written representations.

### **Property Inspection**

7. The Tribunal inspected the property on 8<sup>th</sup> December 2023. The Tenant was present at the time of the inspection. The Landlord did not attend the inspection. Photographs were taken during the inspection by the Tribunal. Copies of the photographs taken by the Tribunal, together with a summary of the Tribunal's general observations at the inspection, are attached as a schedule to this decision.

### **The Hearing**

8. A hearing in relation to the Application was held 8<sup>th</sup> December 2023 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT.

The Tenant attended the hearing and gave evidence to the Tribunal.

The Landlords did not attend the hearing and were not represented at the hearing.

The Tribunal noted that the letter dated 24<sup>th</sup> October 2023, which confirmed details of the Application, and which gave details of the date and time of the hearing had been served upon the Landlords by recorded delivery. In the circumstances the Tribunal were satisfied that it was appropriate to proceed with the hearing in the absence of the Landlords.

9. At the start of the hearing the Tribunal outlined their observations from their inspection of the property. These observations are as noted on the schedule to this decision.

10. The Tribunal heard evidence from the Tenant.

a. The Tenant confirmed that his tenancy of the Property had commenced on 12<sup>th</sup> November 2020. He explained that he had now moved out of the Property as he could no longer tolerate living in the Property due to the general condition of the Property, and in particular the dampness and mould in the Property. The Tenant confirmed that he had not, as at the date of the hearing, sought to terminate the Tenancy. He explained that the Landlords have raised an application for his eviction, but that no decision had, as yet, been made in relation to that application.

b. The Tenant explained to the Tribunal that he had been complaining to the Landlords about his concerns about the condition of the Property since shortly after he moved into the Property in 2020. He had lodged with the Tribunal copies of text messages and emails that he had exchanged with the Landlord's agents and their appointed contractors in connection with water ingress, dampness, and mould at the Property. He explained that, despite his efforts to require the Landlord to carry out necessary repairs, the Property remained subject to dampness and mould. He also believed that some of these problems at the Property were as a consequence of water ingress at the property due to a poorly maintained roof and gutters. He also believed that dampness at the Property was due to the previous removal of the original fireplace within the property. Following those works no air vent had been installed at the site of the original fireplace. There was no cap on the chimney head. Consequently, the Tenant believed these issues contributed to the significant dampness in the Property.

c. The Tenant explained the extractor fan in the bathroom of the Property did not

work. He had reported this to the Landlords but no action had been taken by the Landlords to repair or replace that extractor fan.

- d. The Tenant explained the extractor fan in the kitchen of the Property had no carbon filter fitted, and, consequently, the fan was not in proper working order. The Tenant had reported this to the Landlords but not action had been taken by the Landlords to repair or replace that extractor fan.
- e. The Tenant explained at the time he entered the Tenancy it was confirmed to him, by the Landlords agents, that the solar panels at the property were in working order. He expected to benefit from reduced utility costs due to the benefits of the solar panel system. The Tenant confirmed in his evidence to the Tribunal that the solar panel system had never been in proper working order from the date of his entry to the property. He explained that if he attempted to operate that system it would short circuit the other electrics in the property. The Tenant has not been given a recent EICR in respect of the Property.
- f. The Tenant confirmed in his evidence that parts of the Monoblock paving, which form part of the driveway at the Property, have collapsed. Therefore, he does not believe the driveway is safe to use and is not a reasonable state of repair.
- g. The Tenant confirmed that the Garage at the Property is not wind and watertight. The electrics in the Garage do not operate. The roof of the garage is not in a reasonable state of repair as it has large gaps which are open to the elements and needs a general overhaul and upgrade.

### **Findings in Fact**

- 11. Having viewed the Property and having considered the available evidence which had been made available, the Tribunal make the following findings in fact.
  - a) The Landlords and the Tenant are parties to a tenancy agreement in respect of the Property at 18 West Benhar Road, Harthill, Shotts.
  - b) The Tenant occupied the Property from 12<sup>th</sup> November 2020. He moved from the

Property at the end of October 2023.

- c) The Tenancy has not, as at the date hereof, been terminated.
- d) There are significant and high levels of dampness throughout the Property, together with significant levels of mould and damp spotting. There are significant draughts into the Property around the external doors of the Property. The Property is not wind and watertight and in all other respects reasonably fit for human habitation.
- e) The roof and gutters at the property are not in a reasonable state of repair or in proper working order. The Garage, being part of the Property let to the Tenant, is not in a reasonable state of repair. The driveway of the Property is not in a reasonable state of repair. 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.
- f) The extractor fan in the bathroom of the Property is not in proper working order. The extractor fan in the kitchen of the Property is not in proper working order. The Solar panel system at the Property is not in a reasonable state of repair or in proper working order. The electrical installations in the Property are not in a reasonable state of repair or in proper working order.
- g) The Tenant has notified the Landlord of the requirement to carry out necessary repairs to the Property. The Landlords have failed to carry out such repairs as are necessary to rectify the issues identified by the Tenant.
- h) The Property does not currently meet the Repairing Standard and in particular the Landlord has failed to comply with subsections (a), (b), (c), (d) of Section 13(1) of the Act.
- i) The Property does not meet the Tolerable standard as required by subsections (h), of Section 13(1) of the Act and section 86 of the Housing (Scotland) Act 1987. In particular, the Property is not substantially free from rising or penetrating damp.

## **Reasons for Decision**

12. The Tribunal considered the Tenant to be entirely credible in his evidence. His statements regarding the condition of the property were in accordance with the Tribunal's own observations from their inspection of the Property.

13. Having inspected the Property, and having considered the evidence by provided by the Tenant, the Tribunal were satisfied that the Property does not meet the Repairing Standard.

### **Decision**

14. The Tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
15. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act. The Tribunal determined to require the Landlord to: -
- a. Instruct a suitably qualified specialist to
    - i. prepare a report on the condition of the Property (including the roof and guttering) detailing the cause and full extent of water ingress and damp throughout the Property and
    - ii. prepare a proposed specification of works outlining any necessary works required to ensure that the Property is wind and watertight, and that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair.
  - b. Carry out such works as are necessary to draught proof the external doors at the Property so that they are in a reasonable state of repair and in proper working order.
  - c. Submit the report and specification required at Paragraph 15a to the Tribunal for further consideration and, thereafter, carry out all works which are then further determined by the Tribunal as are necessary to ensure that the property meets the Repairing Standard.
  - d. Repair the garage at the Property so that is in a reasonable state of repair and in proper working order.
  - e. Repair the driveway at the Property so that is in a reasonable state of repair and in proper working order.

- f. Repair or replace the extractor fans in the bathroom and kitchen of the Property so that they in a reasonable state of repair and in proper working order.
  - g. Repair the Solar Panel system at the Property so that it is in a reasonable state of repair and in proper working order.
  - h. Instruct a SELECT, NICEIC or NAPIT registered electrician to carry out a full inspection of the electrical wiring, installations and apparatus throughout the Property and to repair or renew any parts which are identified in said report to be of Category C1 or C2 to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a new EICR to the Tribunal confirming that the installations, apparatus and wiring meet current regulatory standards,
16. The Tribunal order that the works specified in the RSEO must be carried out and completed by 31<sup>st</sup> January 2024.
17. The decision of the Tribunal is unanimous.

#### **Right of Appeal**

18. A Landlord, tenant or third-party applicant 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.

#### **Right of Appeal**

19. 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.

A Cowan

Chairperson  
Andrew Cowan

Date 12<sup>th</sup> December 2023



# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### Pre-inspection summary and schedule of photographs



**Property** *18 West Benhar Rd, Harthill, Shotts ML7 5PB*

**Ref No:** *PROPERTY REF NO FTS/HPC/RP/23/2841*

**Tribunal members** *Andrew Cowan Legal Member and Lori Charles Ordinary member (Surveyor)*

### **Purpose of inspection**

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

### **Access**

The above Tribunal Members attended the property at 10am on 08/12/2023. Also in attendance was the tenant Mr Alban Bartley-Jones

*Lori Charles*  
Ordinary (Surveyor) Member  
First-Tier Tribunal for Scotland  
08/12/23

## Appendix 1

Schedule of photographs taken during the inspection on 08/12/23

### **Inspection notes**

*Access was given by the tenant Mr Bartley-Jones the house was empty and electricity and central heating was switched off at the time of inspection.*

*The inspection took place after a recent period of cold weather and it was noted some windows were left open to allow for ventilation this was clarified by Mr Barkley-Jones.*

*The Tribunal were unable to determine the cause of the significant high moisture readings noted throughout the property.*

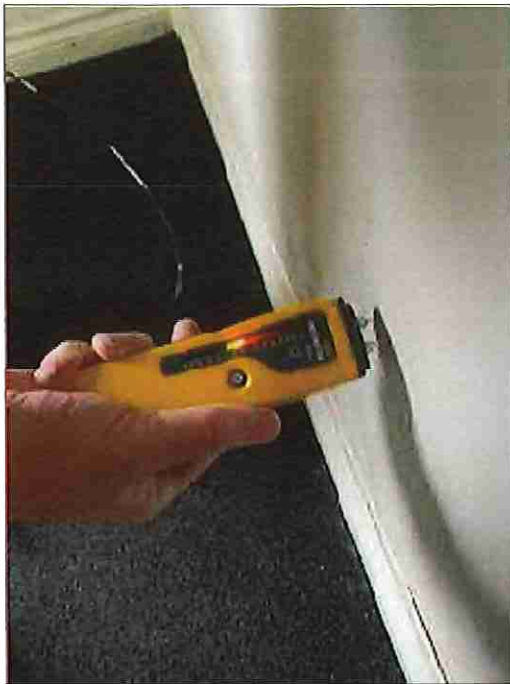
*The property has a chimney but no chimney pot was visible however all fire places within the property have been blocked over and no ventilation was noted.*

### **Ground floor**

#### **Hall**



## Lounge



### 1<sup>st</sup> Floor bedrooms

High moisture readings noted within all bedrooms





## Bathroom



Unable to test mechanical extract fan as no electricity in house. No evidence of mechanical ventilation vented externally. High moisture readings noted.

## Garage



Felt roof has perished in part, daylight visible and water ingress noted.

### External roof



The chimney pot appears to have been removed, evidence of flashing damaged in sections and slipped, broken slates noted. Solar panels have been fitted but unable to confirm if Solar panels are connected and are operating as per manufacturers guidance.

### Driveway



Sections of the mono block drive has collapsed at the rear of the driveway.