



**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/RT/23/3108

Re: Property at 3 Balmain Cottages, Fettercairn, AB30 1DA (“the Property”)

Parties:

RR Brown and Sons, Balmain Farm, Fettercairn, Laurencekirk, AB30 1DA (“the Landlord”);

Faith Allan, 3 Balmain Cottages, Fettercairn, AB30 1DA (“the Tenant”); and

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, AB51 3WT
 (“the Third Party Applicant”)**

Tribunal Members:

R O'Hare (Legal Member) and A 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 Third Party Applicant 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 Third Party Applicant 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; and
 - (iv) The house met the tolerable standard.
- 3 In summary the Third Party Applicant stated that there was mould in the bedroom, boxroom, kitchen and bathroom, internal decoration had not been made good, there was damp in the living room and hall, the guttering needed repaired or replaced, the external wall pointing was loose and cracked, the oil boiler did not work correctly, the oil tank lid was missing, the hot water tap in the kitchen was too powerful and extremely hot, and there was a high level of moisture in the air.
- 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 9th January 2024 with a hearing set for later that day.

The Inspection

- 5 The Tribunal inspected the property at The Tribunal inspected the property at 10.00am on 9th January, 2024. The tenant was in attendance and permitted access. The representative for the third party applicant, Eilidh McKay, was present as were the landlords, Mr Robert Brown and Mr Jim Brown.
- 6 The property is situated in a rural location around one mile south of the village of Fettercairn. It was dry and bright during the inspection with wet weather over the preceding few days.
- 7 The property is a semi-detached, single storey cottage which was constructed around 1900 and extended upwards of 60 years ago. The walls are solid stone and the roof is pitched and slated. There is an oil fired system of central heating. The windows are PVC framed and a double glazed.
- 8 The accommodation comprises: entrance hallway, kitchen, bathroom with WC, lounge with two bedrooms off.
- 9 The inspection commenced within the lounge in relation to damp and mould. Moisture levels were tested using a Protimeter Surveymaster moisture meter.

High readings (99%) were observed to the lower areas (floor level up to around 150cm) of the wall linings of the chimney breast. Further high readings (99%) were detected in the lower areas of the wall linings to the left side of the door to the hallway.

- 10 Bedroom one was inspected in relation to damp and mould. A small damp stain was observed at the junction of the chimney breast and ceiling. When tested, high (99%) readings were observed in both the wall and ceiling linings adjacent to the stain.
- 11 Bedroom two was inspected in relation to damp and mould. Similar to bedroom 1, there was a small damp stain at the junction of the chimney breast and ceiling. When tested, high (99%) readings were observed in both the wall and ceiling linings adjacent to the stain. There was visible mould, peeling wallpaper and staining to the wall linings beneath the window. When these areas were tested moisture meter readings up to 99% were observed. Replacement linings adjacent to the damp area showed moderate dampness of around 60%. There was a "tide mark" to the wall between the two bedrooms. When tested, high (99%) moisture readings were observed. The tenant pointed out a dark area to the top corner of the room at the outside wall. However, this area could not be tested due to obstructions on account of the stored items present.
- 12 The hallway was inspected in relation to damp and mould. There was visible staining and peeling wallpaper to the lower section of the wall, corresponding with the damp area on the other side of the wall within the lounge. High (99%) readings were observed to this area.
- 13 The bathroom was inspected in relation to damp and mould. The tenant showed that mould and damp had affected a piece of floorstanding furniture constructed of MDF. A degree of mould growth was noted to the outer wall. Moisture meter readings were taken to this wall, adjacent to the WC and generally, normal (up to 20%) readings were observed. However, there was faint staining to the upper section of the wall above the window. When tested with a moisture meter, high (99%) readings were observed to this area.
- 14 The kitchen was then inspected in relation to damp and mould. Mould growth was observed to the wall to the side of the fridge freezer. Shading was apparent to sections of the outer wall above the radiator and above the fridge freezer. When tested with a moisture meter, high (99%) readings were observed to these areas.
- 15 The function of the kitchen tap was tested. The control arm of the tap was stiff in operation such that the base of the tap had to be held to allow the arm to be moved without the body rotating in its fixings. The water was found to be very hot or cold dependent on the position of the control arm. Control was difficult due to the stiff operation. The water flow was fast and tended to splash out of the sink. It was found that the flow control insert was missing from the end of the tap.

- 16 Externally, the boiler was inspected. The boiler was found to operate when the kitchen tap was opened, indicating that it is a Combi boiler which provides heating on demand. The position of the thermostat for the water outlet had been altered by Mr Brown immediately prior to the tribunal members inspection, so the position of the control during the previous testing of the tap could not be ascertained.
- 17 A new connection area placement lid had been fitted to the oil storage tank.
- 18 The exterior of the property was inspected from ground level. It was noted that there were cracks to the chimney rendering with some sections missing.
- 19 The rainwater goods had some open joints and some sections did not appear to be laid to fall appropriately. There were splash marks and some staining to the outer walls indicating previous or ongoing leakage.
- 20 The roof void over the kitchen was inspected. There was no obvious evidence of any water ingress through the roof covering. A limited "head and shoulders" inspection was possible of the main roof void over the lounge. The masonry to the chimney stack appeared damp with watermarks, efflorescence and some crumbling mortar.
- 21 Photographs were taken during the inspection and are included in the attached schedule.

The Hearing

- 22 The hearing took place following the inspection in Aberdeen. Mr Robert Brown and Mr Jim Brown were present. Ms McKay appeared on behalf of the Third Party Applicant. The Tenant was not 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.
- 23 The Tribunal then took the parties through the findings of the inspection and asked for their submissions on each item.

Damp and mould

- 24 Ms McKay indicated in relation to this, and the other items, that she believed everything had been covered in the application. She did note that she was awaiting a damp specialist report from the Landlord. She had received one report, but understood a second had been prepared. Mr Robert Brown confirmed that a second report had been instructed but the work had not yet been carried out. The damp specialist had mentioned damp in the hall but not in the living room. The damp in the hall was a mystery as one side was damp but the other was dry. The issues were mainly a result of the Tenant not using the heating effectively as well as drying clothes inside, keeping windows

closed and using candles, all of which resulted in condensation. Ms McKay advised that the Tenant had told her the property was too hot, which indicated she had been using the heating, albeit she had been struggling with the energy costs.

Boiler

- 25 Mr Robert Brown advised that the boiler was serviced every year and was found to be operating correctly. He confirmed that he would submit the relevant certification to the Tribunal for consideration. Ms McKay advised that the Tenant believed the boiler used too much oil and she did not believe it was working properly. Mr Brown stated that the boiler worked as it should. It was expensive to run but that was the reality of the price of oil. He referred again to the report which confirmed it was working correctly. The Tribunal queried whether the oil line to the tank had been tested. Mr Brown advised that it had not, but it would be obvious if there were leaks. When the boiler fired up it was clean. The Tenant had an instruction manual for the boiler and had received some instructions from the plumber as well.

Hot water tap

- 26 Ms McKay advised that the Tenant was fearful as a result of the temperature of the hot water and the rate of flow. She was worried her young son would be scalded. Her son was primary school age and didn't currently reside with her, but the Tenant was planning for her children to move into the property at some point. A plumber had come out to inspect the tap and Ms McKay understood that he had indicated that a valve could be fitted to fix the issue. Mr Brown advised that the Landlord could fit a new tap if required.

External areas

- 27 Mr Brown advised that the roof was checked periodically by his son who was a slater to see if any slates were missing. He confirmed that the chimneys were not checked as part of those inspections. With regard to the guttering and external pointing, Mr Brown advised that the Landlord could sort the areas requiring repair.

Oil tank lid

- 28 Ms McKay confirmed that the lid for the oil tank had been replaced by the Tenant.

Additional representations

- 29 Following the hearing the Landlord submitted additional documentation for consideration by the Tribunal. The documentation consisted of:-
- (i) Appliance Service, Commissioning and Inspection Record dated 27 February 2023 from DPC Heating and Plumbing;
 - (ii) A floor plan of the property prepared by Martin Property Care Ltd; and

- (iii) A chronology of attendance by DPC Heating and Plumbing at the property.

30 Findings in Fact

The Tribunal found the following facts to be established:-

- 31 The Landlord and Tenant entered into a tenancy agreement for the property which commenced on 3 November 2021.
- 32 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. The property is not presently wind and watertight.
- 33 The hot water tap pertaining to the property is not in a reasonable state of repair. The fixture is loose and the water flow and temperature difficult to control. The tap is missing a flow control insert.
- 34 The guttering pertaining to the property is not in a reasonable state of repair. There are open joints and in some places the gutters appear to have been mislaid.
- 35 The chimneys pertaining to the property are not in a reasonable state of repair. The masonry to the chimney stack is damp with watermarks, efflorescence and some crumbling mortar. There are cracks to the rendering.
- 36 The oil boiler is in a reasonable state of repair and in proper working order.
- 37 The oil tank lid has been replaced.

Reasons for decision

- 38 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties 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.
- 39 Based on its findings in fact the Tribunal concluded that the property does not presently meet the repairing standard. 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. Furthermore the Tribunal did not accept that the damp and mould in the

property was solely a result of the Tenant's failure to adequately heat and ventilate the property. There was nothing apparent from the Tribunal's inspection to evidence this other than the Landlord's expressed view.

- 40 Whilst the Landlord had stated that reports had been undertaken by contractors to investigate the areas of damp as at the time of writing the Tribunal has yet to have sight of these. The Landlord had simply submitted a floor plan of the property which failed to specify the cause of damp and the actions required to remedy same. The Tribunal therefore requires the Landlord to obtain a timber and damp specialist report, with reference to this decision, so that the areas of concern can be fully investigated and addressed.
- 41 The Tribunal was further satisfied, based on its findings in fact, that the hot water tap in the kitchen was not in proper working order, on the basis that it was missing a flow control insert, it was stiff in operation and the hot water was excessively hot, thereby posing a risk to users. The Tribunal also accepted that the guttering was not in a reasonable state of repair, nor were the chimneys, with visible defects evident from the Tribunal's inspection.
- 42 With regard to the oil boiler, this appeared to be functioning correctly based on the rudimentary functional tests undertaken during the Tribunal's inspection. The Tribunal found no evidence that there were issues with its operation and no visible defects were observed. This was supported by the certification provided by the Landlord following the inspection which confirmed the boiler to be in safe working order. The lid to the oil tank lid had been replaced therefore the Tribunal was satisfied that this item had been resolved.
- 43 Finally the Tribunal noted that, in areas within the property where work had been undertaken by the Landlord, the internal decoration had not been made good. The Tribunal would expect the Landlord carry out redecoration of any rooms where works have been undertaken, and following the completion of the works required under the RSEO.
- 44 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)(h), the house does not meet the tolerable standard.

45 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.

46 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.

24 January 2024

Legal Member/Chair

Date