

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Sections 26 and 27

Chamber Ref: FTS/HPC/RP/23/3784

18 Brockly View, Kilbirnie, North Ayrshire, KA25 7HQ, being the subjects registered in the Land Register of Scotland under Title Number Ayr79254 (“the Property”)

The Parties:-

Allison Clark, 18 Brockly View, Kilbirnie, North Ayrshire, KA25 7HQ (“the Tenant”)

Alister Meek, CHAP, Michael Lynch Centre, 71 Princes Street, Ardrossan, North Ayrshire, KA22 8DG (“the Tenant’s Representative”)

Jackie Clyde, 56 Drumcroon Road, Garvagh, Coleraine, BT51 4ED (“the Landlord”)

Tribunal Members:

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

Decision

The tribunal determined:

(One) that the Landlord has failed to maintain the Property to the repairing standard as set out in Section 13 of the Housing (Scotland) Act 2006 and

(Two) that a repairing standard enforcement order (RSEO) be made in terms of Section 24 of the Housing (Scotland) Act 2006.

Background

1. By application dated 26 October 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 Housing (Scotland) Act 2006 as amended (“the 2006 Act”). The application is in terms of Section 22 (1A) of the 2006 Act.

2. 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 installations in the Property 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 and that the Property does not meet the tolerable standard.
3. The application makes specific reference to the following matters:
 - 3.1 Water ingress from a hole in the roof
 - 3.2 Leaking radiators
 - 3.3 Non -functioning radiators
 - 3.4 Radiator not securely attached to the wall
 - 3.5 Leaking central heating boiler
 - 3.6 Patio door requiring repair or replacement
 - 3.7 Damp issue under the kitchen sink
4. On 8 November 2023, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.

Property Inspection

5. The members of the tribunal inspected the Property on 21 February 2024. The Applicant was present and was accompanied by her co-tenant, Garry McCourt. The Respondent was not present.
6. A schedule of photographs, prepared by the Ordinary Member is attached to this Decision.

Findings on Inspection

7. The Property is an extended two storey semi-detached house, originally built by and on behalf of the local authority and now in private ownership. The outer walls are of brick cavity construction under a pitched roof clad externally with concrete tiles. The accommodation comprises, living room, dining room, three bedrooms, kitchen and bathroom.
8. Viewed externally from ground level there is an area of defective and missing roof/ridge tiling towards the gable wall. From an inspection of the roof space there is clear evidence of significant water ingress towards the gable wall, with high levels of damp affecting the timber roof frame and fibreboard sarking. In places this has reached saturation level.

9. There is a gas fired central heating system served by a wall mounted combination, condensing boiler located within the front bedroom cupboard. The pressure within the boiler periodically drops as a result of several leaks within the system including the radiators in the ground floor entrance hall, the front bedroom and the bathroom. It is also possible that other concealed leaks in the system may be present.
10. There are “French doors” leading from the dining room to the rear garden. When closed the doors are not secure and readily open if outside pressure is applied. The doors incorporate a triple locking security mechanism and the upper lock is currently inoperative which affects the security of the property. When the doors are in the closed position there is a significant gap where they meet, resulting in a noticeable through draught and rain water penetration in certain circumstances. The doors are in need of significant repair or renewal.
11. The cupboard area below the sink unit is saturated. The rear panel of the cupboard is in an extremely poor condition as a result of prolonged exposure to water. It is in need of replacement. A contributing cause of the water is likely to be the gap between the worktop surrounding the sink, and the “wall panel” immediately to the rear, permitting water to “run behind” the worktop directly into the “under sink cupboard”.
12. The heat detector within the kitchen is not functional and is in breach of current Scottish Government guidelines.
13. There is no functioning Carbon Monoxide (CO) detector in the house appropriately located in accordance with current Scottish Government guidelines. This represents an extremely serious health and safety issue as the boiler is located within a cupboard leading from a bedroom which appears to be used by a child.
14. The tenant was unable to exhibit to the tribunal a satisfactory Landlord’s gas safety certificate or a satisfactory Electrical Installation Condition Report (EICR) and was unaware if either existed.

Hearing

15. A Hearing was held at Ardeer Community Centre, Stevenston. Neither the Applicant or the Respondent were in attendance. The Applicant was represented by Alister Meek of CHAP.
16. The Ordinary Member set out the findings from the Inspection.

17. Mr Meek said that he had tried to have the letting agent engage with the repairs issues and that he has had no success. He said that he received no response to the notification letter which he sent to the Respondent and in which he detailed the repairs which were required.

18. Findings in Fact

18.1 The Applicant and Respondent are parties to a private residential tenancy agreement dated 20 May 2021.

18.2 The tenancy commenced on 20 May 2021.

18.3 There is an area of defective and missing roof/ridge tiling and water ingress to the roof space.

18.4 The gas fired central heating boiler, which is situated in a cupboard in an upstairs bedroom, is not operating properly and there are leaks in the central heating system, including the radiators in the ground floor entrance hall, the front bedroom and the bathroom.

18.5 The "French doors" in the dining room are not secure, the locking system is not operating properly and they are not wind and watertight.

18.6 The cupboard below the sink unit in the kitchen is saturated. There is a gap between the worktop surrounding the sink and the wall panel to the rear of the sink.

18.7 The heat detector within the kitchen is not functional.

18.8 There is no functioning carbon monoxide detector in the Property.

18.9 The Applicant does not have a copy of a current Landlord's Gas Safety certificate or a current satisfactory electrical installation condition report ("EICR")

Repairing Standard Enforcement Order

19. The tribunal determined to make a RSEO in the following terms;

The Landlord is required to:

- 1. Produce to the Tribunal a "satisfactory" current "Electrical Installation Condition Report" on the Property, prepared by a suitably qualified competent electrician, on the working order and condition of the installations in the house for the supply of electricity. The report should also address the state of repair and working order of any electrical fittings and appliances provided by the Respondent in the house (PAT test certificate). The provisions relating to competent electricians are contained in the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property. This information is available on the Housing and Property Chamber website at <https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20I>**

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- 2. Produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.**
- 3. Investigate and repair the roof to ensure it is wind and watertight.**
- 4. Engage a suitably qualified central heating engineer to inspect the central heating system, including the boiler, radiators and associated plumbing to ensure that it is in a reasonable state of repair, that radiators are securely fixed to walls, that the system is fully functioning and thereafter to carry out any necessary repairs.**
- 5. Investigate the source of water ingress to the internal part of the sink unit in the kitchen, carry out the necessary repairs and renew the rear panel of the sink base unit; complete all necessary work to ensure that there is a water tight seal between the sink unit and the wall panel above and to the rear of the sink.**
- 6. Install a suitably located carbon monoxide detector, in the proximity of the gas boiler, to comply with current Scottish Government guidelines applicable to private rented residential properties.**
- 7. Repair or renew the defective heat detector in the kitchen, ensuring that it is in satisfactory working order and interconnected with the existing smoke detectors.**

The Landlord is required to carry out the work required by the RSEO before 26 April 2024

Reasons

20. The tribunal had regard to what it had found at the inspection of the Property.
21. The tribunal had regard to the statutory obligations imposed upon a residential landlord to comply with Scottish Government guidelines with regard to carbon monoxide detection and fire and heat detection.

Note

The application disclosed that the Respondent had engaged a letting agent. Because of data protection issues, the Tribunal is not able to contact such a letting agent unless it is authorised to do so by a landlord. As a consequence, the letting agent for the Property did not receive any of the details of the case management discussion.

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 McAllister

M J. McAllister,
Solicitor, legal member of
Tribunal.
25 February 2024