

Housing and Property Chamber

First-tier Tribunal for Scotland



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 24(1) of the Housing (Scotland) Act 2006

Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber Ref: FTS/HPC/RT/23/2442

Title number: LAN 148159

15 Fir View, Calderbank, Airdrie, North Lanarkshire, ML6 9SW (“the House”)

The Parties:

Ms Lorna Riley, residing at the Property (“the Tenant”)

Mr John McGlone, 7 Tenant Wynd, Bellshill, MLH 3GE (“the Landlord”)

Tribunal Members: Mrs Nicola Weir, Legal Member and Mr Nick Allan, Ordinary Member

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 Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 24 July 2023, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House, namely the electric shower was not working/electrics issue; the ceiling lights were defective; the window in the hallway cannot be opened (reported 2015); the gutter was coming away from the property; the walls were damp and the wall

under the bedroom window was crumbling away. Supporting documentation was submitted with the application, including proof of the Tenant's notification of the defects to the Landlord by email on 4 July 2023. Some further detail regarding the alleged defects was contained in that notification such that there was no Electrical Installation Condition Report ("EICR"); that an electric socket in the front bedroom was loose; that it was the kitchen and rear bedroom ceiling lights which were defective; and that the rainwater outlet was disconnected from the gutter on the front elevation. The notification to the Landlord also mentioned that required work included boxing in of the pipework to the new gas boiler.

2. On 7 August 2023, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal and Inspection and Hearing was issued to the parties, requesting any written representations from the Landlord that he wished to make in response to the application. The Tribunal also issued a Direction to the Landlord dated 7 August 2023 requiring the Landlord to lodge a current EICR and a copy of the tenancy agreement, both by 7 September 2023.
3. The Landlord emailed the Tribunal on 6 November 2023 advising that he is no longer living at the address the Tribunal has for him and requesting that further communications be emailed to him. He attached a photograph of one page of an EICR dated 8 September 2023 and stated that he was trying to obtain a copy of the tenancy agreement and would forward it to the Tribunal in due course.
4. An Inspection and Hearing were fixed for 5 February 2024, at 10am and 11.45am respectively. Notification was sent to the Landlord by recorded delivery post on 22 November 2023, signed for on 23 November 2023. Due to an administrative oversight, the Tribunal had not also emailed the notification to the Landlord.
5. The Landlord emailed the Tribunal at 1am on 5 February 2024, seeking a postponement of the Inspection and Hearing on the basis that the Tribunal had intimated the details to him at an address at which he no longer resides [although the Tribunal records indicate that the documentation had been signed for at that address on 23 November 2023], he only found out about the date and arrangements for the Inspection and Hearing on 10 January 2024 via the Tenant, he could not get an appointment with his solicitor regarding the matter until 2 February 2024 and they had not had time to properly prepare for the Inspection and Hearing. The Landlord also, however, provided his written representations in relation to the application, explaining some background circumstances regarding the tenancy and that some of the works had already been carried out including the electric shower and lights having been replaced/fixed, the hallway window having been replaced and a new gas boiler system recently replaced.
6. Due to the timing of this postponement request, the Tribunal Members were unaware of it prior to their arrival at the property for the Inspection, when they

received a telephone call from the Tribunal Administration. The Tribunal Members discussed the postponement request and decided, in the circumstances, that they would proceed with the Inspection at 10am but would postpone the Hearing fixed for 11.45am to a later date to allow the Landlord more time.

7. The Tribunal Members had also just become aware that there was a previous Repairs application between the parties in respect of the House (reference PRHP/RP/15/0261) and that there was still a Repairing Standard Enforcement Order (“RSEO”) in place in respect of that application.

Inspection

8. The Tribunal Members carried out an Inspection of the House at 10 am on 5 February 2024. The Tenant and Landlord were both present and were advised of the Tribunal’s decision in respect of the Landlord’s postponement request. The Tenant’s partner was also present in the House during the Inspection but did not take part as such. Relations between the Tenant and Landlord were clearly strained and exchanges between them became heated at times. However, the Tribunal managed to complete their Inspection.
9. The House is a first floor/top floor flat in a block of four. Tribunal inspected the various issues raised in the application and noted that, as per the Landlord’s written representations, some of the issues had now been resolved, including the electric shower which the Tenant confirmed was now fully functional and the hallway window had been replaced. The Landlord’s electrician had also attended to deal with the issues raised regarding the ceiling lights in the kitchen and rear bedroom, although it was disputed whether the kitchen light issue had been satisfactorily resolved. It was noted by the Tribunal that there was only one bulb in the kitchen fitting, whereas the unit is designed to hold three. It was also noted that the Landlord had already lodged one page of an EICR dated 8 September 2023 with the Tribunal. The Tribunal noted that dampness was not detected in the front bedroom wall at a level to give cause for concern, the Ordinary Member having tested same with a damp meter, although noted that there was some visible mould and an area of damaged plasterwork directly under the window. It was noted that there was no ‘trickle vent’ in the window. As to the guttering/downpipe issue raised in the application, the Tribunal viewed the exterior of the building from outside and noted that the gutter/downpipe join on the front elevation was broken/detached, that there was a missing gutter end piece on the gable end and that the gutter appeared to be choked with vegetation in places. Although not raised specifically in the application, the Tribunal also observed a number of other issues, both in the interior and exterior of the House. A Summary of Inspection, including Photographic Schedule taken during the Inspection by the Ordinary Member dated 12 February 2024 is attached to this Statement of Decision.
10. Parties were advised at the conclusion of the Inspection that the Hearing fixed for 11.45am would no longer take place that day and that parties would be contacted in due course regarding a fresh Hearing date.

Post-Inspection Procedure/Direction

11. On 21 March 2024, the Report/Photographic Schedule from the Inspection was circulated to parties, together with a further Direction to the Landlord dated 20 March 2024 which required him, within 21 days:-

“To produce all pages of the Electrical Installation Condition Report (EICR) dated 8 September 2023 (as only the first page has been produced) and to confirm which trade body the electrical contractor who completed the report is registered with (SELECT, NICEIC or NAPIT) and his registration number with that trade body”.

The Landlord did not submit anything further in response to this Direction.

Hearing

12. The Hearing took place by telephone conference call on 17 May 2024 at 10am by telephone conference call. Only the Tenant, Ms Lorna Riley, was in attendance at 10am. The Tribunal delayed commencement of the Hearing by 10 minutes to allow an opportunity for the Landlord to join late but he did not do so. The Tribunal decided to proceed with the Hearing on the basis that the Landlord had been notified by email to his correct email address on 14 February 2024 of the date and time of the hearing. The Tribunal Clerk had also emailed both parties with updated dial-in details in advance of the Hearing and attempted several times, unsuccessfully, to contact the Landlord on his mobile telephone number both prior to and after the 10am Hearing start time.
13. Following introductions and introductory comments by the Legal Member, reference was made to the Report/Photographic Schedule circulated after the Inspection had taken place. Ms Riley confirmed she had received a copy of this and was asked to provide the Tribunal with any update on matters. She confirmed that the Landlord had sent her a text message on 7 May 2024 and that a plasterer instructed by him attended at the House on 8 May 2024 to deal with the front bedroom wall issue. However, when he saw the wall and realised it had not been treated, he said that he had not been told this and could not do any plastering work until the wall had been treated. Ms Riley presumed he would report back to the Landlord but she confirmed that she had not heard anything further since. Ms Riley confirmed that this is her daughter's bedroom and she continues to clean the mould off the walls but it always comes back. The Ordinary Member explained about the damp meter readings taken on the day of the Inspection being within the normal levels of acceptable tolerance and suggested that the mould and damaged plaster below the window may be the result of condensation, rather than water coming in from external sources, as the Landlord had also suggested. Ms Riley was asked about ventilation and confirmed that she opens the windows regularly to allow air to circulate.
14. Ms Riley stated that the previous evening (16 May 2024) around 5pm, three men were outside the House, including the Landlord who was sitting in a van. There was no communication or contact with Ms Riley. She stated that the men were looking up at the guttering above the front window. One of them came up

a ladder and cleared the gutter and also clicked the piece of gutter that had been hanging off back into the downpipe. They did not fix/replace the missing end piece of the gutter and Ms Riley does not know whether the part of the gutter they dealt with has now been repaired or is still defective.

15. Reference was made to the Tribunal's observations at the Inspection regarding possible roof maintenance issues such as loose or missing slates and areas of defective coping and rendering on the chimney stacks and to the fact that the previous RSEO issued by the Tribunal in the previous application in 2015 had mentioned roofing and guttering issues. Reference was also made to the Landlord's written representations in the current application concerning North Lanarkshire Council's involvement and responsibilities in relation to these issues which he states are common repairs. Ms Riley confirmed that two of the properties in the block are still Council owned and the other two, including this House have been purchased. She confirmed that they had put scaffolding up previously and had done something to the downpipe outside at one point. Her understanding was that there was only so much that the Council could do and that the Landlord was responsible for some of it. Ms Riley confirmed that she has been involved with both the Council and CAB, arising from her previous boiler problems in March 2023. She also confirmed that she has not heard anything since around May 2023 in relation to her previous Tribunal Repairs case.
16. Ms Riley confirmed that the electric shower is working fine and that she does not have ongoing issues with the lights, although still only has one bulb in the kitchen light fitting. She explained that this is because, if she put additional bulbs in, this would 'trip' the electrics. She conceded, however, that she had not tested this issue again more recently. She confirmed that the electrician instructed by the Landlord previously had put a new fusebox in and carried out the condition report. She has seen the single page of the EICR which had been sent to the Tribunal by the Landlord but confirmed that she was not provided with a copy of the EICR at the time, or since.
17. Ms Riley confirmed that the Landlord's communication with her about repairs has always been quite bad. He does not tend to directly communicate with her and she just deals with his tradesmen. She stated that the Landlord has only really dealt with anything as a result of Council involvement or her applications to the Tribunal. She confirmed that, for example, the hall window which she had been complaining about since 2015 was only replaced in October 2023 and that the tradesmen had only been round yesterday evening to look at the gutter issues.
18. The Tribunal Members thanked Ms Riley for her attendance and confirmed that they would consider the application and issue their Decision in writing to the parties in due course.
19. After conclusion of the Hearing, the Tribunal Members were notified that the Landlord had made contact with the Tribunal Administration to advise that he had attempted unsuccessfully to join the Hearing by telephone conference call using the details provided to him. The Tribunal Members discussed matters and

decided, in the circumstances, to give the Landlord a further opportunity of seven days within which to provide any further written representations and to delay making any decision in the matter until that time limit had expired. The Landlord was emailed on 17 May 2024 in the following terms:-

“Following the conclusion of this morning's Hearing, the Tribunal Members were made aware by the Tribunal Administration that you had been in contact with the caseworker around 10.35am and the Tribunal Clerk around 10.50am to advise that you had been unable to dial in to the telephone conference call using the new dial-in details circulated to you by email by the Clerk earlier this morning and also provided to you by the caseworker by telephone (although it is noted from your email back to the Clerk that you appear to have added an extra digit (7) into the participant code you were given).

The Tribunal delayed commencement of the Hearing by 10 minutes to allow an opportunity for you to join late but decided to proceed. This was on the basis that you were advised by email on 14 February 2024 of the correct date and time of the hearing, the Clerk had emailed both parties with the correct dial-in details in advance of the Hearing start time this morning and the Clerk had also attempted several times, unsuccessfully, to contact you on your mobile number both prior to and after the Hearing start time.

However, in the circumstances, the Tribunal has invited you to make any further written representations in relation to the application that you wish the Tribunal to have regard to. Please note that the Tribunal already has your detailed written representations dated 5 February 2024, submitted prior to the property Inspection and the first page of the EICR that you submitted in response to the first Tribunal Direction on 6 November 2023. It is noted that you have not complied with the further Tribunal Direction issued after the Inspection requesting a copy of the whole EICR (all pages), together with details of the relevant trade body your electrician is registered with. It would be helpful if you could now submit this. The Tribunal obtained an update from your tenant, Ms Riley, at the Hearing this morning regarding the outstanding issues and note that she stated that a plasterer attended at the property on 8 May 2024 to look at the area of wall below the bedroom window but did not carry out any work and also that yourself and two other men attended at the property yesterday evening and that some work was carried out to the guttering, but all issues with the guttering not resolved. It would be helpful if you could update the Tribunal on these matters from your own perspective.

The Tribunal requests any further written representations from you within 7 days.”

20. The Tenant was also notified by email on 17 May 2024 to advise of the position, which she acknowledged by return email.
21. The Landlord did not lodge any written representations within the time limit stated and, to date, has not been in further contact with the Tribunal.
22. The Tribunal accordingly proceeded to determine the application.

Findings in Fact

1. The House is let to the Tenant by virtue of a Short Assured Tenancy which commenced on 7 June 2010, with an initial rent of £495 per month.

2. The Tenant previously made a Repairs application to the Tribunal in 2015 and a previous RSEO was issued on 23 December 2025.
3. The previous RSEO remains in place as the previous Tribunal considered that it had not been fully complied with.
4. The Landlord was formally notified by the Tenant of the current repairs issues by email on 4 July 2023 and given a further opportunity to rectify matters prior to this application being made to the Tribunal.
5. This application was lodged with the Tribunal on 24 July 2023.
6. The Landlord has not addressed all repairs issues raised by the Tenant.
7. The Landlord submitted written representations on 6 November 2023 in response to a previous Tribunal Direction dated 7 August 2023.
8. The Landlord submitted further written representations on 5 February 2024.
9. Reference is made to the Tribunal's findings on Inspection, which took place on 5 February 2024.
10. The Landlord did not comply with a further Tribunal Direction issued after the Inspection, dated 20 March 2024.
11. The Landlord had attended to some of the repairs issues included in the application prior to the Inspection.
12. The Landlord had also arranged for tradesmen to attend at the House on 8 May 2024 and 16 May 2024, prior to the Hearing.
13. The Landlord did not attend the Hearing on 17 May 2024.
14. The Landlord was given a further opportunity to make further written representations following the Hearing but did not do so.
15. The House still does not meet the Repairing Standard in some respects, as detailed in the Repairing Standard Enforcement Order (RSEO).

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the application and noted at the Inspection, all supporting documentation lodged and the oral evidence of the Tenant at the Hearing. The Tenant's oral evidence was summarised to the Landlord, who was given an opportunity to respond with his own further written representations but has not done so.
2. The Tribunal is satisfied that parts of the Repairing Standard are not currently met in respect of the House, namely Sections 13(1)(b) and (c), in respect of the structure and exterior of the house (including drains, gutters and external pipes)

and 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.

3. Although some work had been carried out to the guttering the evening before the Hearing, it appeared that the missing end piece of the gutter at the gable end noted by the Tribunal at the Inspection had still not been replaced. It was also uncertain whether the work had resolved the other guttering defects identified previously at the join with the downpipe and the obstructions caused by vegetation/other debris in the guttering. The Tribunal determined that they required further detail of the works which had been carried out to the guttering and verification that the defects identified have been resolved in order to ensure that the guttering and downpipe are in a reasonable state of repair and proper working order.
4. The Tribunal considered that there was no evidence of any ongoing electrical issues, including with the ceiling lights. Although the Tenant confirmed that she still only has one bulb in the ceiling fitting, rather than the three it is designed to hold, this appeared to be more down to nervousness on her part regarding the electrics previously tripping as she conceded she had not tested the issue again more recently. However, the Tribunal was not satisfied that they had had sight of an EICR in satisfactory terms, given that the Landlord had only lodged a photograph of one page of the EICR and the Tribunal had been unable to verify that the electrician concerned was registered with one of the appropriate trade bodies. The Landlord had failed to comply with the Tribunal's Direction in this regard. The Tribunal determined that they either required to see the complete EICR dated 8 September 2023 and be provided with the details requested as regards the electrician concerned or a more recent EICR in satisfactory terms.
5. Although the Tribunal had noted mould on the bedroom walls and an area of damaged plaster under the window at Inspection, given that they were not satisfied that the walls were damp to an extent that would cause concern nor that any moisture was arising from an external source, such as the roof or defective guttering, or a defect with the window itself, the Tribunal did not consider it appropriate to make any order in this regard. It was hoped, however, that if the issues being experienced by the Tenant continued, the Landlord would consider undertaking further investigations and any remedial work required, including making good the damaged area of plaster and décor under the window.
6. Although the general maintenance issues with the roof noted by the Tribunal at Inspection were not included in this application, again, as these issues appeared to be long-standing, it was hoped that the Landlord would continue to work with the local authority to have any common repairs issues resolved and also undertake any such maintenance or repairs to the exterior of the House which may be his sole responsibility.
7. The Tribunal did not consider that the lack of boxing-in of the pipework of the new gas boiler to be a breach of the Repairing Standard, whilst accepting it was visually unattractive.

8. It was noted by the Tribunal and accepted by the Tenant that the other matters included in the application had been resolved by the Landlord prior to Inspection, including the hall window and electric shower.
9. The Tribunal is satisfied that the Landlord had been notified in writing of the required repairs and given a reasonable opportunity to attend to same prior to this application being lodged with the Tribunal, and since then. The Tribunal accordingly considered that the Landlord was in breach of his duty in terms of the Repairing Standard and that an RSEO requires to be made in respect of the outstanding matters, as detailed above. Given the nature of the required works and documentation to be supplied, the Tribunal is of the view that a period of 6 weeks is an adequate and reasonable timescale for these issues to be resolved.

Decision

1. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
2. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
3. The decision of the Tribunal was unanimous.

Right of Appeal

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.

In terms of Section 63 of the Act, 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.

N Weir

Signed..... Date: 13 June 2024
 N Weir, Legal Member of the Tribunal