

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 (“the 2006 Act”)

Chamber Ref: FTS/HPC/RP/23/3870

Title number: LAN 40342

29 Bankhead Place, Airdrie, ML6 8JW (“the House”)

The Parties:

Miss Chloe Wynne, formerly 29 Bankhead Place, Airdrie, ML6 8JW (“the Tenant”)

Gracie Property LTD, 118 Motherwell Street, Airdrie, ML6 7EJ (“the Landlord”)

Tribunal Members: Mrs Nicola Weir, Legal Member and Ms Carol Jones, 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 31 October 2023, which was subsequently amended, 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 that roof tiles were missing from the roof/indent; air blocks covered from previous owner; loft insulation black due to damp; cupboard door hinges are loose and fall off every now and

again. Supporting documentation was submitted with the application, including a copy tenancy agreement and proof that the Tenant had previously notified the Landlord of the defects.

2. On 12 December 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 details of an Inspection and Hearing fixed to take place on 27 March 2024 was issued to the parties, requesting any written representations from the parties that they wished to make in response to the application by 1 March 2024.
3. The Tenant had emailed the Tribunal on 12 February 2024 with some further information (messages from the Landlord) and indicated that she was trying to move out of the Property. She subsequently advised by email dated 14 February 2024 that she was moving out of the House on 14 March 2024 and wished to withdraw the application. Having considered the Tenant’s withdrawal, the Tribunal decided to continue with the application in terms of Paragraph 7(3) of Schedule 2 to the 2006 Act, as it contained matters which raise potential health and safety issues for any future tenants. A Minute of Continuation dated 23 February 2024 was issued by the Tribunal.
4. Mr Paul Traynor of the Landlord company did not lodge any written representations but did submit a postponement request by email on 13 February 2024 in respect of the Inspection and Hearing. He submitted proof in respect of his reasons for seeking a postponement and the Tribunal granted the postponement request.
5. A fresh Inspection and Hearing were subsequently fixed for 17 June 2024.
6. Nothing further was heard from the Landlord prior to the Inspection and Hearing.

Inspection

7. The Tribunal Members carried out an Inspection of the House at 10 am on 17 June 2024. Mr Paul Traynor of the Landlord company was present and was accompanied by a friend, Ms Kirsty Howe. Mr Traynor indicated that there was a new tenant in the Property as from 1 June 2024. The tenant was not present but had authorised Mr Traynor to allow the Tribunal Members to inspect.
8. The property is a former local authority two storey end-terrace house in a block of four constructed in the 1950’s. It is situated in a predominantly residential area in the Craigneuk district of Airdrie and located around 1.5 miles east of the town centre in North Lanarkshire. The accommodation comprises a hall, living room, kitchen and bathroom on the ground floor and 3 double bedrooms on the upper floor. The property has gas central heating and UPVC double glazed windows. There are gardens to the front and rear and a driveway at the side leading to a large garage. The Tribunal inspected the issues raised in the application and also made a number of observations in respect of other issues.

Reference is made to the Schedule of Photographs, with accompanying notes prepared by the Ordinary Member which is attached to this Statement of Decision and paragraphs 12 to 16 below where the issues noted at Inspection and discussed at the Hearing are narrated in detail.

9. The Tribunal advised the Landlord at the conclusion of the Inspection that the commencement time of the Hearing would be 12 noon rather than 11.45am, to give the Landlord and Tribunal Members sufficient time to travel from the House to Glasgow Tribunals Centre for the Hearing.

Hearing

10. The Hearing took place in-person at Glasgow Tribunals Centre, commencing shortly after 12 noon. Only Mr Paul Traynor of the Landlord company was present.
11. Following introductions and introductory comments by the Legal Member, Mr Traynor was asked to confirm the background to Miss Wynne's tenancy as the Tribunal had noted that, although the Private Residential Tenancy agreement produced indicated a commencement date of 1 March 2023, it looked from other paperwork lodged that Miss Wynne had resided at the House for longer. Mr Traynor confirmed that property is his sideline and that this was the first property that he had purchased, although he now owns five or six properties, all in the North Lanarkshire and South Lanarkshire Council areas. He bought this property at an auction in June or July 2022 with Miss Wynne as a sitting tenant. He does not know how long exactly she had been resident there but she had resided with a partner and his parents had also resided in the property at some point. He estimated Miss Wynne had been there for several years at least. Miss Wynne did not have a written tenancy agreement and he tried to get things on a more formal footing. He prepared the PRT agreement produced to the Tribunal with a commencement date of 1 March 2023 but this agreement was not finalised.
12. As to the condition of the property, he accepted that Miss Wynne had raised with him that there was a mould patch on the front bedroom ceiling and that the photograph she had produced to the Tribunal, attached to messages between them dated November 2022 did show the patch referred to. However, at that stage Miss Wynne was intending to try cleaning the mould off and his position is that he did not hear further from her on the mould issue at the time and therefore thought it was resolved. There were also various challenges with the heating. He had a heating engineer attend at the property numerous times and the problem seemed to be that Miss Wynne did not know how to operate the system as the engineer confirmed it was working properly and had shown Miss Wynne several times how to operate it. Reference was made to the email dated 1 February 2023 from Mr Traynor to Miss Wynne and he confirmed that Miss Wynne had raised with him some issues concerning the roof tiles and the kitchen, namely that a door had come off its hinge. He arranged for a tradesman to attend to the kitchen that same week and the tradesmen had carried out various bits and pieces. He had intended to get a roofer out to look at the roof but accepts that this was not done straight away. Mr Traynor stated that he had

always tried to address issues raised by Miss Wynne in a timely fashion. However, he mentioned that he was experiencing some issues with Miss Wynne regarding him putting up the rent and he also did not consider that she was really looking after the property by ventilating it properly or maintaining the garden.

13. Reference was then made to the issues the Tribunal Members had noted at the Inspection. In relation to the kitchen, it had been noted that a unit was missing a door; that several of the doors were not opening and closing properly; some of the hinges appeared to be defective and handles and other parts seemed to have fallen off. Mr Traynor explained that he could not afford a new kitchen. Accordingly, his tradesman had, whilst Miss Wynne was still there, adjusted some of the units and fitted new kickboards and a false drawer front (which is mis-matching). He thinks the tradesman adjusted the hinges too. As to the missing cupboard door, he confirmed that he thinks the new tenant may have taken this door off but he had just noticed this and had not yet been able to confirm this with the new tenant. After the tradesman had been out, Miss Wynne had not sent any further communication to him before her application was submitted to the Tribunal. Mr Traynor confirmed that no further works on the kitchen are anticipated meantime. As he had stated at the Inspection, he had just spent between £3,000 and £5,000 refurbishing the property, including redecoration and reflooring. No works were carried out during the refurbishment to either the kitchen or bathroom. Mr Traynor was asked if he considered that there was a fully functioning kitchen, given the issues noted at the Inspection. He confirmed that he had redecorated the kitchen and although it is not a brand new kitchen, he considers it to be fine and a working kitchen.
14. As to the condition of the roof, Mr Traynor stated that he had not received any further communication from Miss Wynne regarding that either, until the Tribunal application. In the end, he had not considered that he needed to get a roofer out as his general tradesman had had a look at this and had identified no leaks into the roof space, black mould on the loft insulation or other evidence of water damage. It was noted that the re-decorating works carried out as part of the refurbishment had been carried out, according to Mr Traynor, around three months ago and that there was no evidence of any mould re-growth on the bedroom ceiling. Mr Traynor confirmed that he had a specialist cleaning company out to carry out a deep clean. He confirmed that he and his wife had seen the small patches of mould on the bedroom ceiling but the cleaning company considered that there was no damp and that this was just down to a lack of ventilation which was an issue he had raised previously with Miss Wynne. Mention was also made to the difficulties Miss Wynne had experienced with the heating system and that there had perhaps been periods where the heating had not been on and that this could perhaps have contributed to the property being colder than it should have been and the mould growth. Mr Traynor confirmed that he does not have a report from the cleaning company but thinks he will receive this shortly and could produce it to the Tribunal if necessary. He does not have reports or invoices from any other tradesmen as he has tended to use friends and family to do the works for him. However, he did get a Gas Safety Check done and has a report from GSC dated 31 May 2024 which confirms that the heating system was safe to use. Mr Traynor stated

that he accepts that the loft insulation is not new but that his tradesmen had not seen any black mould on it either.

15. As to the air blocks issue raised in Miss Wynne's application, the Ordinary Member confirmed that the ones that could be seen were partially covered, partly by the level of the path having been built up to a higher level than it should be and the positioning of shrubbery. It had been noted that there was no visible air vent at the front of the property, although the neighbouring property had one. Mr Traynor confirmed that he had not had this matter looked at as he had required to re-finance about six to twelve months ago and a survey was carried out in connection with that. He would have thought that if there was any issue concerning the air vents that would have been raised in the survey.
16. Finally, there was brief discussion regarding the incorrect positioning of the carbon monoxide detector in the kitchen, which had been noted at the Inspection, although did not form part of the application. Mr Traynor was not aware of where exactly this should be positioned and was referred to available Scottish Government guidance on this.
17. Reference was made to the more recent messages from Mr Traynor that Miss Wynne had lodged with the Tribunal in February 2024. Mr Traynor stated that he had not seen these and, on being shown the messages, commented that they were not dated. He stated that there were also a number of verbal exchanges between himself and Miss Wynne throughout the relevant period and the other background issues which were mentioned before. Apart from the rent and maintenance issues, he understands that Miss Wynne kept a number of pets in the property and that he personally had never seen a window open when she was residing there. He considers that the heating issues and lack of ventilation of the property by Miss Wynne was a contributing factor to the condensation and previous mould patches on the bedroom ceiling. Mr Traynor conceded that he had perhaps have been a bit naïve when he bought this property with a sitting tenant, it being the first property he had purchased. However, he reiterated that he had genuinely tried to carry out all works that he considered necessary and to be his responsibility in a timely fashion.
18. It was explained to Mr Traynor by the Legal Member that the process would now be that the Tribunal would decide whether there is any breach of the Repairing Standard and, if so, that the Tribunal would issue a Repairing Standard Enforcement Order ("RSEO"), identifying what repairs or other works needed done and stipulating a timescale for compliance. Mr Traynor was informed that, if an RSEO is made, he may wish to submit any reports he has or will receive from tradesmen in respect of any works carried out, or photographs evidencing that matters have been attended to. Otherwise, Mr Traynor was advised that it may be necessary for the Tribunal to re-inspect the property once the timescale for compliance has expired. Mr Traynor indicated that he would address any issues with the kitchen cupboards if the Tribunal considered this necessary and would also have the windows looked at, given that the Tribunal observed that the seals to the glazed units in several windows had failed, causing a build-up of condensation in the windows. He would remove any shrubbery near the air vents and may be carrying out some general

exterior maintenance in any event as the new tenant had brought an issue with one of the downpipes to his attention (the Tribunal had noted at Inspection that black tape had been applied to one of the downpipes).

19. Mr Traynor was thanked for accommodating the Tribunal at their Inspection of the House earlier and for attending the Hearing, and the Hearing was brought to a close.

Findings in Fact

1. The Landlord is the owner of the House, having purchased it at auction and the title was registered in their name on 6 July 2022.
2. The former Tenant was already a sitting tenant in the House when the Landlord purchased it.
3. The former Tenant vacated the House on or around 14 March 2024 and is no longer party to this application.
4. There is now a new tenant in the House from in or around 1 June 2024.
5. The Landlord was formally notified by the former Tenant of outstanding repairs issues prior to this application being made to the Tribunal and given a further opportunity to rectify matters.
6. This application was lodged with the Tribunal on 31 October 2023.
7. Reference is made to the Tribunal's findings on Inspection referred to in paragraphs 8 and 12 to 16 above.
8. The Landlord has previously had tradesmen out to inspect and attend to some of the repairing issues which had been raised by the former Tenant.
9. The Landlord has recently refurbished the House, including re-decoration and re-flooring.
10. The Landlord has not fully addressed all repairs issues raised by the former Tenant in her application.
11. 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, supporting documentation lodged and the oral evidence of the Landlord at the Hearing.

2. The Tribunal is satisfied, from their Inspection, that parts of the Repairing Standard are not currently met in respect of the House, namely Sections 13(1)(b) and (d), in respect of the condition of the roof and the kitchen units and associated fittings and fixtures. Although the Landlord had previously had a tradesman carry out some remedial works to the kitchen units, it was clear that there were still a number of defects which meant that the kitchen was not in a reasonable state of repair or full working order. The Landlord conceded that he had not had a roofer examine the roof, deeming this unnecessary as his general tradesman had not seen any evidence of water damage or leaks into the House. The Tribunal had noted, however, a number of missing or slipped roof tiles, as had been stated by the former Tenant in her application and considered that this should be rectified to ensure that the roof is wind and watertight.
3. The Tribunal saw no evidence of water damage or water ingress into the roof space, or black mould on the loft insulation, and, although the exterior air vents were partially covered, there was no evidence, as such, of any issues being caused by this. The Landlord may, however, wish to have this issue further investigated in case there are any issues regarding air circulation through these vents. There was no sign of any black mould on the bedroom ceiling or evidence of water penetration into this room (or any of the upstairs rooms). However, given that the House, including this bedroom had been recently re-decorated; the moderate damp readings which had been noted in the walls of this particular bedroom; and the general maintenance issues noted at Inspection in respect of the chimney (situated above this particular bedroom) and roof (in addition to the missing tiles mentioned in the application), the Tribunal hoped that the Landlord would consider having these matters further investigated in case issues with further mould/damp should arise again.
4. In relation to observations at the Inspection which did not form part of the application, the Tribunal noted that Mr Traynor had indicated an intention to have the window seals looked at and glazing units replaced if necessary. It was also acknowledged by Mr Traynor at the Inspection, following a test of the smoke/heat detectors by the Tribunal, that while there are an adequate number of detectors and they are all in the correct position, they may not all be interlinked properly and this will be checked. Finally, the Tribunal had noted an issue concerning the positioning of the carbon monoxide detector in the kitchen (not mounted high enough on the wall) and were encouraged by Mr Traynor's comments that he would have regard to the guidance available or take his own advice in relation to this matter.
5. 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 subsequently. The Tribunal accordingly considered that the Landlord was in breach of their 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, 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.

Nicola Weir

Signed... ..
Nicola Weir, Legal Member of the Tribunal

Date: 10 July 2024

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 29 Bankhead Place, Airdrie ML6 8JW by the First-tier Tribunal for Scotland (Housing and Property Chamber) on Monday 17 June 2024

Reference Number : FTS/HPC/RP/23/3870



Front Elevation



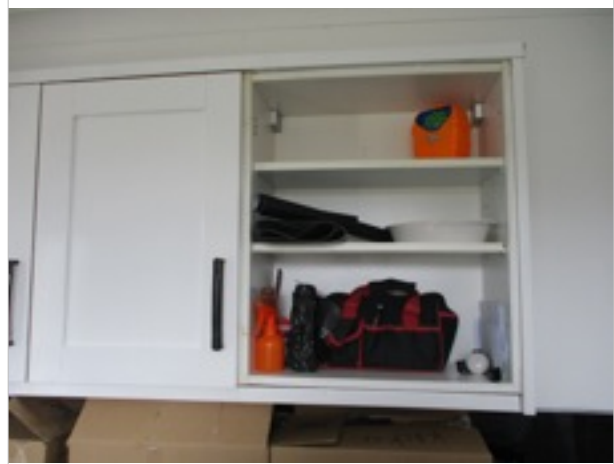
Kitchen - Large cupboard - door does not open and close properly/ill fitting and handle loose



Kitchen - corner base unit - doors do not open and close properly/misaligned/loose/defective fittings and missing door handle



Kitchen - base units - mismatched/false drawer front fitted on end unit



Kitchen - missing door to wall mounted unit



Kitchen - new kick plate



Kitchen - corner wall mounted units appear sound



Kitchen - wall mounted boiler/exposed pipes



Kitchen - wall mounted unit and cooker hood appear sound



Kitchen - double base unit under sink - left side door does not close properly/misaligned



Kitchen - double base unit under sink - damage to base of unit on right side



Kitchen - double base unit under sink - hinge to right side door loose/defective



Kitchen - double base unit under sink - new kick board



Loft - view towards party wall showing insulation



Loft - view towards party wall and skylight on rear pitch



Loft - view towards rear pitch/gable wall/part floored



Loft - view towards front pitch/gable wall



Front bedroom - internal party wall - damp meter reading showing moderate moisture level (search mode)



Front bedroom - internal party wall - damp meter reading showing moderate moisture level (search mode)



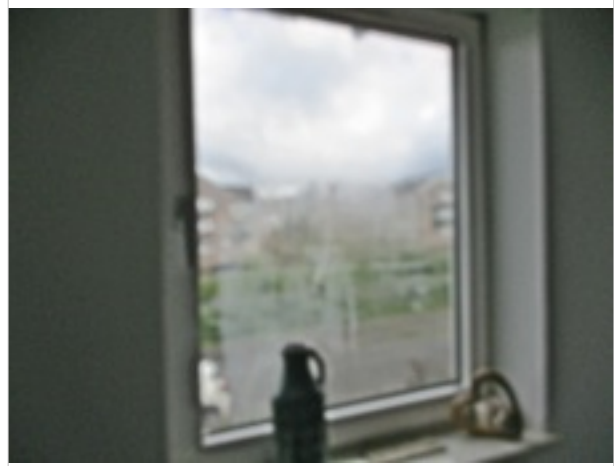
Front bedroom - internal party wall - damp meter reading showing moderate moisture level (search mode)



Front bedroom - front elevation between windows - damp meter showing moderate moisture level (search mode)



Front bedroom - left side window - double glazing seal failed causing build up of condensation between panes (observation)



Front bedroom - right side window - double glazing seal failed causing build up of condensation between panes (observation)



Landing - window - double glazing seal failed causing build up of condensation between panes (observation)



Rear bedroom (1) - window - double glazing seal to right side failed causing build up of condensation between panes (observation)



Roof - rear elevation - some deterioration to roof tiles



Roof - rear elevation - some deterioration to roof tiles/some tiles loose/dislodged/ridge tiles require re-bedding/pointing



Roof - front elevation - some deterioration to roof tiles



Roof - front elevation - some dislodged roof tiles/patches of moss/build up of vegetation in gutter



Roof - front elevation - chimney requires pointing/possible loose flashings



Gable wall - underfloor vent towards rear - part covered by tarmac path surface



Gable wall - underfloor vent towards front - part covered by tarmac path surface



Living Room - 2 x ceiling mounted smoke detectors (observation)



Kitchen - ceiling mounted heat detector (1) (observation)



Kitchen - ceiling mounted heat detector (2) (observation)



Landing - 2 x ceiling mounted smoke detectors (observation)



Kitchen - wall mounted carbon monoxide detector (observation)