



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 60(5) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/24/0602

**46 Glencairn Street, Stevenston, KA20 3BY being the subjects registered
in the Land Register of Scotland under Title number AYR42956 (“the
Property”)**

The Parties:-

**Ian McDonagh residing at 46 Glencairn Street, Stevenston, KA20 3BY
 (“The Tenant”)**

**Mrs Andrea Gibson, CHAP, Michael Lynch Centre, 71 Princes Street,
Ardrossan, KA22 8DG (‘The Tenant’s Representative’)**

**William Higgins residing at 1C Morrishill Drive, Beith, KA15 1LS (‘The
Landlord”)**

Tribunal Members:

Jacqui Taylor (Chairman) and Donald Wooley (Ordinary Member)

1. Background

1.1 The Tenant leases the Property from the Landlord in terms of the lease between the parties dated 18th July 2017.

1.2 The Tenant applied to the Tribunal for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (‘the Act’).

2. Application

The application by the Tenant dated 7th February 2024 stated that he considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. He advised the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order and the Property does not meet the tolerable standard.

In particular the application stated that the work that needed to be carried out was as follows:

- 2.1 Kitchen door to be provided as there is not one.
- 2.2 Chewed beading in the hall.

2.3 Laminate in the kitchen needs to be replaced.

2.4 Plaster in the hallway is falling off.

3. Notification.

The Tenant's Representative had notified the repairs detailed in the application to the Respondent by email dated 26th October 2023.

The Landlord had replied by email dated 27th October 2023. In response to the repairs that had been notified he advised:

- There was a kitchen door and the tenant removed it. He will not be replacing it.
- He will provide kitchen flooring to his specification.
- In connection with the damaged plasterwork he confirmed that he would complete the repair.
- He confirmed that he would take care of the chewed beading

4. Notice of Acceptance

On 19th March 2024, Martin McAllister, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received between 7th February 2024 and 4th March 2024 and he referred the application under Section 22 (1) of the Act to a Tribunal.

5. Inspection

The Tribunal attended at the Property at 10.00 am on 31st July 2024.

The Tenant was present at the inspection. The Landlord did not attend the inspection and was not represented.

The Property is a ground floor main door cottage flat within a block of four similar units. The accommodation comprises living room, two bedrooms, shower room and kitchen.

The Tribunal inspected the alleged defects and found:-

5.1 Kitchen door to be provided as there is not one.

There was no kitchen door installed. The Tenant, during the inspection, advised that there had been no kitchen door in the Property at the start of the tenancy.

5.2 Chewed beading in the hall.

The corners of the beading at the base of the hall skirting boards had been gnawed. The Tribunal noted no other evidence of vermin infestation.

5.3 Laminate in the kitchen needs to be replaced.

The laminate flooring in the kitchen displayed signs of general wear and there was some evidence delamination around several of the end joints. There was also a section of missing skirting board above the laminate flooring although this was not mentioned in the application.

5.4 Plaster in the hallway is falling off.

There was damaged plaster around the light switch in the hall and next to the entry door to the living room.

Photographs were taken during the inspection and are attached as a Schedule to this Decision.

6.Hearing

This hearing was held following the inspection at 11.45am on 31st July 2024 at Ardeer Community Centre, Shore Road, Stevenston, KA20 3NB. The Tenant did not attend the hearing but his representative attended.

The clerk telephoned the Landlord and he advised that had not received prior notification of the inspection or the hearing as he had recently moved. He was happy to attend the hearing. The hearing was adjourned until 1pm when the Tenant's representative and the Landlord attended.

The Landlord confirmed that he was aware of the matters in the application and was happy to proceed. He did not require an adjournment. He provided the clerk with his new address and email address and confirmed that he was happy for the Tribunal administration to communicate with him by email.

In connection with the matters detailed in the application Mr Wooley described the matters observed at the inspection, as detailed above, and the parties advised as follows:

6.1 Kitchen door to be provided as there is not one.

Mr Higgins advised that there was a kitchen door installed at the start of the tenancy. He believes that the Tenant vandalised the door and disposed of it. Mrs Gibson did not make any comments as she had not seen the Property.

6.2 Chewed beading in the hall.

Mr Higgins advised that he called at the Property several years ago as the Tenant was complaining about mice in the Property. There were piles of rubbish at the back door of the Property and the grass was over grown. He believes that this had caused mice to enter the Property. He had paid for a specialist company to exterminate the vermin in the Property. He suspects that the mice chewed the beading. He agreed to replace the damaged beading.

Mrs Gibson did not make any comments.

6.3 Laminate in the kitchen needs to be replaced.

Mr Higgins explained that he bought new lino for the kitchen floor but it had never been installed. He is happy to arrange for it to be fitted.

Mrs Gibson did not make any comments.

6.4 Plaster in the hallway is falling off.

Mr Higgins agreed to repair the damaged plasterwork.

Mrs Gibson did not make any comments.

Mr Wooley advised Mr Higgins that there was no carbon monoxide alarm or compliant smoke alarms in the Property. He wished to draw this to his attention as it is a requirement of the Repairing Standard that they are

installed. The Tribunal cannot make an order in relation to these matters as they were not included in the application.

7. Decision

7.1 The Tribunal made the following findings in fact:

7.1.1 There was no kitchen door in the Property at the time of the inspection.

7.1.2 The beading of the floor in the hall was damaged.

7.1.3 There were holes in the plasterwork in the walls of the hallway.

7.1.4 Areas of the laminate flooring in the kitchen displayed signs of wear.

7.2 The Tribunal made the following determinations in relation to the following provisions of the Repairing Standard:-

Section 13(1)(d) of the Housing (Scotland) Act 2006: The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order.

The Tribunal accepted the evidence of Mr Higgins that there was a kitchen door installed at the start of the Tenancy. The Tribunal had noted that the door of the hall cupboard had sustained significant “impact damage” and considered it likely that the Tenant may have damaged the kitchen door and removed it. The Tribunal determined that Landlord is not responsible for replacing a kitchen door which the Tenant had removed.

The condition of the beading to the floor in the hall and the holes in the wall plaster at the hall result in these items not being in a reasonable state of repair.

The Tribunal, while noting that the landlord had previously offered to replace the floor covering in the kitchen with linoleum, considered that the limited wear and minor delamination of the flooring was not sufficient to be considered a breach of the repairing standard.

7.3 The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Sections 13 (1) (d) and 14(1)(b) of the Act, for the reasons stated. The Tribunal made a Repairing Standard Enforcement Order.

8. The decision of the Tribunal was unanimous.

9. 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.

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.

J Taylor

Signed

Chairperson

Date: 7th August 2024

Schedule of Photographs

46 Glencairn Street Stevenston KA20 3BY

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Schedule of Photographs taken at the inspection on 31 July 2024



1. Front elevation as viewed from road.



2.



3.

Photograph 2:- Kitchen door opening as viewed from within kitchen

Photograph 3:- Kitchen door opening as viewed from within hall

Both photographs 2 and 3 confirm that there is no door at the entrance to the kitchen.



4.



5.

Photographs 4 & 5:- General wear and tear at kitchen laminate flooring with some evidence of delamination around several of the “end” joints



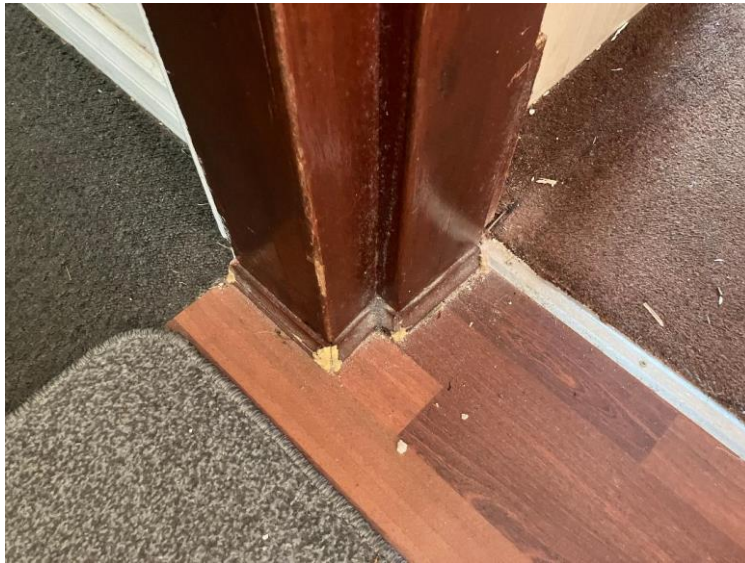
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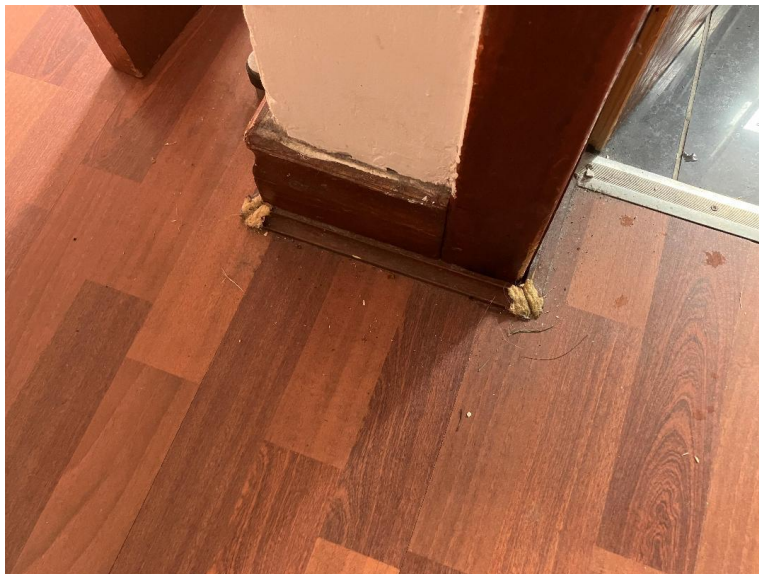
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Photograph 6:- Damaged wall plaster around light switch in hall

Photograph 7:- Damaged wall plaster next to entry door to living room



8.



9.

Photographs 8 & 9:- Evidence of “gnawing” or similar wear at mitred joints of beading at base of the hall skirting boards.

Additional Site Observation

Photographs 10,11 and 12 illustrate that the smoke and heat detection devices located in the living room, hall and kitchen. They do not comply with current legislation or Scottish government guidelines relative to “fire detection in private rented properties”. The existing fittings are not inter –connected, are powered by

standard alkaline batteries which in both the living room and the kitchen were not functional.



10.



11.



12.

This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Thursday 31 July 2024 in connection with a Repairing Standard application under consideration.

Donald Wooley MRICS
31 July 2024