

**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/24/1409**

**45D New Street, Stevenston, KA20 3HD being the subjects registered in  
the Land Register of Scotland under Title number AYR59515 (“the  
Property”)**

**The Parties:-**

**Geoff Lawrence residing at 45D New Street, Stevenston, KA20 3HD  
 (“The Tenant”)**

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

**James and Susan Patrick and John and Tracey Patrick trading as Just  
Property of 21 Adair Avenue, Saltcoats, KA21 5QS (“The Landlords”)**

**Tribunal Members:**

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

**1. Background.**

1.1 The Tenant leases the Property from the Landlords in terms of the lease between the parties dated 27<sup>th</sup> February 2023.

1.2 The Tenant’s Representative 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’s Representative dated 26<sup>th</sup> March 2024 stated that he considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for habitation; the structure and exterior of the Property are not in a reasonable state of repair and proper working order and the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order.

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

2.1 The external light is broken.

- 2.2 The external electrical wiring is exposed.
- 2.3 The bathroom extractor fan is not working.
- 2.4 The sealant around the bath has deteriorated and is causing leaks.
- 2.5 The kitchen window does not close and has been poorly fitted.
- 2.6 There is water damage to the kitchen ceiling due to a roof leak.
- 2.7 The roof is leaking.
- 2.8 There is a vent missing in the kitchen.
- 2.9 The chimney stack is not secure.

### 3. Notification.

The Tenant's Representative had notified the repairs detailed in the application to Jim Patrick, one of the Landlords, by letter dated 19<sup>th</sup> March 2024.

### 4. Notice of Acceptance.

On 19<sup>th</sup> April 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 26<sup>th</sup> March 2024 and 11<sup>th</sup> April 2024 and he referred the application under Section 22 (1) of the Act to a Tribunal.

### 5. The Landlords' Written Representations.

Jim Patrick, one of the Landlords, sent the Tribunal Administration an email dated 22<sup>nd</sup> August 2024 in the following terms:

'I am writing to advise that the works required by North Ayrshire Council's Repairing Standard inspection at our property - 45d New St, Stevenston, have now been completed, apart from one minor item. In the tolerable Standard section, the broken extractor fan in the bathroom has been replaced. As far as I am aware, the tenant, Mr Lawrence, has replaced the battery in the smoke alarm. In the repairing standard section the seal around the bath has been replaced and the bath panel replaced. The high moisture readings in the kitchen were investigated and local roofing company Roofguard advised that several broken roof tiles were the cause. After considerable delay locating the now obsolete replacement tiles, the repair was carried out by Roofguard on Tuesday, August 20<sup>th</sup>. The roofers also inspected the chimney stacks Mr Lawrence has mentioned and reported no repairs are required at this time. The kitchen window which was not closing properly has had a new hinge fitted by local firm MK Windows and is now closing as it should. The only item not dealt with on NAC's list is the vent cover in the kitchen cupboard. Our letting agent tried to contact Mr Lawrence yesterday, August 21<sup>st</sup>, to arrange access to make good the repair but at the time of writing Mr Lawrence has not replied to their email. We will be happy to make good the repair when Mr Lawrence responds. The light bulb in the common close, which Mr Lawrence advised kept blowing, was attended to by an electrician supplied by the letting agent and as far as we are aware has not been an issue for months. Unfortunately, I have not yet been invoiced for the works but I am sure Mr Lawrence, who was present when all the repairs were carried out, can confirm they have in fact been done.'

## **6. Inspection.**

The Tribunal attended at the Property at 10.00 am on 26<sup>th</sup> August 2024.

The Tenant attended the inspection. The Landlords did not attend the inspection.

The Property is an upper floor self-contained flat located above commercial retail premises in a town centre location. Access is taken via an internal stairwell shared with the other residential occupiers. The property is of traditional construction brick and stone construction under a pitched roof.

The Tribunal inspected the alleged defects and found:-

### 6.1 The external light is broken.

The Tenant confirmed that the external light had been repaired.

### 6.2 The external electrical wiring is exposed.

The external wiring appears to be adequately secured to the outer wall before entering the common close/stairwell. Thereafter it is encased in various coverings and well secured to the internal wall face. As a result of a defect in the external fabric of the stairwell, there is evidence of considerable water ingress affecting both the wall and ceiling plaster around and in close proximity to the wiring.

### 6.3 The bathroom extractor fan is not working.

The Tenant confirmed that the bathroom extractor fan had been repaired.

### 6.4 The sealant around the bath has deteriorated and is causing leaks.

The Tenant confirmed that the sealant around the bath had been repaired.

### 6.5 The kitchen window does not close and has been poorly fitted.

The Tenant confirmed that the kitchen window had been repaired.

### 6.6 There is water damage to the kitchen ceiling due to a roof leak.

Significant damp staining is evident affecting the ceiling and wall plaster to the left, as viewed from within, and around the kitchen window. Moisture readings of between 65% and 85% were obtained at the affected areas. The plaster shows signs of localised deterioration and when dry will require redecoration.

### 6.7 The roof is leaking.

The penetrating damp within the kitchen coincides with an area immediately below a valley gutter. Viewed externally there is evidence of a recent repair or renewal of several roof tiles at and around the base of the valley gutter. It is understood that this repair was completed to address the issue of penetrating damp in the kitchen although until the plaster dries out it will not be clear if this action has been entirely satisfactory.

6.8 There is a vent missing in the kitchen.

Within the kitchen, there is a walk in “cold storage cupboard. It is ventilated through the external wall, plastered internally and extends below the external roof pitch. The vent is protected externally by an air brick although there is no corresponding vent cover within the storage area.

6.9 The chimney stack is not secure.

Viewed externally from ground level the gable chimney stack appears vertical with no noticeable outward or inward lean. There is some evidence of localised cracked and possibly bossed rendering which is common in property of this age and design. One chimney cowl/pot has become dislodged, is poorly secured and if left unrepaired this may fall to ground.

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

6.10

While not included within the application, the Tribunal noted that there was no functional smoke alarm in the hallway. The landlord in his written representations stated “I am aware, the tenant, Mr Lawrence, has replaced the battery in the smoke alarm. In the repairing standard section”. The original smoke alarm within the hall has been removed, appears to have been previously “hard wired” and there is no evidence of any battery. The current smoke and heat detection system within the property does not comply with Scottish Government Guidelines in private rented properties.

**7.Hearing**

An inperson hearing was held following the inspection at 11.45am on 26<sup>th</sup> August 2024 at Ardeer Community Centre, Shore Road, Stevenston, KA20 3NB. The Tenant attended the hearing along with his representative Andrea Gibson of CHAP. James Patrick and John Patrick attended the hearing and represented the Landlords.

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

7.1 The external electrical wiring is exposed.

Mr Patrick explained that the application does not refer to dampness in the area of the external electrical wiring. He has an EICR report which he can produce to the Tribunal. The external wiring was replaced in 2019.

7.2 There is water damage to the kitchen ceiling due to a roof leak.

Mr Patrick advised that the roof tiles above the kitchen were repaired on 20<sup>th</sup> August 2024. He acknowledged that there may be residual dampness

following the repair that will take time to dry out. The repair was carried out by a reputable local company called Roof Guard.

### 7.3 The roof is leaking.

Mr Partrick explained that he thought this item referred to the main roof. The application does not refer to the roof above the common access stair leaking. Mr Lawrence advised that the Letting Agent MacKenzie Way have inspected the Property on many occasions and are aware of the dampness to the roof/ceiling of the common stair.

### 7.4 There is a vent missing in the kitchen.

Mr Patrick advised that there has never been a cover over the vent. He had a contractor lined up to carry out the repair and had sent an email to Mr Lawrence requesting access. Mr Lawrence advised that he had missed the email.

### 7.5 The chimney stack is not secure.

Mr Patrick advised that the roofer had reported that the chimney stack was in order. Mr Wooley explained that the defect is with one of the chimney cowls which does not seem to be secure and is hanging loose.

## **8. Decision.**

8.1 The Tribunal determined that the complaint that the roof is leaking is not sufficient to cover the dampness to the ceiling and roof of the common stair.

8.2 The Tribunal accepted that the following items had been withdrawn from the application:

- (i) The external light is broken.
- (ii) The bathroom extractor fan is not working.
- (iii) The sealant around the bath has deteriorated and is causing leaks.
- (iv) The kitchen window does not close and has been poorly fitted.

8.3 The Tribunal determined that the complaint of the missing vent cover in the kitchen cold store is a de minimis matter.

8.4 The Tribunal made the following findings in fact:

8.4.1 There is visible damp in the location of the external wiring.

8.4.2 The kitchen walls are damp.

8.4.3 A recent roof repair has been carried out but it is too soon to determine if the repair has been effective.

8.4.4 The chimney cowl is loose and not in a reasonable state of repair.

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

Section 13(1)(a) of the Housing (Scotland) Act 2006: The house is not wind and watertight and in all other respects reasonably fit for human habitation.

The residual damp to the kitchen walls render them not wind and watertight. The roof may not yet be in a wind and watertight condition.

Section 13(1)(b) of the Housing (Scotland) Act 2006: The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order.

The loose chimney cowl is not in a reasonable state of repair.

Section 13(1)(c) of the Housing (Scotland) Act 2006: The installations in the house for the supply of water, gas, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are not in a reasonable state of repair and proper working order.

The presence of dampness in the location of the external electrical wiring renders the wiring potentially in an unsafe condition.

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

9. The decision of the Tribunal was unanimous.

**10. 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.

## Jacqui Taylor

Signed

Chairperson

Date: 30<sup>th</sup> August 2024

**Schedule of Photographs**

**45D New Street Stevenston KA20 3HD**

**FTS/HPC/RP/24/1409**

**Schedule of Photographs taken at the inspection on 26 August 2024**



**1. Front elevation as viewed from road.**





3



4

**Photographs 2-4:-** Illustrate generally well secured and protected exposed wiring at the rear external wall and within the shared stairwell entrance





5



6



7



8

**Photographs 5-8:-** Illustrate high levels of damp in and around the vicinity of the surface mounted wiring in the shared stairwell area.



9



10



11



12

**Photographs 9-12:-** Illustrate high levels of damp (65-85%) and some localised deterioration of the wall plaster in the kitchen, affecting both the external and adjoining internal walls.



13



14

**Photograph 13:-** Mono pitch roof covering above stairwell

**Photograph 14:-** The area circled in red highlights the the base of the rear valley gutter coinciding with a recent repair to several tiles above the kitchen roof.



**15**

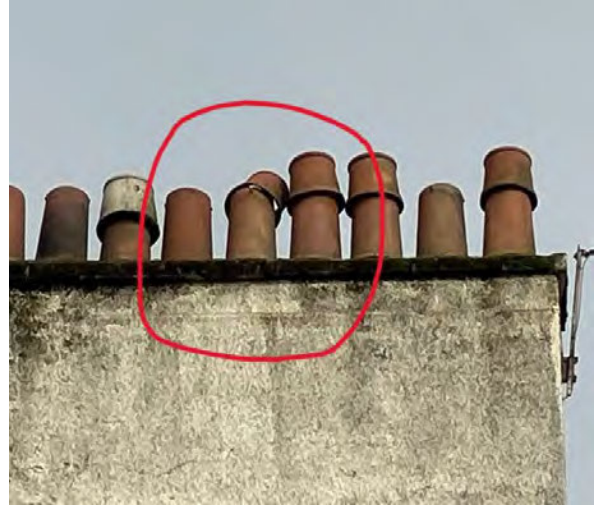
**Photograph 15:-** Illustrates a missing internal “vent cover” on the inner face of the external wall of the kitchen “cold storage” cupboard.



**16**



17



18

**Photographs 16 & 17:-** Illustrate that the gable chimney, as viewed from ground level, is vertical with no significant evidence of any lean

**Photograph 18:-** Illustrates that the chimney cowl/pot (5<sup>th</sup> from the right) is poorly secured and in an unstable condition.

**This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Monday 26 August 2024 in connection with a Repairing Standard application under consideration.**

Donald Wooley MRICS  
26 August 2024