

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/24/0919

Title no: ANGUS 67016

4 Henderston Cottages, Newtyle, Angus PH12 8UT (“The Property”)

The Parties:-

- **Mr Gregory Dedman, 4 Henderston Cottages, Newtyle, Angus PH12 8UT (“The Applicant and tenant”)**
- **Mr Ian McCall, Mr Andrew McCall, Mr Angus McCall, Henderston Farm, Angus PH12 8UT (“The Respondents and landlords”)**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mr David Godfrey - Ordinary Member (Surveyor)

Background

1. By application dated 23rd February 2024, the Applicant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the Applicant stated that it was considered that the Landlords had failed to comply with the duty to ensure that the House met the repairing standard. In the application the Third Party Applicant stated that the following were not being met: -
 - a) The House is wind and watertight and in all other respects reasonably fit for human habitation;

- b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; and
 - c) 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. In particular, the complaints consisted of the following issues: -
- a) The weatherproofing of the Property needs to be replaced around the windows specifically the main living room window but all other windows need weatherproofed.
 - b) The roof needs to be made watertight. Attempts have been made to undertake repairs but not sufficiently and the entire north side has not been inspected.
 - c) Insulation in the bathroom needs to be provided.
 - d) The sewage is insufficient. There have been blockages in the past and a replacement pipe needs to be installed with a drain cover.
 - e) The perimeter fencing is damaged.
 - f) There gate has been removed. It needs to be repaired and replaced.
 - g) There is no EICR.
 - h) Previous repair to a water pipe left the rear garden unfinished and at risk of flooding which subsequently occurred leading to water filling up under the floorboards and interior mould.
4. On 26th January 2024, the Applicant wrote to the Respondents with the list of the complaints. A copy of this letter has been provided to the Housing and Property Chamber. The correspondence related to the matters within the application. The Applicant sent the letter by email.
5. Both parties lodged representations prior to the inspection. The Respondents lodged a surveyors report dated 27th March 2024.

The Inspection

6. The Tribunal attended the House on the morning of 11th July 2024. It was a clear bright day. The Applicant and two of the Respondents, Mr Andrew McCall and Mr Angus McCall, were present. Mr Ian McCall has a Power of Attorney granted in the favour of his sons, Andrew and Angus, who are dealing with this matter on his behalf as well as their own interest in it. The Respondents solicitor, Mr Darren Bell from MML Law, was also present
7. The inspection was undertaken by the Ordinary Member (Surveyor Member) and the Legal Member.
8. The Property comprises a one story detached cottage in a rural setting. The Property is of traditional stone wall construction. The Property has a pitched slate roof. The House was furnished and there were appropriate floor coverings in place.

9. Each point on the list submitted by the Applicant was inspected in turn.
10. The electricity was on during the inspection.
11. The Applicant indicated that he would not be attending the hearing. He said that he has now insulated the bathroom to his satisfaction and that the EICR has now been provided. The septic tank issues have now also been resolved.
12. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.

The Hearing

13. The hearing took place on 11th July 2024 at 11.45am at Endeavour House, 1 Greenmarket, Dundee. Two of the Respondents, Mr Andrew McCall and Mr Angus McCall, were present. The Respondents solicitor, Mr Darren Bell from MML Law, was also present
14. The Tribunal noted that some points of the application had been resolved. This was namely that the bathroom had been insulated by the Applicant, the septic tank issues have been addressed and an EICR has been provided. The Applicant had been satisfied that these matters were resolved. The Tribunal removed these from the points that it was considering.
15. The Tribunal does not consider that either the perimeter fencing or driveway gate fell within the remit of the Repairing Standard.
16. The Tribunal noted that in the written representations lodged by the Respondents solicitor that it was accepted by the Respondents that the weatherproofing, the watertight condition of the roof and the sewage issues are admitted. Mr Bell confirmed that this was the position. He said that some tradesmen have been involved into trying to remedy the issues but have done so without success. Since the surveyors report the Respondents have been trying to obtain specialist tradesmen to complete the work. It will not be able to be done with the Applicant still living in the Property. The Respondents have been told that the work will not able to be commenced until on or around October 2024 due to the non-availability of tradesmen up to that point.

Findings of fact

17. Having considered all the evidence, the Tribunal found the following facts to be established: -
 - a) The tenancy is a Private Rented Tenancy between the Applicant and the Respondents. The tenancy commenced on 1st July 2022.

- b) A surveyors report had been commissioned by the Respondents dated 27th March 2024 which confirmed there were issues raised in the application which required to be repaired.
- c) The Respondents admitted the repairs that needed to be completed in terms of the report namely that the waterproofing, wind proofing and drainage issues as detailed meant that the repairing standards had not been met.
- d) The Applicant confirmed that the inspection that points raised in terms of the bathroom insulation, septic tank and EICR are no longer an issue.
- e) The Repairing Standard has not been met.

Reasons for the decision

- 18. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Respondents at the hearing.
- 19. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
- 20. The Tribunal was in no doubt, from its inspection, that the Property did not meet the Repairing Standard as detailed above.
- 21. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Respondents were in breach of the duty to comply with the Repairing Standard.
- 22. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal “must by order require the landlord to carry out such work”.
- 23. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale

(c) The decision of the Tribunal was unanimous.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to Tribunal members in relation to any future proceedings on unresolved issues.

G Miller

G Miller, Chair

16th July 2024