



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 24(1) of the Housing
(Scotland) Act 2006**

Chamber Ref: FTS/HPC/RT/24/0830

**Re: Property at 13 Shore Street, Macduff, Aberdeenshire, AB44 1UB (“the
Property”)**

Parties:

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie,
Aberdeenshire, AB51 3WA (“the Third Party Applicant”);**

**Robyn Watt, 13 Shore Street, Macduff, Aberdeenshire, AB44 1UB (“the
Tenant”)**

**William Stewart, Greenfold Farmhouse, Bridge of Marnoch, Huntly, Moray,
AB54 7UN (“the Landlord”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and David Godfrey (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) unanimously determined that the Landlord had failed to comply with
the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the
Act”). The Tribunal accordingly made a Repairing Standard Enforcement Order
(“RSEO”) as required by Section 24(2) of the Act.**

Background

- 1** By application to the Tribunal, the Third Party Applicant alleged that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2** The application stated that the Third Party Applicant considered the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard and in particular that the Landlord had failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation;
 - (ii) 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;
 - (iii) 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; and
 - (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- 3 In summary the Third Party Applicant stated that the windows required repair, there was evidence of water ingress to the master bedroom and bathroom, the gutters and downpipes were not in proper working order, there was a blocked drain in the back garden and there was evidence of gaps in the external rendering. The Third Party Applicant further alleged that the Landlord had failed to provide an up to date electrical installation condition report ("EICR"), gas safety certificate and portable appliance testing, and the property did not have sufficient carbon monoxide and smoke detection.
- 4 By Notice of Acceptance of Application dated 6 March 2024 a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the Landlord under Schedule 2, Paragraph 1 of the Act. An inspection was scheduled for the 12 July 2024 with a hearing set for later that day.
- 5 On 1 July 2024 the Tribunal received an email from Annie Kenyon of Annie Kenyon Architects on behalf of the Landlord. Ms Kenyon confirmed that she had instructed contractors to proceed with repairs to the windows, gutters and down pipes. She was tracking down the Gas Safety Certificate and EICR, and would forward on documentation in due course. Finally she confirmed that there were no portable appliances provided by the Landlord that required testing and she would provide evidence of smoke and carbon monoxide detection.

The Inspection

- 6 The Tribunal inspected the property at 10.30am on 12 July 2024. The weather was dry and windy. The Third Party Applicant was represented by Emma Bain. The Tenant was also in attendance. Neither the Landlord nor a representative on his behalf were present.
- 7 The Tribunal proceeded to inspect the property which was a semi-detached dwellinghouse on three floors. The Tribunal noted that no up to date gas

safety certificate or EICR were available, and that the Landlord had not provided the Tenant with any portable appliances that would require testing. The Tribunal further noted that whilst there were interlinked smoke alarm on the first two floors of the property, the alarm on the top floor did not appear to be connected.

- 8 The Tribunal inspected the bathroom cupboard where the boiler was located. There was a carbon monoxide alarm in the bathroom however this had become detached from the ceiling. The Tribunal viewed damp staining within the cupboard together with damage to the plasterwork which appeared to be the result of current water ingress.
- 9 The Tribunal inspected the bedrooms on the first floor of the property. The Tribunal found the windows in the master bedroom had rotted frames and broken handles. There was damp staining on the ceiling and wallpaper had become loose. In the second bedroom the window frames were rotted with a broken handle.
- 10 The Tribunal proceeded to inspect the bedrooms on the attic floor of the property. In one bedroom the window had been screwed shut to prevent it from opening. A light fitting on the ceiling was missing, leaving wires exposed. In the second attic floor bedroom the window had been sealed closed.
- 11 The Tribunal inspected the living room. The frame of the front living room window was rotted. The rear window was misted and the window sill was rotted.
- 12 The Tribunal proceeded to inspect the external structure. To the rear of the property there was evidence of defective drainage with water pooling. The gutters were full of vegetation. There were open joints and weathered stonework as well as defective rainwater fittings. At the front of the property a large section of rainwater fittings was missing.
- 13 Photographs were taken during the inspection and a schedule is appended to this decision.

The Hearing

- 14 The hearing took place following the inspection by teleconference. The Third Party Applicant was represented by Ms Bain. The Landlord was represented by Ms Kenyon. Neither the Landlord nor the Tenant were present.
- 15 The Tribunal invited parties to address them on the issues raised in the application. Ms Bain confirmed that she was content to rely upon the terms of the application and the Tribunal's own findings from the inspection.
- 16 Ms Kenyon confirmed that she had recently become involved in the application following an approach from the Landlord whom she acted for in

other matters. She apologised on his behalf and confirmed that she would deal with the repairs as soon as possible. She understood the implications for the Landlord's registration. She confirmed that a construction team had inspected the property and she awaited a schedule of works. It was likely that the windows would require replacement. The Landlord may have to consider whether it was financially viable to carry out the repairs required, with the alternative being to sell the property. Ms Kenyon confirmed that there were no portable appliances provided by the Landlord therefore no requirement for testing. She was arranging the gas safety certificate and EICR. Ms Kenyon explained that she expected the Tribunal to make an RSEO and would deal with it straight away. In response to questions from the Tribunal Ms Kenyon confirmed that the starting point would be the fabric of the property, looking at the roof and walls. An electrician would be attending the property next week, and the scope of works would include the provision of appropriate smoke and carbon monoxide detection.

17 The Tribunal asked Ms Bain if she had any further comments. Ms Bain wished to highlight that the smoke alarms in the property didn't appear to be interlinked and that would require to be looked at by the electrician.

18 **Findings in Fact**

The Tribunal found the following facts to be established:-

19 The Landlord and Tenant entered into a tenancy agreement for the property dated 8 January 2021.

20 The exterior of the property is not in a reasonable state of repair. There are missing rain water fittings and cracks in the rendering. There are open joints and weathered stonework to the rear of the property.

21 The drainage to the rear of the property is defective.

22 There is evidence of ongoing water ingress in the master bedroom.

23 The windows in the property are not in a reasonable state of repair.

24 The property does not have sufficient provision for the detection of smoke, heat and carbon monoxide.

25 There is no up to date certification available for the gas and electric installations in the property.

26 The Landlord has not provided any portable appliances to the Tenant under the terms of the tenancy agreement between the parties.

Reasons for decision

- 27 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties and the findings of the Tribunal's inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 28 Based on its findings in fact the Tribunal concluded that the property does not presently meet the repairing standard. Ms Kenyon had conceded this on behalf of the Landlord and had not disputed anything that had been raised by the Third Party Applicant in the application, with the exception of the portable appliance testing. It was however a matter of agreement that the Landlord had not provided any portable appliances under the terms of the tenancy therefore the Tribunal accepted that no certification was required.
- 29 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:
- (i) In respect of 13(1)(a), the house is not wind and watertight and in all other respects reasonably fit for human habitation;
 - (ii) In respect of 13(1)(b), the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;
 - (iii) In respect of section 13(1)(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; and
 - (iv) In respect of section 13(1)(d) the fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.
- 30 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal "must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard". The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is one month, having regard to the ongoing health and safety risks posed by the lack of sufficient certification for the gas and electrical installations. The Tribunal noted there were young children residing in the property which was a particular cause of concern.

- 31 As an observation the Tribunal would wish to highlight that there were other issues observed during the inspection that were not part of the current application but caused concern in terms of the Landlord's repairing duty, for example the poor condition of the kitchen units and loose carpeting on the stairs. The Tribunal would therefore urge the Landlord to take steps to ensure the property is fully compliant with the repairing standard to avoid the need for any further applications to the Tribunal.
- 32 The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party 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 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 determined.

R O'Hare

22 July 2024

✓ Legal Member/Chair

Date