

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Ref: FTS/HPC/RP/24/1856**

**Title Number: DMB48838**

**Re: 32 Westermains Avenue, Kirkintilloch, Glasgow G66 1EH  
("the House")**

**The Parties:**

**Julie Murray, 32 Westermains Avenue, Kirkintilloch, Glasgow G66 1EH  
("the Tenant")**

**Raymond Heath, East Dunbarton CAB, 11 Alexandra Street, Kirkintilloch,  
G66 1HB  
("the Tenant's Representative")**

**Brian McGeady, 59 Victoria Road, Kirkintilloch, G66 5AP ("the Landlord")**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Nick Allan (Ordinary Member)**

**Decision**

**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, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. The Tenant applied to the Tribunal in terms of Section 22(1) of the Housing (Scotland) Act 2006. The Tenant stated that the Landlord has failed to meet

the repairing standard in relation to the House. In particular, the Landlord has failed to attend to carry out necessary repairs and make good any damage or rectify defects on the House, specifically: cracks on the outside wall of the House; garage leaks; dampness/mould; holes in walls and ceilings; electric cables in garage showing; old guttering and drainpipes require inspection; dampness/mould on bathroom; ceiling in bathroom fallen down and walls in bathroom in poor condition and holes; central heating repair/inspection needed; wall in garden down; and decking needing cleaned as unsafe.

2. On 23 July 2024, the Parties were notified that the Tribunal would inspect the House on 4 September 2024 at 10am and that an in-person Hearing would take place at 11.45 am at Glasgow Tribunals Centre, room 110, 20 York Street, Glasgow G2 8GT.
3. The Tenant's Representative and the Landlord intimated that they intended to attend the Hearing.
4. The Tribunal inspected the House on 6 March 2024, at 10am. Access was provided by the Tenant. The Tenant's Representative and the Landlord were also present during the inspection.
5. An in-person Hearing took place at 11.45 a.m. on the same date. The Tenant's Representative (with the Tenant's permission in her absence) and the Landlord participated.

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### **The Inspection**

6. At the time of the Inspection the weather was dry and sunny.
7. The House is a three bedroomed semi-detached villa with attached garage.
8. Accessing the House through the front door there is an entrance hall, from which access is gained to the living room and the kitchen, both on the ground floor. Adjoining the kitchen is a separate area forming a downstairs toilet and a utility room with access to an integral garage. Upstairs there are three bedrooms and a bathroom.
9. Outside the rear of the House there is a raised timber decked area accessed from the rear of the living room. There are rear stone steps leading to the lawn which can be accessed this way or from the back door in the utility room.
10. At the time of the Inspection the House was occupied by the Tenant and her family.
11. The downstairs toilet and utility room

It was agreed by the Parties that the matters complained about in the application referred to this area downstairs and not the main bathroom upstairs.

It was clear that there is evidence of persistent water damage in those areas. Surface and below surface readings were taken in the utility room and WC using a specialist damp meter. The readings recorded indicate that several sections of the wall and ceiling are saturated. This is embedded dampness and does not correlate with potential condensation issues. Staining and bubbling to various surfaces was evident. There were holes in the pipe chase in the utility room. The party wall with the Kitchen had

evidence of staining and surface damage indicative of sustained water penetration.

12. The garage

The garage area did not appear to have any water damage issues, but an electrical cable was hanging loose from the ceiling. It appeared to pose no risk.

13. The guttering and downpipes.

The front guttering was choked with vegetation. The rear guttering had two areas where it was out of alignment/pitch and could be a potential source of pooling of water with overspill. There was evidence of a repaired section above the decking area which potentially could be the source of water dripping onto the decking.

14. The decking area

The flooring comprised timber slats. It was slippery despite the weather being dry and had some surface algae.

The fencing/boundary wall

Adjacent to the rear stone steps, two wooden fence panels had come down. A section of single brick wall at the same location had also collapsed. It had no identified purpose and it did not appear to form part of the boundary. Neither Party appeared to have any interest in it other than that the debris should be removed when the boundary fence is being re-instated.

15. The central heating, water pressure and temperature in the radiators.

The central heating boiler was in an underfloor area in the kitchen and the access hatch was jammed. The tribunal was unable to inspect the boiler despite efforts by the Parties to release the hatch. The central heating system was operated by a wireless thermostat and the Tenant turned on the heating for the purposes of inspection. After a short time, the radiators were inspected. There were two in the living room that were hot at the top and cool at the bottom. The upstairs three-bedroom radiators and the towel rail in the bathroom were hot at the bottom and cool at the top. However, the system was generally working sufficiently.

16. The roof and external walls

There were two rectangles of roughcast that had been removed from the gable wall to allow for inspection, and evidence of other attempts to resolve the water ingress problems. There were also signs of cracking and the roughcast had blown at sections and been patched at others.

17. There was a working interlinked wireless fire alarm system in the main areas, together with a heat detector and a Carbon Monoxide detector in the Kitchen. The Tribunal noted that the CO monitor was separated from the gas boiler by a floor and hatchway.

**Observations**

18. There were items that did not form part of the Application that were noted by the tribunal during inspection, that may need attention namely: the light fitting in the utility room; the paint finish on the WC window frame; and the

bossed and loose roughcast on the side of the rear steps accessing the garden.

19. A Schedule of Photographs taken during the inspection is attached to this decision.

#### **The Hearing- 4 September 2024 at 11.45am**

20. The Tenant was represented by Mr. Heath and the Landlord participated.

21. The findings of the Inspection as detailed above were discussed. The findings of the inspection were conveyed verbally to the Parties present and were undisputed.

22. The Landlord explained that he had purchased the House with a sitting tenant in 2013. The tenant at that time had installed cavity wall insulation. This had become a problem over time that had caused retention of water in the cavity. This in turn had damaged the fabric of the building due to sustained water ingress. There had been tensions between him and the Tenant as a result of the repairs issues being prolonged, and relations had deteriorated between them. Investigations have been carried out alongside some roof repairs. The cavity wall insulation was inspected at the access areas and had solidified and had been seen through the inspection points on the gable wall. It was holding water and also forming a bridge across the cavity. The source of the water ingress he understood to be around the gable wall-roofline area. The edge of the roof covering is virtually flush with the roughcast finish with little overhang and appears to him now to be deficient. It appeared to his tradesperson to be a design flaw, and it was noted that another similar house in the street had redesigned this feature to create a more substantial and weather-proof overhang. He concluded that this needed to be investigated and possibly changed to remove the source of water ingress into the cavity channel. He had asked for a quotation from his roofer. He had been told this needed attended to before any other remedial works around the damage.

The Landlord had noted that the radiators needed bled, and he required to arrange for the access hatch to be released. He was arranging for his plumber to attend to this. He had installed a Worcester boiler in the House. A Gas Safety inspection is due on 27 September 2024. He would carry out the necessary works. He flushed the radiators out last year but accepted some minor works around the radiators were needed.

The electric cable in the garage had been repositioned by the tenant and simply needed pinned up. There was no electrical risk. The Landlord noted that the boundary fence had come down and would arrange to have it reinstated. The Landlord referred to his letter submitted to the tribunal in advance of the Inspection and stated that he had served a Notice to Quit on the tenant and wished to sell the House. The Notice was due to expire on 31 October 2024. As yet, the House had not been marketed for sale. He needed to take advice on the process.

23. The Tenant's Representative made no additional observations regarding the findings of the Inspection.

24. The tribunal thereafter deliberated and proceeded to a determination.

### **Findings in Fact**

25. The House is one to which the repairing standard applies.
26. There is a fixed radiator-based gas central heating system installed in the House.
27. The gas central heating system was working sufficiently at the time of Inspection by the tribunal albeit some minor routine maintenance was required.
28. The Application did not rely on section 13(1) (c) of the 2006 Act. This is the section that covers space heating and heating water.
29. Two wooden panels of the boundary fence need replaced and re-instated. A section of single brick wall at the same location had also collapsed. It had no identified purpose and it did not appear to form part of the boundary. Neither Party appeared to have any interest in it other than that the debris should be removed when the boundary fence is being re-instated.
30. There is water damage to the interior and exterior of the House.
31. The roughcasting on the House has blown in sections and been patched at others.
32. Areas of plasterwork in the downstairs toilet and utility room are damaged due to water ingress.
33. There were holes in the pipe chase in the utility room.
34. The walls in the downstairs toilet and utility room have the highest moisture readings possible.
35. The cause of the high moisture readings is not condensation.
36. The guttering at the front of the House is choked with vegetation. The rear guttering is out of alignment/pitch in two sections.
37. The decked timber area is wet and slippery. It is below an area of guttering that is out of alignment.
38. The electric cable in the garage does not pose a safety risk but should be secured to the ceiling joists.

### **Decision and reasons for decision**

39. The Tribunal considered the issues of disrepair set out in the application, the undisputed verbal findings of the Inspection and the information provided by the Parties.
40. The tribunal is only able to decide on the matters raised in the application, with reference to section 13 of the 2006 Act.
41. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 14(3) of the 2006 Act, "The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it". Section 22(3) of the 2006 Act states that an application can only be made if

the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard. The Tribunal is satisfied that the Tenant's Representative notified the Landlord of the repairs issues at the House prior to lodging the application by way of the letter sent by her agent on 4 April 2024.

42. The Tribunal's decision was primarily informed by the undisputed findings of the Inspection. Those findings are referred to above under the heading 'Inspection'.
43. The tribunal made no determination regarding the central heating as reference had not been made to the appropriate repairing standard in the application. The gas central heating system was in any event working sufficiently at the time of Inspection by the tribunal albeit some minor routine maintenance was required. The tribunal had some concerns regarding the location of the boiler that was located sub-floor. The tribunal was unable to inspect it. The tribunal notes it did not form part of the application reference. The Landlord may wish to make such enquiries to ensure the system is in its current state fully safety compliant.
44. There is water damage to the interior and exterior of the House.
45. The roughcasting on the House and rear steps has blown in sections.
46. Areas of plasterwork in the downstairs toilet and utility room are damaged due to water ingress.
47. There were holes in the pipe chase in the utility room.
48. The walls in the downstairs toilet and utility room have the highest moisture readings possible.
49. The cause of the high moisture readings is not condensation.
50. The guttering at the front of the House is choked with vegetation. The rear guttering is out of alignment/pitch in two sections.
51. The decked timber area is wet and slippery. It is below an area of guttering that is out of alignment.
52. The electric cable in the garage does not pose a safety risk but should be secured to the ceiling joists.
53. The Tribunal is satisfied that the Landlord has failed to comply with the repairing standard in relation to the Landlord having failed to ensure that: - Section 13(1)
  - (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.
54. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Section 13 (1)(a) and (b) of the Act.
55. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act and proceeded to make a repairing standard order to rectify the identified defects as follows:
  - (1) Carry out such repairs and any alterations to the roof of the House to remove the source of water ingress at the gable wall.

- (2) Carry out such repairs to the rear gutter to align the run and pitch on it.
  - (3) To clean out the front guttering and remove any obstructions and repair it as necessary.
  - (4) To reinstate the boundary by replacing the two wooden panels at the rear boundary fence and remove any surrounding debris.
  - (5) Remove any loose roughcast to the exterior of the House and carry out such repairs as necessary to reinstate same.
  - (6) Repair the covering to the pipe chase in the utility room of the House.
  - (7) Clean the surface of the decking area outside the House to remove any potential source of slipping hazards. This work should be done once the gutter above same has been repaired.
  - (8) Carry out finishing works to dry out, repair and restore the interior walls and ceiling of the downstairs toilet and utility room; to include restoring any finishes.
56. The decision of the Tribunal is 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.

Susan Christie

Susan Christie, Legal Member

4 September 2024

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Inspection Photograph Schedule**  
**32 Westermains Avenue, Kirkintilloch, Glasgow**  
**G66 1EH**

**Case Reference:** FTS/HPC/RP/24/1856

**Date of inspection:** 04/09/2024

**Time of inspection:** 10.00 am

**Weather conditions:** Dry and sunny

**Present:** Mrs Susan Christie – Legal Member  
Mr Nick Allan – Ordinary Member  
Mr Raymond Heath – East Dunbartonshire CAB  
Ms Julie Murray – Tenant  
Mr Brian McGeady - Landlord



Photo 1 – Front elevation





Photo 2 – Water damage in WC



Photo 3 – Water damage in WC



Photo 4 – Water damage in WC



Photo 5 – Water damage in WC



Photo 6 – Embedded dampness reading in WC



Photo 7 – Embedded dampness reading in WC



Photo 8 – Water damage in Utility room



Photo 9 – Water damage in Utility room



Photo 10 – Loose electrical cable in garage



Photo 11 – Continuation of loose cable



Photo 12 – Choked gutter on front elevation



Photo 13 – Pitch/run issue with rear gutter

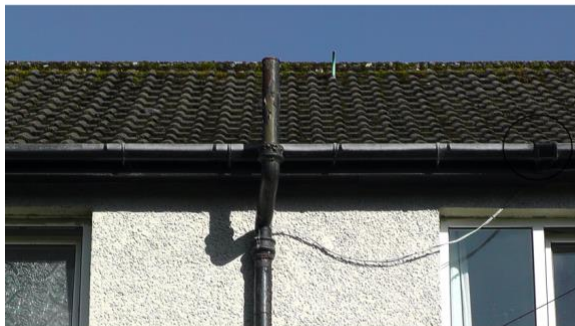


Photo 14 – Potential issue with gutter section to right

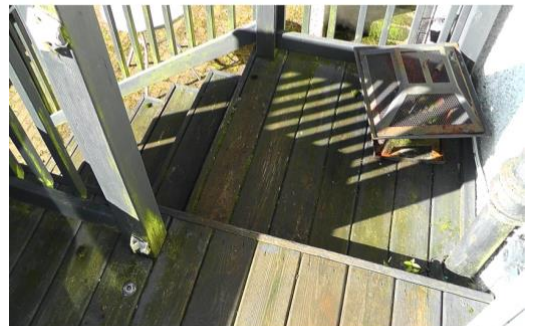


Photo 15 – Moss covered deck and garden steps



Photo 16 – Collapsed fence panels and wall section

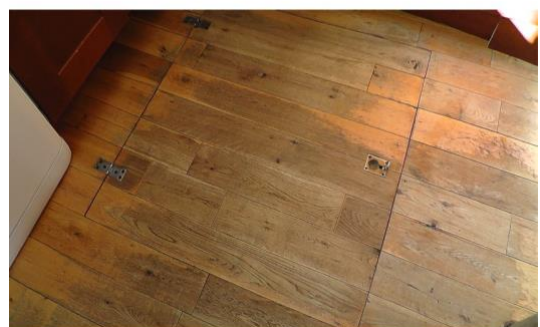


Photo 17- Floor hatch



Photo 18 – Living room/Dining area radiator



Photo 19 – Bossed roughcast/exposed brickwork



Photo 20 – Roughcast issues



Photo 21 – Roughcast issues/exposed brickwork



Photo 22 – Cracking on render



Photo 23 – Roughcast issues on front elevation



Photo 24 –Roofline/gable detail



Photo 25 – WC window issues



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Photo 26 – Broken light fitting in Utility room

### **Inspection Notes**

1. The Tribunal noted the presence of smoke alarms in the Living/Dining room, Hallway and Upper Landing, together with a heat sensor in the Kitchen. These were tested, and it was noted that each unit was fully functioning and interconnected.
2. The Tribunal noted the presence of a Carbon Monoxide alarm in the Kitchen but noted that it was not located in accordance with Scottish Government requirements.

Nick Allan FRICS  
Surveyor – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber – 20<sup>th</sup> September 2024