



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

Reference number: FTS/HPC/RP/24/1669

Re: 9 Warrix Avenue, Irvine, North Ayrshire KA12 ODP (registered under title number AYR5568) (“Property”)

The Parties:

Leo Carruthers, 9 Warrix Avenue, North Ayrshire KA12 ODP (“Tenant”)

CHAP, Michael Lynch Centre, 71 Princes Street, Ardrossan, North Ayrshire KA11 8DG (“Tenant’s Representative”)

John Carpy, 16 Church Wynd, Bo’Ness EH51 OEQ (“Landlord”)

Tribunal Members :

Joan Devine (Legal Member); Donald Wooley (Ordinary Surveyor Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (a) and (d) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 12 April 2024, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that he believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (a) and (d) of the Act. The Application stated that the Landlord had failed to ensure that:
 - The Property is wind and watertight and in all other respects reasonably fit for human habitation.

- Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :
 - Three holes in the main roof causing water ingress
 - Water damage to living room ceiling and water entering light fitting at front window
 - All light fittings in the Property are poorly fitted
 - Dampness throughout the Property
 - Kitchen window does not close
 4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 26 September 2024.
 5. On 5 September 2024 the Landlord lodged a written representation in which the Landlord stated that repairs had been Carried out to the roof in January, February, May and October 2022 as well as in February 2024; works were carried out to light fittings on 30 May 2024; to alleviate dampness gutters cleared in October 2023 and in February and June 2024; ivy also cut back and weed killer applied to alleviate dampness in February and June 2024; Peter Cox reported woodworm which was treated on 25 June 2024; and a window fitter attended the Property on 5 March 2024 when the kitchen window was fully sealed. The representation included (a) emails from Housing Strategy & Corporate Sustainability department of North Ayrshire Council regarding an inspections of the Property on 3 December 2021 and 24 May 2022; (b) a report from Peter Cox regarding the Property dated 4 June 2024 regarding a survey of the Property which took place on 31 May 2024 which referred to evidence of infestation by woodworm; and (c) an EICR dated 14 December 2021. On 6 September 2024 the Landlord lodged a copy of an email from Stephen Dean of Peter Cox dated 12 June 2024. On 23 September 2024 the Landlord lodged a further written representation in which he stated that further maintenance was to be carried out to the roof on a date to be arranged with the Tenant and a glazier had arranged to visit the Property on 28 September 2024

The Inspection

6. The Tribunal inspected the Property on the morning of 26 September 2024. The weather conditions at the time of the inspection were dry and overcast. The Tenant and the Landlord were present at the Property during the inspection. The inspection included inspection of the roof space. The Property is third floor flat with 2 bedrooms, living room, bathroom and kitchen. A schedule of photographs taken at the inspection is provided with this Decision.

The Hearing

7. The Hearing took place on 26 September 2024 at Russell House, King Street, Ayr. The Tenant was in attendance and was represented by Andrea Gibson from the Tenant's Representative. The Landlord was also in attendance.

8. The Tribunal considered the issues raised in the Application. As regards dampness in the Property, the Tribunal noted that the report provided to the Landlord by Peter Cox recommended the removal of ivy from the exterior of the building, the installation of extractor fans in the bathroom and kitchen and the provision of a tumble dryer to assist with drying clothes. The Tribunal noted that the ivy had been cut back. The Tribunal noted that damp meter readings taken in the living room in the area below the window suggested that the area of dampness may be drying out since removal of the ivy. Meter readings taken in the area above the living room window indicated recent water ingress. The Tribunal noted that the dampness appeared to be restricted to the ceiling below the flat roof section. The Tribunal queried whether the flashing where the flat roof met the main roof could be defective. The Landlord told the Tribunal that there had been a fibre glass seal fitted to the flat roof. He said the roofer who had carried out the recent works increased the "lip" of the felt in order to create a larger overlap in order to address the water ingress. The Landlord had photographs of the recent works and said he would send copies to the Tribunal administration. He said that the Tenant has raised the issue of water ingress several times.
9. As regards damp in other parts of the Property, the Tribunal noted that the damp meter readings did not indicate any dampness in either bedroom. The Tenant agreed that both bedrooms were now dry. The Tenant said that the only areas where he had been concerned about dampness were the living room and bedrooms.
10. As regards the roof, the Tribunal noted that there was no evidence of holes in the roof tiles. The Landlord told the Tribunal that works had been carried out to the roof which had been completed on 25 September 2024. He said that the roof tiles had been power washed and that may have contributed to dampness evident at the inspection. The Landlord said that the gutters were being cleared every 4/6 months. He hoped the removal of moss from the roof would help with the dampness.
11. As regards the living room, the Tribunal noted that there was large damp stain around the lights in the bay window and that damp meter readings taken in this area were very high. The Landlord said that may be because the roof had recently been power washed. The Tenant said that water pours in at this area when it rains. The Landlord told the Tribunal that the lights in the bay window area had been disconnected because of the water ingress. He said they would be reconnected once it was clear that the water ingress had been resolved.
12. As regards the light fittings, the Tribunal noted that the lights in the hall were in a reasonable state of repair. The tribunal noted that the EICR lodged by the Landlord was dated 14 December 2021 and noted C2 issues. The Tribunal noted that electrical works had been carried out since the EICR had been prepared and asked if a more up to date EICR was available. The Landlord said he did not think so but would require to check.

13. As regards the kitchen window, the Tribunal noted that it did not close properly and therefore was not wind and watertight. The Landlord said that a glazier was coming to look at it on Saturday 28 September 2024. If it could be repaired, he would arrange a repair otherwise he would arrange for it to be replaced.

The Evidence

14. The evidence before the Tribunal consisted of:
 - 14.1 The Application completed by the Tenant's Representative
 - 14.2 The tenancy agreement between the Tenant and the Landlord
 - 14.3 Land Register report relating to the Property
 - 14.4 Notification to the Landlord dated 15 February 2024.
 - 14.5 The written representations lodged by the Landlord on 5, 6 and 23 September 2024.
 - 14.6 The Tribunal's inspection of the Property
 - 14.7 The oral representations of the Landlord and Tenant.

Summary of the Issues

15. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on him by Section 14(1)(b).

Findings in Fact

16. Tribunal made the following findings in fact:
 - 16.1 The tenancy agreement indicates that the Tenant has lived in the Property since 1 July 2021.
 - 16.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 16.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 16.3.1 There is no evidence of holes in the roof of the Property.
 - 16.3.2 There is dampness in the living room in the area below the window and in the ceiling below the flat roof.

- 16.3.3 There is no evidence of damp elsewhere in the Property.
- 16.3.4 There is staining on the ceiling in the living room.
- 16.3.5 The lights in the bay window area of the living room have been disconnected and are not operational.
- 16.3.6 The window in the kitchen is not fully functional and does not close properly.
- 16.3.7 The current EICR for the Property is dated 14 December 2021 and contains C2 faults.
- 16.3.8 Contrary to current Scottish Government guidelines, the carbon monoxide detector is situated in the cupboard which houses the boiler.

Reasons for Decision

- 17. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (a) and (d) of the Act.
- 18. The Property is not wind and watertight and in all other respects reasonably fit for human habitation as the window in the kitchen does not close properly and there is dampness evident in the bay window and front wall area of the living room. There is also staining and damp on the ceiling below the flat roof in the living room from water ingress.
- 19. As regards the dampness, the Landlord has undertaken works including the removal of the ivy and redressing and extending the flashing between the flat and pitched roof sections on the front of the building in an attempt to address the issue. The latest works were completed the day before the Tribunal inspected the Property. It is too early to determine whether the works carried out have fully addressed the issue. At the time of the inspection there was evidence of damp which was at a significant level in the ceiling below the flat roof.
- 20. The fixtures, fittings and appliances provided by the Landlord in the Property are not in a reasonable state of repair as the lights in the bay window of the living room have been disconnected.
- 21. The Tribunal observed that the carbon monoxide detector is on the wall next to the boiler in a cupboard off the hall which is not in accordance with Scottish Government Guidelines. The detector should be outside the cupboard.

Decision

- 22. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has

failed to ensure that the Property meets the repairing standard in respect of Section 13(1) (a) and (d) of the Act.

23. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

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.

Joan Devine

**Legal Member
27 September 2024**

Schedule of Photographs

9 Warrix Avenue, Irvine

FTS/HPC/RP/24/1669

Schedule of Photographs taken at the inspection on 26 September 2024



1. Front elevation



2. Front roof pitch and flat roof projection



3. Rear roof pitch

Photographs 2 and 3:- The roof tiles have been “cleaned” and that there are no significant holes in the roof covering



4.



5.

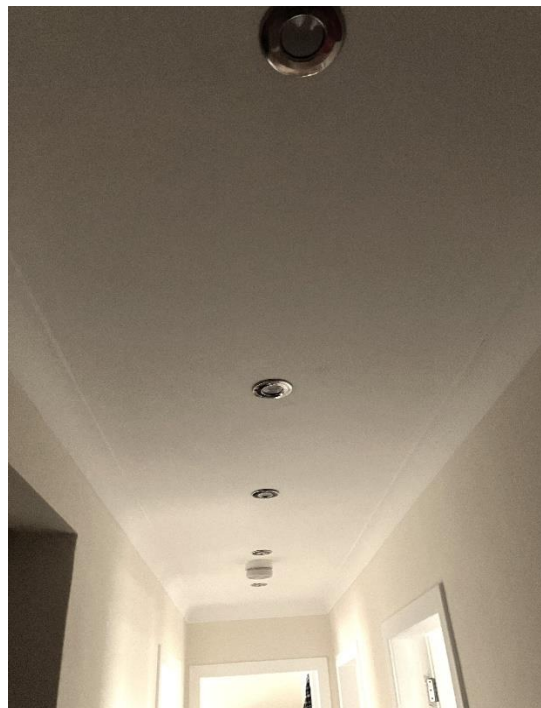
(2)



6.

Photographs 4 & 5:- Evidence of water ingress below the flat roof projection above the living room and moisture readings in the vicinity of recessed ceiling light fittings at levels likely to cause further damage, if not repaired.

Photograph 6:- Confirms that the damp staining towards the centre of the living room ceiling is dry.



7.

Photograph 7:- Recessed ceiling lights in the entrance hall all of which appear to be properly secured. No poorly secured ceiling mounted light fittings were identified within the property or brought to the attention of the Tribunal by the applicant.

(3)



8



9



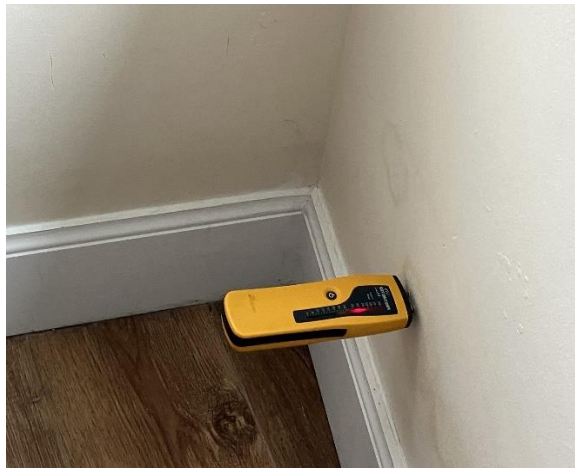
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Photographs 8 - 10:- Historic condensation staining on the foil backed plasterboard sarking in roof space and a damaged sarking panel which was disturbed during a recent repair to the roof tiles on the front roof pitch. Such staining and condensation within roofs of this style of construction is very common, most notably during winter. There was no evidence of any recent penetrating damp within the roof space.

(4)



11.



12.



13.



14.

Photographs 11 & 12:- Damp staining at front and return walls of living room. This coincides with an area of the external wall where, as a result of a recommendation from “Peter Cox”, a timber and damp preservation company, ivy which was previously growing on the external face of the wall was removed in order to address the likely cause of penetrating damp. Damp levels, still in the region of 30% remain, although it is very possible this is residual damp which will reduce as the wall dries out.

Photograph 13:- Readings taken in the front bedroom, where the tenant considered there to have previously been damp, identified no evidence of damp.

Photograph 14:- Readings taken in the rear bedroom, where the tenant considered there to have previously been damp, identified no damp. There is evidence of variable “shading” on the wall although it was completely dry at time of inspection.



15.

Photograph 15:- Top left hand corner of PVC double glazed kitchen window. Operating mechanism of window is not fully functional and there is a noticeable draught at this area when in the closed position.

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 26 September 2024 in connection with a Repairing Standard application under consideration.

Donald Wooley MRICS

26 September 2024