



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

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

Chamber Ref: FTS/HPC/RT/24/1772

Title Description: 37 Main Road, Collin, Dumfries, DG1 4JL being part of the subjects described in the Disposition by James Francis Mundell Mundell in favour of James Frederick Stodart Mundell recorded in the Division of the General Register of Sasines for the County of Dumfries on 18 December 1995.

**Re: 37 Main Road, Collin, Dumfries, DG1 4JL
("the House")**

The Parties:

**Peter Geddes, 37 Main Road, Collin, Dumfries, DG1 4JL
("the Tenant")**

**Fiona Smith, Dumfries & Galloway Council, Housing Standards, Militia House,
English Street, Dumfries, DG1 2HR
("the Third-Party Applicant")**

**James Mundell, Braehead Farm, Collin, Dumfries, DG1 4JN
("the Landlord")**

Tribunal Members:

**Susan Christie (Legal Member)
Andrew Taylor (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 Third-Party Applicant applied to the Tribunal in terms of Section 22(1A) of the Housing (Scotland) Act 2006. The application 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: in the lounge area there is a damp patch at the left hand side of the window with a high moisture reading, the chimney needs sweeping; in the hall area at the front door the timber front door of the house appears to have swollen with rainwater ingress and makes the door difficult to open and close, the door is binding on the rubber draught excluder fitted to the threshold thus adding resistance to opening and closing, the concrete floor at the door was visibly wet and the cause should be further investigated; the bathroom the window seals are rotten and coming away from the frame allowing wind and water ingress; bedroom 1, the ceiling area above the chimney breast is water damaged and wallpaper is peeling off. Water could be seen collecting in a bucket. The root cause of the penetrating dampness should be investigated and repaired as necessary; the kitchen the floor had sunk in places and in particular the area opposite the washing machine, the floor was spongy, there was a large crack on the window surround and the paint was flaking off the external windowsill; the external areas temporary repairs had been carried out to the front and rear gutters and it required permanent work, the fence at the front was loose and the fence posts were rotting, the render to the front and back has many areas of damage.
2. On 2 August 2024, the Parties were notified that the Tribunal would inspect the House on 11 September 2024 at 11am and that a conference call Hearing would take place at 14.30 pm.
3. The Tribunal inspected the House on 11 September 2024, at 11am. Access was provided by the Tenant. The Third-Party Applicant's representative Ms Smith and the Landlord were also present during the inspection.
4. A conference call Hearing took place at 14.30 p.m. on the same date. The Third-Party Applicant's representative Ms Smith and the Landlord participated.

The Inspection

5. At the time of the Inspection the weather was dry and sunny.
6. The House is a two bedroomed semi-detached bungalow.
7. Accessing the House through the front door there is an entrance hall, from which access is gained from the left into the living room and from there into a kitchen to the right, and from the left of the living room onto the bedrooms. The bathroom is accessed from the entrance hall to the right. There is a small front garden that borders the pavement, and there is a larger decorative garden to the rear.
8. The lounge area
To the lower wall to the left hand side of the window, a damp meter reading was taken from an area identified by those present. The moisture reading taken was 6% and was much lower than the reading of 26.4% submitted in the application. A second wall area was examined which was on the living room, where the living room met the kitchen entrance. The moisture reading taken was 6%.
Within the fireplace was a multi stove. The area was clean, and the tribunal was unable to see any debris said to have been dropping from the chimney at the time of inspection.
9. The hall area at the front door

The tribunal found that the timber front door of the house was difficult to open and close, and the door is binding on the rubber draught excluder fitted to the threshold. The concrete floor at the door was inspected by the tribunal after the Tenant had lifted part of the floorcovering. It was visibly wet at the concrete slab.

10. The bathroom

The window seals are rotted in areas of the left hand side window and have separated from the window frame.

11. Bedroom 1

The ceiling area above the chimney breast has a visible patch of water damaged and wallpaper had peeled there. A bucket was present but was empty on inspection. Plastic sheeting had been placed over the bed in this room.

12. The kitchen

The tribunal was directed to a strip of flooring running parallel to the sink and units. This is spongy underfoot and is sunken. The Tenant had placed a thick wooden board over its length to stand on.

The window frame at the kitchen window mullion has come away and there is a gap. The paint has worn from the exterior of the window.

13. External areas

The front and rear gutters showed sign of deterioration and there are gaps with the line not running true.

The fence at the front of the House complained of had been re-secured to its post, but generally was showing signs of age.

The render at the rear of the House had been patch repaired.

14. There was a working interlinked wireless fire alarm system in the main areas, a heat detector in the kitchen and Carbon Monoxide detector in the House.

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

The Hearing- 11 September 2024 at 14.20 p.m.

16. The Third-Party Applicant's representative Ms Smith and the Landlord participated.

17. It was agreed that the tenancy between the Landlord and Tenant had commenced around 13 March 2019. The rent is £450 per calendar month. A deposit of £450 was paid. In response to the tribunal's Direction, some paperwork had been produced that indicated the Parties had utilised the style model private residential tenancy agreement. Agents instructed by the Landlord had prepared it and sent it out for signature. Unfortunately, the agent no longer did that type of work, and they had mislaid the only copy of the tenancy agreement.

18. It is undisputed that the Tenant had been provided with sight of an electrical installation report. There were no white goods included in the let, and therefore no portable appliance testing had been done. Further inspections were due within the next month or so.

19. 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.

20. The Landlord explained that he had had joiners out at the House and the back door had been renewed and four new windows had been installed in the bedroom. The

kitchen window was to be repaired but the joiner would not come back, and alternative tradespersons were being asked. Generally, several tradespersons were refusing or were reluctant to work on the House because they said that they were watched over by the Tenant who told them how to do their job. The landlord was arranging for a slater to look at the roof of the House and had been waiting for him to become available. It appeared that his inspection was imminent. Some of the issues may be roof related such as the bedroom damp patch. The plasterer who had patched the exterior render at the back of the House thought he had finished the job as the Tenant had told him not to bother with any work at the front.

21. The Tenant's Representative made observations consistent with the tribunal's findings of the Inspection and speculated that the lower readings on the damp meter may be due to the better weather.
22. The tribunal thereafter deliberated and proceeded to a determination.

Findings in Fact

23. The House is one to which the repairing standard applies.
24. The damp meter readings taken in the living room were low and did not evidence damp issues on either wall at the date of the inspection.
25. The chimney in the living room requires to be swept periodically notwithstanding the installation of a multi fuel stove. There was no debris noted at the date of the inspection and the area was generally clean.
26. The timber front door of the house was difficult to open and close, and the door is binding on the rubber draught excluder fitted to the threshold.
27. The concrete floor at the front door was visibly wet at the concrete slab despite the dry weather.
28. The window seals are rotted in areas of the left hand side window in the bathroom and have separated from the window frame.
29. The ceiling area above the chimney breast is water damaged.
30. A section of flooring in the kitchen running parallel to the sink and units is spongy underfoot and has sunk in places. This poses a danger to the Tenant or anyone else using the kitchen.
31. The window frame at the kitchen window mullion has come away and there is a gap. The paint has worn from the exterior of the window.
32. The front and rear gutters showed sign of deterioration and there are gaps with the line not running true.
33. The fence was generally secure.
34. The render at the rear of the House had been patch repaired. The front of the House needed inspected and render repairs completed as appropriate.

Decision and reasons for decision

35. 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.
36. 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.

37. The Tribunal’s decision was primarily informed by the undisputed findings of the Inspection. Those findings are referred to above under the heading ‘Inspection’.
38. It was accepted by the tribunal that whilst some work to the House had been done by the Landlord in the preceding year or two, it was clear that there was still more work to be done.
39. The tribunal was primarily concerned with the health and safety aspects arising from the kitchen floor, which needed immediate attention as it posed a risk to the Tenant. The damp patch on the bedroom ceiling also required early attention and may be linked to a roof issue or a chimney breach.
40. The windows highlighted in the inspection are in need of repair, as was the front door that was taking in water and the rubber draught excluder was no longer sound.
41. The concrete floor adjacent to the front door had an obvious water ingress issue and needed to be investigated.
42. The gutters needed repaired or replaced. The downpipes appeared sound.
43. The tribunal had no immediate repair concerns over the front fence albeit it was showing signs of age and will require to be checked from time to time and repaired and secured as needed.
44. The exterior render at the back of the House had been patch repaired and there were no obvious signs that the render was causing any repair issues, but this may be checked and further repairs carried out as necessary. The front of the House needed to be inspected and render repairs completed as appropriate.
45. 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.
46. 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.
47. 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 on the following terms: the Tribunal requires the Landlord to: -
 - 1) Engage a suitably qualified damp specialist to investigate the causes of dampness at two patches on the walls in the Living Room and at the concrete slab adjacent the front door. Undertake all works recommended; make good all plaster, decoration and flooring.

- 2) Engage a HETAS qualified chimneysweep to sweep the flue to the multi-fuel burner and provide the Tenant with the appropriate certificate.
- 3) Repair or replace the front door to the property including all draught excluders and weather bars so that the door is secure, wind and watertight, and capable of being easily opened and closed.
- 4) Replace the seals to the bathroom window so that the window is secure, wind and watertight, and capable of being easily opened and closed.
- 5) Investigate and repair the cause of the leak affecting the ceiling to bedroom 1.
- 6) Make good plaster and decoration.
- 7) Investigate the subsiding floorboards in the kitchen. Replace floorboards and joists as necessary and carry out any rot works required. Include all making good and replacement of kitchen flooring.
- 8) Carry out maintenance to double window at rear kitchen so that the window is secure, wind and watertight. Include render repair to mullion, pointing and decoration.
- 9) Repair or replace gutters throughout the property so that they are watertight and operate efficiently.
- 10) Complete render repairs to all elevations of property and make good.

48. 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, Legal Member

11 September 2024



Pre-hearing Inspection Summary and Schedule of Photographs



Property – 37 Main Road, Collin, Dumfries, DG1 4JL.

Reference- FTS/HPC/RT/24/1772

Tribunal Members – Susan Christie (Legal Member) & Andrew Taylor (Ordinary Member)

Purpose of Inspection – To prepare a record of the position at the property specifically as it relates to the items raised in the application and any issues arising therefrom.

Access – 11.00am, 11th September 2024

Weather – Dry, sunny periods

In Attendance – The above Tribunal Members attended the property. Also in attendance were Mr James Mundell, Landlord; Mr Peter Geddes, Tenant; Ms Fiona Smith and Ms Lisa Kirk, Housing and Licensing Standards, Dumfries and Galloway Council.

Appendix 1

Schedule of Photographs taken during the Inspection on 11th September 2024



1. Damp patch in Living Room.



2. Damp patch in living room.



3. Multi fuel burner and flue.



4. Smoke and Carbon Monoxide Detector.



5. Front Door.



6. Damp concrete floor adjacent front door.



7. Damaged seals at bathroom window



8. Damp patch at ceiling adjacent chimney breast in bedroom.



9. Hazardous floor in kitchen



10. Window and mullion



11. Window and gutters to rear



12. Gutters front elevation



13. Fencing to front garden.



14. Render repairs.



15. Render repairs.

Andrew Taylor,

Surveyor Member, Housing and Property Chamber, First-tier Tribunal for Scotland

12th September 2024