



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 (“the 2006 Act”)

Reference number: FTS/HPC/RP/24/2498

Re: Inverhaggernie Farmhouse, Crianlarich, Stirlingshire, FK20 8RU (“the Property”)

The Parties:

Mr Gary McKie (“the Tenant”)

Mr Peter Christie (“the Landlord”)

Tribunal Members :

Alastair Houston (Legal Member); Sara Hesp (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 (h) of the 2006 Act. The Tribunal therefore issues a repairing standard enforcement order. The decision is unanimous.

1. Background

1.1 This is an application dated 3 May 2024 whereby the Tenant sought a determination that the Landlord had failed to comply with their duties under section 14 of the 2006 Act. In particular, the Tenant alleged that the Property did not meet the following requirements under the 2006 Act:-

- *the house is wind and water tight and in all other respects reasonably fit for human habitation,*
- *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,*
- *the installations in the house for the supply of water, gas, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order,*
- *any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*
- *the house meets the tolerable standard.*

- *the house has satisfactory provision for, and safe access to, a food storage area and a food preparation space.*

- 1.2 The Tenant complained of dampness and mould growth throughout the Property and that the access road to the Property was not fit for use. The notification letter to the landlord made the same complaints regarding dampness and mould growth. A complaint regarding exposed pipework in the kitchen was also made. There was no mention of the condition of the access road.
- 1.3 The application was accepted by the Tribunal and a notice of acceptance dated 1 July 2024 issued. An inspection and hearing was fixed for 21 October 2024 which was intimated to the parties.
- 1.4 By way of email dated 30 September 2024, the Landlord contacted the Tribunal to advise that the Tenant had vacated the property and that remedial works were underway. The Tribunal sought to confirm with the Tenant if he had left the property and had terminated the tenancy. No response was received. As the Tribunal could not confirm that the tenancy had been lawfully terminated, the inspection on 21 October 2024 went ahead.

2. The Inspection

- 2.1 The inspection of the Property took place on 21 October 2024. The Landlord was present. The Tenant was not present nor represented. The Tribunal noted that the property was uninhabited. The inspection proceeded in the Tenant's absence.
- 2.2 The property was a large stone farmhouse. The Landlord confirmed that it was around 200 years old. The weather was largely dry during the inspection with some light rain towards its conclusion. The electrical supply to the property was not operational and neither was the heating system. A schedule of photographs taken during the inspection is produced alongside this decision.

3. The Hearing

- 3.1 The hearing took place, by teleconference, on 21 October 2024 following the inspection. The Landlord attended personally. The Tenant was neither present nor represented. Given that he had been absent during the inspection and appeared to have vacated the Property, the Tribunal considered it appropriate to proceed in his absence, as permitted by the Chamber Rules.
- 3.2 The Tribunal first considered whether there was an ongoing tenancy between the parties. The Landlord confirmed that the tenancy had begun on 15 July 2011. The Tenant had initially resided with his partner. The Landlord believed she had moved out around 5 years ago however, no formal notice had been given. She remained a joint tenant in terms of the tenancy agreement signed between the parties. The Tenant had vacated the Property on or around 17 August 2024. The Landlord gained access to the Property on 19 August 2024 to begin remedial work. The Property was found to be empty and the Tenant had not responded to

efforts to contact him since that date. The Landlord considered that possession of the Property had been recovered.

- 3.3 The Tribunal considered that the tenancy between the parties ought to be treated as terminated by consent as at 19 August 2024. Accordingly, in terms of paragraph 7(1) of schedule 2 of the 2006 Act, the Tribunal required to treat the application as withdrawn by the Tenant. The Tribunal then considered whether it ought to continue with the application, despite the withdrawal. Given the issues raised by the Tenant, and the condition of the property as at the time of inspection, the Tribunal considered it appropriate in terms of paragraph 7(3) of schedule 2 of the 2006 Act to continue to determine the application.
- 3.4 The Landlord confirmed that no complaint regarding the condition of the Property had been received prior to 2021, when the Tenant complained of the condition of the window in the back room. This was replaced at that time. The Landlord acknowledged that there had been an issue with dampness in that room, and elsewhere in the Property, related to the chimney stack. Works including the reskimming and installation of a new cap to that chimney had already taken place. A skylight above the back stairs had been removed and slated over. Substantial works to the roof had also been carried out. The exposed pipework in the kitchen had been covered and many of the rooms affected by dampness had been replastered.
- 3.5 The Tribunal had noted during the inspection that there were continuing areas of concern. There were areas of dampness observed in the left hand bedroom on the first floor potentially related to the downpipe. Areas of dampness were also present at a low level for example to the walls of the kitchen, rear kitchen areas and living room on the ground floor which may be indicative of rising damp. The roof of the lean to was covered in moss and water goods were potentially clogged, both of which could contribute to issues with dampness. Black mould was apparent to the rear stairwell and to a bedroom ceiling.
- 3.6 The Landlord, largely, took no issue with the Tribunal's concerns. A builder had previously opined that the Property was free from rising damp but he was willing to reinvestigate this and the other issues raised. He considered that the Property being vacant and going without heating was likely contributing to any high moisture readings. A complicating factor was the apparent involvement of Historic Environment Scotland who required the Property to be maintained in its original condition and for its original use. This limited the extent of the work that could be undertaken however, the Landlord was uncertain as to the exact extent of their authority and permissions that could be obtained for remedial works.

4. Reasons For Decision

- 4.1 Although the application by the Tenant alleged multiple failures on the part of the Landlord to comply with the standard set out in section 13 of the 2006 Act, the Tribunal noted that the copy of the notification letter accompanying the application only made reference to complaints of dampness throughout the Property. In the absence of any representations by the Tenant as to any further notification that may have been given to the Landlord of other issues with the Property, the

Tribunal only considered those relevant to sections 13(1) (a) and (h) of the 2006 Act, namely, dampness and mould growth affecting the Property.

4.2 The Property is not wind and watertight and in all other respects reasonably fit for human habitation as higher than usual moisture readings were taken in the kitchen, rear kitchen areas, living room at the ground floor and also to the first floor. Areas of mould were also apparent for example to a bedroom ceiling and to the rear stairs. The Property cannot be said to meet the tolerable standard as it is not substantially free from rising or penetrating damp.

4.3 The Tribunal was mindful of the nature and age of the Property, as well as its location together with the apparent involvement of Historic Environment Scotland. Some of the dampness and mould growth alleged by the Tenant appeared to have been addressed. Nonetheless, the Landlord has failed to comply with his duties under sections 14(1)(b) and 13(1)(a) and (h) of the 2006 Act. The Tribunal is therefore required to make a repairing standard enforcement order under section 24(2) of the 2006 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.

A Houston

**Legal Member
21 November 2024**