



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/23/4306

Re: Property at 12 Pladda Avenue, Broomlands, Irvine, North Ayrshire KA11 1DR (registered under title number AYR42604) (“Property”)

The Parties:

Donna Todd, 12 Pladda Avenue, Broomlands, Irvine, North Ayrshire KA11 1DR (“Tenant”)

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

Ka Ming Leung, 63 Beecheno Road, Norwich NR5 8TP (“Landlord”)

Wallace Hodge, Solicitors, 6 Burns Statue Square, Ayr KA7 1UP (“Landlord’s Representative”)

Tribunal Members :

Joan Devine (Legal Member); Andrew McFarlane (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) (b), (c), (d) and (g) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 4 December 2023, 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 she 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), (b), (c), (d), (f), (g) and (h) 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.
- The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- The installations in the Property 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
- 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 Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- The Property met the tolerable standard.

3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :

Hall :

- Front door is buckled and is not wind and watertight
- Radiator does not heat evenly and requires maintenance
- Floorboards are dipping

Living Room :

- Door does not close properly
- Windows are buckled and are not wind and watertight. One window is missing a handle.
- Radiator does not heat evenly and requires maintenance

Dining Room :

- Back door and window are not wind and watertight

Kitchen :

- Window seal is peeling and is not wind and watertight
- Kitchen units in poor condition, cupboard shelves not secure, cupboard door is damaging worktop when opened, drawer is stuck
- Exposed wiring in wall
- Double socket that is not fixed to wall and is loose
- Hole in floorboard

Bathroom :

- Hot tap drips and handle does not work correctly
- Toilet does not flush correctly and makes excessive noise when refilling; cistern is loose
- Damp at top of the wall
- Door does not close properly

Bedroom 1 :

- Window is not wind and watertight

Bedroom 2 :

- Two wardrobe doors are off runners

- Window is not wind and watertight

Bedroom 3 :

- Dampness at top of wall
- Window is not wind and watertight

Bedroom 4 :

- Dampness at top of wall
- Window is not wind and watertight and hits frame when opening and closing

Other :

- Smoke and CO alarms are not interlinked and do not meet current safety standards
- Roughcasting at back of building has fallen off
- Fascia at front of the Property is rotting
- Gutters require cleaning and maintenance
- Fence is falling down

4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 11 September 2024.

The Inspection

5. The Tribunal inspected the Property on the morning of 11 September 2024. The weather conditions at the time of the inspection were clear and dry. The Tenant was present at the Property during the inspection. The Property is a mid-terraced 2 storey house with 4 bedrooms, bathroom, kitchen, dining room, toilet and living room. A schedule of photographs taken at the inspection is provided with this Decision.

The Hearing

6. The Hearing took place on 11 September 2024 at Russell House, King Street, Ayr. The Tenant was represented by Alister Meek from the Tenant's Representative. The Landlord was not in attendance. The Tribunal noted that at the inspection the Tenant had advised that the following works had been carried out: all windows and external doors had been replaced; taps on sink in bathroom had been replaced; in the kitchen the exposed wiring and the double socket not fixed to the wall had been repaired; the smoke and heat alarms had been interlinked and the roughcasting had been replaced.
7. The Tribunal considered the remaining issues raised in the Application on a room by room basis. As regards the hall, the Tribunal noted that although the front door had been replaced, it required to be adjusted in order to close properly. As regards the radiator, the Tenant had told the Tribunal at the inspection that it worked without any difficulty. As regards the floorboards, the Tenant had indicated that her concern related to the floorboards in the upper hall. The Tribunal explained that the inspection revealed nothing to suggest the floorboards in the upper hall were loose or insecure.

8. As regards the living room, the Tribunal noted that the door did not close properly due to a cable running from the hallway. As regards the radiator, it had been surrounded by washing. The Tenant told the Tribunal that it did not heat evenly.
9. As regards the kitchen, the Tribunal noted that the drawer adjacent to the sink could not be opened and that the worktop adjacent to the sink was damaged due to friction with the door below when it was opened. The door to the kitchen unit to the right of the cooker does not close properly and appears to be missing a handle. The Tribunal also noted that whilst the double socket above the freezer had been replaced, there was a hole in the plaster above the socket that should be filled. The Tribunal noted that the Tenant had moved the freezer from its location in the kitchen to show the Tribunal a hole in the floorboards below.
10. As regards the downstairs toilet, the Tribunal noted that the cistern was not secure.
11. As regards the bathroom on the upper floor, the Tribunal noted that the cistern was loose due to corroded screws and the flushing mechanism was not working as intended. The Tribunal noted that the door does not close properly and that there was evidence of damp on the wall and ceiling above the sink (above the window). Damp meter readings were taken which indicated presence of dampness.
12. As regards bedroom 2, the Tribunal noted that two wardrobe doors are off the runners.
13. As regards bedroom 3 and 4, the Tribunal found no evidence of damp.
14. As regards the other matters raised the Tribunal noted that the CO monitor is on the wall next to the boiler in a cupboard in bedroom 1 which is not in accordance with Scottish Government Guidelines. The Tribunal tested the smoke and heat alarms at the inspection and found that they are interlinked. As regards the fascia at the front of the Property, the paint was failing but otherwise the fascia appeared to be in a reasonable state of repair. As regards the gutters, a visual inspection from ground level indicated the presence of weeds or similar vegetation. As regards the fence, posts had been inserted to stabilise the fence. From documents provided by the Landlord's agents this was described as a temporary repair.
15. Following the Hearing the Tribunal became aware that the Application had not been intimated to the Landlord as the papers were returned marked as undelivered. The Tribunal therefore determined to issue the photographic schedule to the Parties and to fix a fresh Hearing which took place on 27 November 2024 by conference call.
16. At the Hearing on 27 November 2024 the Tenant was represented by Alister Meek of the Applicant's Representative and the Landlord was represented by Norman Fraser of the Landlord's Representative.

17. Mr Fraser told the Tribunal that the Landlord accepted that further repairs were necessary and said that the Landlord wished to identify what they were. He said that the Landlord then proposed to put funding in place to pay for the repairs. The Tribunal narrated the findings from the inspection on 11 September 2024. Mr Meek said the Tenant had not reported to him regarding the current state of the damp in the bathroom. Mr Fraser said it may be helpful to monitor that as other works progressed as the damp may be areas may be drying out after the external roughcast had been replaced. Mr Fraser said that the Landlord was content for the Tribunal to proceed to issue a Decision.

The Evidence

18. The evidence before the Tribunal consisted of:
 - 18.1 The Application completed by the Tenant's Representative
 - 18.2 The tenancy agreement between the Tenant and the Landlord
 - 18.3 Land Register report relating to the Property
 - 18.4 Screenshots of notifications to the Landlord's former agent regarding repairs required to the Property.
 - 18.5 Copies of estimates and invoices addressed to the Landlord's current agents.
 - 18.6 The Tribunal's inspection of the Property
 - 18.7 The oral representations of the Tenant's Representative and the Landlord's Representative

Summary of the Issues

19. 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

20. Tribunal made the following findings in fact:
 - 20.1 The Tenant has lived in the Property since June 2022.
 - 20.2 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.
 - 20.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
 - 20.3.1 The front door does not close properly.

- 20.3.2 The living room door does not close properly
- 20.3.3 The drawer in the kitchen adjacent to the sink cannot be opened.
- 20.3.4 The door to the lower kitchen cabinet next to the sink is catching on the worktop above which has caused damage to the worktop.
- 20.3.5 The door to the lower kitchen cabinet to the right of the cooker does not close properly and appears to be missing a handle.
- 20.3.6 There is a hole in the plaster above the double socket which has been fitted above the freezer in the kitchen.
- 20.3.7 The floorboards below the freezer in the kitchen are rotted which has caused a hole to develop.
- 20.3.8 The cistern on the toilet on the ground floor of the Property is loose.
- 20.3.9 The cistern on the toilet in the bathroom on the upper floor of the Property is loose.
- 20.3.10 The toilet in the bathroom on the upper floor of the Property does not flush properly.
- 20.3.11 There is damp in the bathroom on the upper floor of the Property on the wall and ceiling above the sink.
- 20.3.12 In bedroom 2, two wardrobe doors are off the runners.
- 20.3.13 The CO detector in the cupboard in bedroom 1 is not correctly placed in accordance with Scottish Government Guidance.
- 20.3.14 Externally, the gutters contain weeds or similar vegetation.

Reasons for Decision

- 21. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (b), (c), (d) and (g) of the Act.
- 22. The structure of the Property is not in a reasonable state of repair as the front door does not close properly; the living room door does not close properly; the door on the bathroom on the upper floor does not close properly and the gutters require to be cleared.

23. 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 as the radiator in the living room does not heat properly.
24. The fixtures, fittings and appliances provided by the Landlord in the Property are not in a reasonable state of repair as in the kitchen a drawer cannot be operated and the worktop is damaged and the door to one cabinet does not close properly; in the downstairs toilet the cistern is loose; in the bathroom on the upper floor the toilet cistern is loose and the toilet does not flush properly and in bedroom 2, two wardrobe doors are off the runners.
25. The Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health as the CO detector is not correctly placed.
26. Although in the application the Tenant had complained of uneven floorboards in the hall on the upper floor of the Property, the Tribunal could find no evidence of this. Although in the application the Tenant had complained of loose shelving in the kitchen, the shelving seemed to the Tribunal to be in a reasonable state of repair. Although in the application the Tenant had complained of damp in bedroom 3 and 4, the Tribunal could find no evidence of damp in those locations. The Tribunal found evidence of damp in the bathroom on the upper floor of the Property but could not assess whether this was a historic issue which may have been rectified by the replacement of the roughcast. There would be a period of “drying out” after the roughcast was replaced.
27. The Tribunal observed that the fence had been repaired on a temporary basis and it would be prudent for a more permanent repair or replacement to be made.

Decision

28. 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) (b), (c), (d) and (g) of the Act.
26. 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.

**J Devine
27 November 2024**