

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the Tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RP/24/3746

Re: 16 Houston Terrace, East Kilbride G74 1DB (“the house”)

Land Register Title No: LAN112047

Mrs Rossana Idele and Mr Anthony Idele, formerly residing at 16 Houston Terrace, East Kilbride G74 1D (“The former Tenants”)

Mr Allan Firth, 40 Middlefield, Whitehills, East Kilbride G75 0HJ (“The Landlord”)

Tribunal Members – Sarah O'Neill (Legal Member) and Kingsley Bruce (Ordinary (Surveyor) Member)

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has failed to comply with the said duty. The Tribunal therefore issues a Repairing Standard Enforcement Order. The Tribunal’s decision is unanimous.

Background

1. By application received from their solicitor on 14 August 2024, the former tenants applied to the Tribunal for a determination that the landlord had failed to comply with his duty under Section 14(1) of the Act.
2. In their application, the former tenants stated that they believed the landlord had failed to comply with his duty to ensure that the house met the repairing

standard as set out in section 13(1) (a), (b), (c), (d) and (h) of the Act. Their application stated that the landlord had failed to ensure that:

- the house is wind and watertight 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 and electricity and for sanitation, space heating 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

3. The former tenants included the following complaints in their application form:

1. The wall in the corridor is in a state of disrepair.
2. The roof of the property is in a state of disrepair.
3. The bath panel is broken.
4. The front door is hard to use and poses a security risk.
5. The property suffers from damp and mould throughout most of the rooms.
6. A working extractor fan requires to be fitted in the bathroom.
7. A working extractor fan requires to be fitted in the kitchen.
8. There is a smell of gas when cooking.
9. The carbon monoxide alarm goes off on an intermittent basis.
10. The heating system is old and does not work properly.
11. The property is in need of insulation and the sealing of all draughts.

4. On 26 August 2024, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. An inspection and hearing were arranged for 13 March 2025.

5. The landlord was invited to submit written representations no later than 20 February 2025. No written representations were received from him by that date.

6. Further written representations were received from the former tenants' solicitor on 12 and 14 February 2025.

7. On 20 February 2025, the Tribunal issued a direction to the landlord, directing him to provide by 6 March 2025:

- a) an up to date gas safety certificate in respect of the house by a Gas Safe registered engineer, showing that all gas installations and appliances,

including the gas cooker and heating system, within the house, had been checked and were working safely.

- b) an up to date and valid Energy Performance Certificate in respect of the house.
 - c) an up to date Electrical Installation Condition Report (EICR) for the house, together with a Portable Appliance Test (PAT) certificate, showing that all electrical installations, appliances and fixtures and fittings supplied by the landlord within the house had been checked and were working safely.
8. A response to the direction was received from the landlord on 24 and 25 February 2025. In an email of 24 February 2025, the landlord stated that the former tenants had vacated the property and handed back the keys on 13 February 2025, and that their tenancy had therefore ended.
9. The Tribunal administration sent an email to the former tenants' solicitor on 5 March 2025, asking them to confirm whether the former tenants had ended their tenancy. The Tribunal noted that in her written representations of 12 February 2025, the former tenants' solicitor had advised that the former tenants were in the process of moving from the house into temporary homeless accommodation.
10. Having received no response from the former tenant's solicitor by 11 March, the Tribunal took the view that the former tenants appeared to have vacated the property. It therefore issued a minute of continuation to the parties on that date, confirming the Tribunal's intention to continue with the application. This was on the basis that the application should be determined on public interest grounds due to the nature of the alleged repairs issues and the potential effects for any future tenants/occupiers if the allegations were substantiated.
11. On 12 March 2025, an email was received from the former tenants' solicitor, advising that she had been on leave. She said that there had been no contact from the former tenants and she was therefore unable to confirm whether they were still living in the property. She therefore considered herself to be without instructions and would not be attending the inspection or the hearing.

The inspection

12. The Tribunal inspected the house on the morning of 13 March 2025. The weather conditions at the time of the Tribunal's inspection were cold, sunny and dry. The landlord was present and allowed the Tribunal access for the inspection.
13. Photographs were taken during the inspection. These are attached as a schedule to this decision.

The house

14. The house is a top floor flat within a two-storey former local authority block of four development which is in the region of 60 years old. The house comprises two bedrooms, living room, kitchen, bathroom and hallway.

The hearing

15. Following the inspection, the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT.
16. The landlord was present at the hearing and represented himself.
17. The Tribunal noted that the former tenants were no longer parties to the application, as their tenancy has been lawfully terminated.
18. The landlord told the Tribunal that he was shocked by the state the property was in. He said that he would have to do a lot of work to restore it to its previous condition before either renting it again or selling it. He said that he had always carried out any repairs required as soon as the former tenants had complained about them. It had been difficult, however, to obtain access to the house for repairs in recent years.

The evidence

19. The evidence before the tribunal consisted of:
 - The application form submitted by the former tenants' solicitor with enclosures.
 - Copy notification letter from the tenant's solicitor to the landlord dated 26 August 2024, together with proof of sending.
 - Registers Direct copy of Land Register title LAN112047.
 - Scottish Landlord Register registration details for the house.
 - Tenancy agreement between the parties in respect of the house which commenced on 15 March 2019.
 - Written representations received from the former tenants' solicitor on 12 and 14 February 2025, including a report dated 18 May 2024 in relation to the house by Professor Tim Sharpe, Architect.
 - Written representations received from the landlord on 24 and 25 February 2025.
 - Gas safety certificate dated 11 November 2024 produced by BGHC Ltd in respect of the house.
 - Energy performance certificate (EPC) by J and E Shepherd in respect of the house dated 19 February 2019.

- Electrical Installation Condition Report dated 8 May 2024 and PAT test certificate dated 14 February 2024 in respect of the house produced by Hi-Lite Electrical Services.
- The Tribunal's inspection of the house.
- The oral representations of the landlord at the hearing.

Summary of the issues

20. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed by section 14 (1) (b).

Findings in fact

21. The house is owned by the landlord.
22. The landlord is the registered landlord for the house.
23. The landlord entered into a private residential tenancy agreement with the former tenants which commenced on 15 March 2019.
24. The former tenants' solicitor notified the landlord of the required repairs on 26 August 2024.
25. The former tenants vacated the property on or around 13 February 2025.
26. The gas safety certificate in respect of the house dated 11 November 2024 stated that the gas installation (namely the boiler and the hob) were satisfactory. One defect was identified, namely that the front ring (small) of the cooker was broken and did not stay alight. The certificate also recorded that the carbon monoxide alarm was in date i.e. January 2034.
27. The EPC stated that the energy efficiency rating for the house was D. It was noted on the certificate that there was cavity wall insulation in the house and assumed that there was no roof insulation.
28. At its inspection, the Tribunal carefully checked the items which were the subject of the complaint. The Tribunal observed the following:
- a) The property was dirty throughout.
 - b) There was no electricity in the house.
 - c) The plaster on the wall in the hallway was damaged.

- d) Roof repairs had recently been undertaken. The verges had been repointed and one of the ridge tiles had been replaced. No missing roof tiles were observed. Tree debris was visible in the gutters.
- e) The bath panel was broken and had been taped up.
- f) The front door opened and closed correctly. It was in reasonably good condition. There were no obvious defects, although it appeared to have been forced open recently. The lock had been re-secured and the door appeared to be fully functional.
- g) There was severe black spot mould throughout the house, particularly in the bathroom, bedrooms, living room and kitchen.
- h) There were no extractor fans in the bathroom or the kitchen.
- i) No smell of damp was evident in the house.
- j) It was not possible to test the gas hob or the boiler as there was no electricity in the house at the time of the inspection.
- k) There was a carbon monoxide alarm in the kitchen, which was not fixed to either the wall or the ceiling. When tested, this appeared to be operational and it did not go off during the inspection.
- l) The boiler was relatively modern.
- m) The central heating system appeared to be of some age and there were no thermostatic controls on the radiators. The radiators could not be tested as the boiler was not operational due to the lack of electricity.
- n) There were modern double glazed windows throughout the house, including in the bathroom and kitchen. There was no evidence of condensation on the insides of the windows.
- o) No draughts were evident in the house.
- p) Draughtproofing was evident around the front door.
- q) There was evidence on the exterior of the building that cavity wall insulation had been installed in the house.
- r) It was not possible to inspect the roof space to see whether it was insulated, as the roof hatch was padlocked by South Lanarkshire Council.

Reasons for decision

29. In making its decision, the Tribunal carefully considered all of the evidence before it. In doing so, it applied the civil burden of proof, which is the balance of probabilities.

30. The Tribunal considered each of the former tenants' complaints in turn, as set out below.

1. The wall in the corridor is in a state of disrepair

31. The application stated that the wall was damaged by workmen carrying window units through the property, and that it required to be repaired and reinforced where it had become damaged. The Tribunal observed during its inspection that the plaster on the wall in the hallway was damaged. The Tribunal took the view, however, that this was a cosmetic issue, rather than a structural matter. Therefore, while the landlord may wish to have the damage repaired, this was not a breach of the repairing standard. The Tribunal therefore determined that the wall in the hallway was in a reasonable state of repair and in proper working order.

2. The roof of the property is in a state of disrepair

32. The former tenants stated in their application that the roof was unclean, had missing tiles and was in a state of general deterioration. It said that the gutters were blocked, some tiles were missing and there were some open verges.
33. During its inspection, the Tribunal observed that roof repairs had recently been undertaken. The verges had been repointed and one of the ridge tiles had been replaced. No missing roof tiles were observed. Tree debris was visible in the gutters.
34. The Tribunal noted that, while the gutters should be cleaned regularly, some debris was inevitable, particularly during the winter, given the close proximity of several trees to the property. The Tribunal determined that at the time of its inspection, the roof was wind and watertight and was in a reasonable state of repair and in working order.

3. The bath panel is broken

35. The Tribunal observed during its inspection that the bath panel was broken and had been taped up.
36. The landlord accepted that the bath panel was broken. He told the Tribunal that the bath panel was brand new when the former tenants moved into the property. He said that he had tried several times to replace the bath panel, but had been unable to get one which would fit. He was currently waiting for quotes for having the bath panel tiled.
37. The Tribunal determined that the bath panel was not in a reasonable state of repair and in proper working order.

4. The front door is hard to use and poses a security risk

38. The former tenants complained in their application that the front door was hard to use and posed a security risk as it was old and in a state of disrepair.
39. The Tribunal observed during its inspection that the front door opened and closed correctly, and that it was in reasonably good condition. There were no obvious defects, although it appeared to have been forced open recently. The lock had been re-secured and the door appeared to be fully functional. The Tribunal did not consider that the door was a security risk and determined that it was in a reasonable state of repair and in proper working order.

5. The property suffers from damp and mould throughout most of the rooms

40. The Tribunal observed at its inspection that there was severe black spot mould throughout the house, particularly in the bathroom, bedrooms, living room and kitchen. The Tribunal did not observe any smell of damp during its inspection. Using its specialist knowledge and expertise, the Tribunal considered that the mould was the result of condensation. There were a number of factors which may have contributed to this, including whether the house had been adequately heated and ventilated by the former tenants, which they were obliged to do in terms of the tenancy agreement.
41. In the absence of the former tenants, the Tribunal was unable to be certain as to whether they had adequately heated and ventilated the house. The landlord told the Tribunal at the hearing that he did not believe that the former tenants opened the windows. The windows were fairly new, having been installed in 2020, but were difficult to open. The landlord confirmed that the tenants had been living in the house with their two small children.
42. The Tribunal considered the architect's report which had been submitted on behalf of the former tenants, which concluded that the house is subject to cold, dampness and mould growth, and that the external fabric is not reasonably wind and watertight. The Tribunal noted that the report made the assumption that the roof was not insulated, based on the assumption made in the EPC regarding this. The Tribunal considers that this assumption was probably made based on the age of the property, but may not have been correct. It was not possible to inspect the roof space to see whether it was insulated, as the roof hatch was padlocked by the council, which the landlord thought still owned two of the flats in the block and was also the property factor.

43. The Tribunal observed evidence on the exterior of the building that cavity wall insulation had been installed in the house. The landlord advised that this has been part of renovations carried out by the council in the 1980s. While no roof insulation could be seen, the Tribunal considered that it was likely that the common roof space had also been insulated to some degree, although this may not meet current standards. There was no indication of significant condensation marking, discolouration or mould across the surface of ceilings with the notable exception of the bathroom. Marking/mould was only visible at the perimeter of some ceilings, where there would not be insulation into the verges, to allow for ventilation.
44. The Tribunal also noted that the architect's report concluded that the poor condition of the roof was likely to lead to water penetration to the roof and walls, and would reduce thermal performance of the walls. The roof issues had now been addressed, as noted above.
45. The Tribunal was not therefore persuaded by the findings of the architect's report. At the time of its inspection, there was no smell of dampness and there was no sign of condensation on the inside of the windows, which might have been expected given the weather conditions on that day. The windows were modern and double glazed, and the heating system appeared on the balance of probabilities to be operational. The Tribunal also noted that the property was very dirty in general at the time of its inspection, which suggested that the tenants may not have kept the property in good, clean tenantable order as required under the tenancy agreement.
46. The Tribunal did not consider that it would be reasonable to assume that the condensation which was apparent could be attributed solely to any deficiency in the fabric of the property or the facilities. The provision of heating, insulation and double glazing appeared reasonable, having regard to the age, type and construction of the property.
47. The Tribunal concluded on the basis of all the evidence that on the balance of probabilities, the property had not been adequately heated and ventilated by the former tenants, which had resulted in the black mould observed. The Tribunal therefore determined that the house was wind and watertight at the time of its inspection. It was not, however, in all other respects reasonably fit for human habitation at the time of the inspection due to the presence of severe black spot mould throughout.

6. A working extractor fan requires to be fitted in the bathroom

7. A working extractor fan requires to be fitted in the kitchen

48. These complaints were related to the complaint about dampness and mould. The Tribunal noted that the architect's report recommended that extract fans should be installed in the kitchen and bathroom. The Tribunal observed at its inspection that there were no extractor fans in the bathroom or the kitchen. The Tribunal also observed that there were modern double glazed windows throughout the house, including in the bathroom and kitchen. There is no specific requirement on the landlord as part of the repairing standard to provide extractor fans. The tolerable standard does require, however, that a house should have satisfactory provision for ventilation.
49. The landlord noted at the hearing that the windows throughout the property were capable of being opened, but were stiff, which he suggested meant that they had not been opened often. He suggested that opening the windows regularly would provide the necessary ventilation. He said that the windows were quite large given the size of the rooms in question. He said that shortly before the former tenants moved in, he had engaged a surveyor to inspect the property. The surveyor had advised that while extractor fans were recommended, these were not a legal requirement
50. The Tribunal considered the [Repairing Standard Statutory Guidance issued by the Scottish Government](#). With regard to ventilation, this guidance contains links to more detailed [guidance for local authorities on the Tolerable Standard](#). This guidance states (at paragraph 6.21) that "*the most obvious method of ventilating a room is to open a window*" and (at paragraph 6.22): "*For bathrooms, and other apartments, plus the kitchen, where there is no satisfactory openable window, they must have an alternative ventilation system. Normally this will be a mechanical device, such as an extractor fan*".
51. The Tribunal noted that there were openable windows in both the bathroom and kitchen. The Tribunal therefore considers that the house has satisfactory provision for ventilation. It observes, however, that the landlord may wish to consider installing an extractor fan in the bathroom to assist with ventilation in future, given the high levels of moisture which can exist in a bathroom.

8. There is a smell of gas when cooking

52. It was not possible for the Tribunal to test the gas hob at its inspection as there was no electricity in the house. It noted, however, that the gas safety certificate dated 11 November 2024 had identified one defect, namely that the front ring (small) of the cooker was broken and did not stay alight.

53. The Tribunal concluded on the balance of probabilities that this broken cooker ring was likely to be the source of any smell of gas complained of. On the basis of the gas safety certificate, the cooker did not appear to be in a reasonable state of repair and in proper working order and required to be investigated further.

9. The carbon monoxide alarm goes off on an intermittent basis

i.

54. During its inspection, the Tribunal tested the carbon monoxide alarm in the kitchen, which was close to the boiler. This was found to be operational and did not go off during the inspection. The Tribunal also noted that the gas safety certificate dated 11 November 2024 found the alarm to be satisfactory, and stated that the expiry date on the alarm was January 2034.

55. The landlord told the Tribunal at the hearing that the problem had been that the batteries needed to be replaced. This had now been done. The Tribunal therefore concluded that the house had adequate carbon monoxide alarms.

56. The Tribunal observed at its inspection, however, that the carbon monoxide alarm was not fixed to either the wall or the ceiling. While there was no complaint about this in the tenant's application, the tribunal observes that this does not meet the requirements set out in the relevant [Scottish Government guidance](#). This states that unless otherwise indicated by the manufacturer, carbon monoxide alarms should be either:

- ceiling mounted and positioned at least 300 mm from any wall (unless otherwise indicated by the manufacturer) or
- wall mounted and positioned at least 150 mm below the ceiling and higher than any door or window in the room. (unless otherwise indicated by the manufacturer).
- If the combustion appliance (primarily boilers) is located within a small space, usually a cupboard, the detector should be sited outside the space / cupboard with the appropriate distance between appliance and detector of between 1 and 3 metres.

10. The heating system is old and does not work properly

57. The Tribunal observed during its inspection that the boiler was relatively modern. It also observed that the central heating system appeared to be of some age and that there were no thermostatic controls on the radiators. The radiators could not be tested as the boiler was not operational due to the lack of electricity.

58. The landlord told the Tribunal at the hearing that the boiler was around 10 years old. He stated that the boiler and heating system are serviced once a year when the gas safety certificate is updated.
59. The Tribunal noted that a lack of thermostats did not in itself mean that there was a defect in the heating system. It noted that the current gas safety certificate stated that the boiler was in satisfactory condition and raised no concerns about the heating system. The Tribunal therefore determined on the balance of probabilities that the heating system was in a reasonable state of repair and in proper working order.

11. The property is in need of insulation and the sealing of all draughts

60. The Tribunal did not observe any evidence of draughts at its inspection. The windows were double glazed and were only five years old. The trickle vents were open, which was necessary for ventilation. Draughtproofing was evident around the front door.
61. In terms of insulation, the tolerable standard requires that a house has “satisfactory thermal insulation.” As noted above, there was evidence on the exterior of the building that cavity wall insulation had been installed in the house. It was not possible to inspect the common roof space to see whether it was insulated, as the roof hatch was padlocked by South Lanarkshire Council. The Tribunal considered, however, that it was likely that the common roof space had also been insulated to some degree, as discussed further above. The EPC rating for the house was D, which is the average rating for properties in Scotland.
62. On the basis of the evidence before it, the Tribunal determines that the house has adequate insulation and is wind and watertight.

Summary of decision

12. On the basis of all the evidence before it, the Tribunal determined that the landlord had 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 house meets the repairing standard in that:
- 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 and in proper working order
 - the fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order
 - the house was not in all other respects reasonably fit for human habitation

13. The Tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of Appeal

14. In terms of section 46 of the Tribunals (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.
15. 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.

S O'Neill

Signed.....Date: 3 April 2025
Sarah O'Neill, Chairperson

Schedule of photographs

16 Houston Terrace, East Kilbride, G74 1DB

13 March 2025

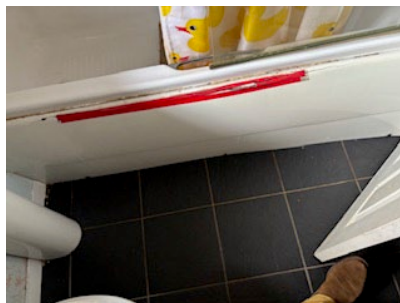
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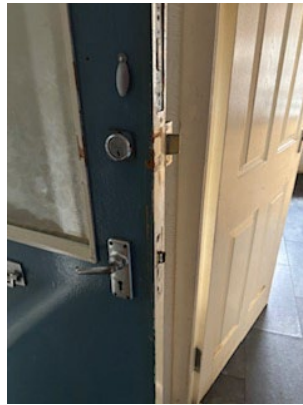
Bathroom- Condensation



Defective Bath Panel



Entrance door



Condensation To Livingroom and Bedroom

