

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 FTS/HPC/RP/24/5572

17 Smithyends, Glasgow, Cumbernauld, G67 2SJ (“the house”)

Land Register Title No: DMB62924

Mrs Rebecca Gray, formerly residing at 17 Smithyends, Glasgow, Cumbernauld, G67 2SJ (“the former tenant”)

West View Park Homes Ltd, PO Box 15712, Bathgate, EH48 9DP (“the landlord”)

Tribunal Members:

Sarah O’Neill (Chairperson) and Nick Allan (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 it 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 not failed to comply with the said duty. The tribunal’s decision is unanimous.

Background

1. By application received on 3 December 2024, the former tenant applied to the tribunal for a determination that the landlord had failed to comply with its duty under Section 14(1) of the Act.
2. In her application, the former tenant stated that she believed the landlord had failed to comply with its duty to ensure that the house met the repairing

standard as set out in section 13(1)(a) and (h) of the Act. She complained that the landlord had failed to ensure that:

1. the house is wind and watertight and in all other respects reasonably fit for human habitation.
 2. the house meets the tolerable standard as it does not have satisfactory provision for natural and artificial lighting, for ventilation and for heating.
3. The former tenant complained in her application form that all of the windows in the property needed upgrading due to severe condensation. She said that there were huge gaps between the windows and window frames which were letting in cold and water and causing black mould.
 4. Following a request from the tribunal administration, an email was received from the former tenant on 5 December 2024 enclosing evidence that she had notified the landlord about the repairs.
 5. On 9 January 2025, 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 22 May 2025.
 6. The landlord was invited to submit written representations by 19 April 2025.
 7. An email was received from Mr Alex Walker, a director of the landlord company, on 5 April 2025. Mr Walker stated that the tenants had now left the property and that there were new tenants living there. In an email of 23 April 2025, the former tenant confirmed that she and her family had left the property.
 8. On 29 April 2025, the tribunal issued a minute of continuation confirming its 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.

The inspection

9. The tribunal inspected the house on the morning of 22 May 2025. The weather conditions at the time of the tribunal's inspection were dry and sunny. The landlord was not present at the inspection. Access was provided to the tribunal by the new tenants of the property.
10. Photographs were taken during the inspection. These are attached as a schedule to this decision.

The house

11. The house is an end terraced two-storey house formerly owned by Cumbernauld Development Corporation which is in the region of 50 years old. It comprises living room, kitchen and hallway (downstairs) and three bedrooms and a bathroom (upstairs).

The hearing

12. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The landlord was not present or represented at the hearing.
13. The landlord had advised the tribunal in an email of 13 May 2025 that he was on holiday and that the new tenants would provide access for the inspection.
14. The tribunal delayed the start of the hearing by 10 minutes, in case the landlord had been detained. No further telephone calls, messages or emails had been received from the landlord.
15. The tribunal was satisfied that the requirements of rule 24 (1) of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules') regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the landlord's absence, in terms of rule 29 of the 2017 rules.

The evidence

16. The evidence before the tribunal consisted of:
 - The application form submitted by the former tenant.
 - Copy private residential tenancy agreement between the landlord and the former tenant and Mr James Gray in respect of the house which commenced on 1 May 2024.
 - Email received from the former tenant on 5 December 2024, with copy WhatsApp messages attached between the parties regarding the repairs alleged to be required, dated between 10 June and 27 November 2024.
 - Written representations received by email from Mr Alex Walker on behalf of the landlord dated 5 April, 1 and 14 May 2025.
 - Registers Direct copy of Land Register title DMB62924.
 - Scottish Landlord Register registration details for the house.
 - The tribunal's inspection of the house.

Summary of the issues

17. 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

18. The house is owned by the landlord.
19. The landlord is the registered landlord for the house.
20. The parties entered into a tenancy agreement for the house which commenced on 1 May 2024.
21. The former tenant and her family vacated the house prior to 5 April 2025.
22. At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - a) There were modern UPVC double glazed windows throughout the house.
 - b) There was no evidence of draughts or water ingress through any of the windows in the house.
 - c) No condensation was observed on the inside of any of the windows.
 - d) Having inspected the windows from both within and outside the house, no gaps were visible between the windows and their frames.
 - e) No black mould was visible within the house.
 - f) Dampness readings were taken, but no evidence of dampness was found.

Reasons for decision

23. 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.
24. During its inspection, the tribunal observed no evidence of draughts or water ingress through any of the windows in the house. No condensation was observed on the inside of the windows.
25. The tribunal's inspection took place on a dry and sunny day following a prolonged spell of dry weather. It was therefore to be expected that there were no signs of water ingress through the windows. Nothing was found, however, which would suggest that water ingress would be likely to occur.

26. Having inspected the windows from both within and outside the house, the tribunal found that no gaps were visible between the windows and their frames. No black mould was visible within the house. Dampness readings were taken, but no evidence of dampness was found.
27. The tribunal therefore found no evidence to substantiate the former tenant's complaints. The tribunal determined that at the time of its inspection the house was wind and watertight and in all other respects reasonably fit for human habitation.
28. The tribunal noted that the former tenant had also complained in her application that the house did not meet the tolerable standard in the respect that it does not have satisfactory provision for natural and artificial lighting, for ventilation and for heating. It is unclear on the basis of the application what this complaint related to, but the tribunal did not observe anything at its inspection which would indicate that the house did not meet the tolerable standard in this respect.

Observations by the tribunal

29. The tribunal wishes to make observations about two matters which it noted at its inspection, but which were not the subject of any complaint in terms of the former tenant's application. Firstly, the tribunal observed that the gas boiler in the house was situated underneath the stairs. There was, however, no evidence of a carbon monoxide alarm either next to the boiler or in the kitchen, where it might be expected that such an alarm would be situated.
30. The tribunal therefore draws the landlord's attention to the requirements in the current [Scottish Government guidance on carbon monoxide alarms in private rented properties](#). This states that unless otherwise indicated by the manufacturer, CO detectors 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.
31. Secondly, the tribunal observed that the staircase in the house was open on one side. This creates a "falling from height" risk, and is a health and safety concern.

Summary of decision

32. On the basis of all the evidence before it, the tribunal determines that the landlord has not failed to comply with the duty imposed by section 14(1) (b) of the Act.

Rights of Appeal

33. 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.
34. 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...
Sarah O'Neill, Chairperson

Date: 3 June 2025