

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

**Chamber Ref: FTS/HPC/RP/24/4204**

**Property: 26 New Road, Kennoway, Leven, KY8 5JR ('The House')**

**Title reference: FFE64995**

**The Parties: -**

**William Mitchell, The Elms, The Causeway, Kennoway, Leven ('the landlord')**

**Rosemary Morris, 26 New Road, Kennoway, Leven, KY8 5JR ("the tenant")**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are fit for the purpose 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 concerned determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**The decision was unanimous.**

**The Tribunal consisted of: -**

**Mary-Claire Kelly, Chairing and Legal Member**

**Greig Adams , Ordinary Member (surveyor)**

## Background

1. By application dated 7 September 2024, the tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the section 13(1) of the Act.
3. The application contained a letter from Fife Council to the landlord sent on behalf of the tenant dated 24<sup>th</sup> June 2024 which specified that the said failure was established as the following work needed to be carried out
  - *Inadequate smoke and heat detection system with no detector in the living room or bottom hall*
  - *The light fitting in the living room has an intermittent fault*
  - *There is a fault with the electrics serving the hall lighting*
  - *The pin has come out of the window in the bedroom to the back*
  - *The shower in the ensuite has a lead causing damage to the ceiling in the kitchen*
  - *The flush on the toilet in the ensuite is broken*
  - *The thermostat on the shower in the ensuite is broken*
  - *There are signs of water ingress in the bathroom ceiling*
  - *The extractor fan in the bathroom does not work*
  - *There are some signs of mould about the window in the bedroom to the front of the property, due to limited access I am unable to confirm if it is due to water ingress*
  - *The radiator in the downstairs hallway is in poor condition*
  - *The hinge of the patio door is broken*
  - *The decking is in poor condition*
  - *Plug sockets under the sink, behind the washing machine and behind the dryer are faulty*
  - *The flooring in the kitchen is in poor condition*
  - *No legionella risk assessment*
  - *No Electrical Installation Condition Report*

- *No Gas Safety Certificate*
  - *No Energy Performance Certificate*
4. The tenant also submitted text and letter correspondence with the landlord, photographs and a notice to quit document with the application.
  5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 12 April 2025.

### **Hearing and Inspection**

6. The Tribunal inspected the house on the morning of 6 June 2025. The tenant and her son Martin Ryder were present at the inspection. The landlord was not present or represented.
7. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
8. A hearing took place at 12:00 in person at the Vine Conference Centre, Dunfermline. The landlord's solicitor, Mr Macdonald attended on his behalf. The tenant was present with her son and representative, Martin Ryder.
9. At the inspection and hearing the Tribunal considered each of the issues specified in the application. It was evident at the inspection that a number of repairs had been carried out since the application was submitted.
10. Pin to the window in the back bedroom:- At the time of the inspection this item had been attended to and had been adequately repaired.
11. Hallway radiator:- a repair had been carried out the radiator placing it in a reasonable state of repair.
12. Decking in poor condition:- It was observed that the decking had been replaced completely since the application had been submitted and was in reasonable condition at the time of the inspection.
13. Hinge of patio door: This item had been repaired. The door was in proper working order and in a reasonable condition at the time of the inspection.
14. Flooring in kitchen is in poor condition:- The previous vinyl flooring had been removed to reveal a tiled floor below which was in a reasonable state of repair.
15. Water ingress in bathroom ceiling – The tenant confirmed that a repair had been carried out to the bathroom ceiling after the application was submitted.

They accepted that this had resolved the issue. It was observed at the inspection that there was no evidence of water ingress in the area.

16. Mould near the window in the front bedroom:- It was observed at the inspection that there was no active condensation in the area. Mould was observed close to the ceiling above the window. It was not possible to discern the cause of the mould. There was no evidence of ongoing water ingress at the time of the inspection. The tenant stated that she had attempted to clean the mould off on many occasions however it always returned.
17. Smoke and heat detectors: It was observed at the inspection that the house had not been fitted with functioning and interlinked smoke and heat detectors in the living room, hall, first floor landing and kitchen.
18. Light fittings in kitchen, hall and living room, plug sockets in the kitchen: –  
The tenant stated that there were issues with the functioning of the lights in the 3 rooms. They also highlighted that there was an issue with the wiring in the hallway where the wiring had not been properly enclosed. It was noted during the inspection that a single socket behind one of the cupboards was broken which was a cause for concern. Mr Macdonald stated that his client had attempted to have electricians carry out work in the property however there had been issues with the tenant and Mr Ryder's conduct which had meant that access had either not been allowed or tradespeople were not prepared to carry out the work. Mr Macdonald stated that the landlord would be seeking access to allow the repairs to be carried out and that the tenant was required to allow reasonable access. He also stated that Mr Ryder had sought to video tradespeople carrying out work in the property which was a barrier to the work being done. Mr Ryder stated that he had been advised to video anyone coming into the property for his own record by a local authority officer. After some discussion it was noted that parties will cooperate to allow works to be carried out without interference. If the landlord has evidence that tradespeople have been put off attending the property that should be submitted. The tenant is entitled to check the identity of anyone coming into the property however should not interfere with their ability to carry out repairs undisturbed.
19. Ensuite shower leak and thermostat: - The tenant confirmed that a repair had been carried out to the shower since the application had been submitted. The shower had been replaced and resealed however it was observed that there

was still water escape from the front corner as a result of a defect with the sealant.

20. Toilet flush - It was observed that the toilet had a built in concealed flushing mechanism. The flush was operational however the front fixture was no longer attached.
21. Extractor fan in ensuite and main bathroom: Neither extractor fan was operational. It was observed that there were windows in both the ensuite and bathroom. The tenant stated that the extractor fans had not been functional for a considerable period of time.
22. Gas safety certificate:- The tenant stated at the hearing that they had not received an up to date gas safety certificate for the property.
23. Legionella test: Mr Macdonald stated that it appeared that a relevant test had been carried out however he had not been supplied with a copy of the results.

### **Summary of the issues**

24. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1) of the Act.

### **Findings in fact: -**

25. The tribunal find the following facts to be established: -
  - a. The parties entered into a tenancy agreement with a commencement date of 15 May 2012.
  - b. The property is a 3 bedroom semi detached property with gardens to the front and rear.
  - c. The landlord has failed to produce a satisfactory EICR for the house.
  - d. The landlord has failed to produce a current gas safety certificate for the house.
  - e. The landlord has failed to produce a satisfactory legionella test for the house.
  - f. The house does not have interlinked smoke and heat detectors that comply with Scottish government regulation.

- g. Prior to the inspection the landlord had instructed repairs to be carried out to the patio door, decking, bathroom ceiling, back bedroom window and the radiator in the hall. The repairs had placed these items in proper working order and a reasonable state of repair.
- h. The kitchen floor is in a reasonable state of repair.
- i. The shower in the ensuite has been replaced recently however a defect in the sealant means that water is escaping from the front corner.
- j. The front of the toilet flushing mechanism in the ensuite is no longer attached and requires to be reattached.
- k. The extractor fans in the bathroom and ensuite shower room are not working.
- l. Mould growth was observed above the window in the front bedroom.
- m. At the time of the inspection there was no evidence of water ingress or active condensation in the area above the window in the front bedroom.

### **Reasons for the Decision**

- 26. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.
- 27. The Tribunal was only able to consider those items which formed part of the intimated application.
- 28. The Tribunal noted that landlord had instructed works to be carried out in the house which had resolved the repairs at paragraphs 10 to 15 above. The tenant accepted that the repairs had addressed the issues with those items.
- 29. The Tribunal observed at the inspection that repairs were required to the shower sealant and the toilet in the ensuite shower room. Mr Macdonald did not dispute that these repairs were outstanding and that an EICR ,Gas safety certificate and Legionella test are required to demonstrate compliance with the repairing standard duty. The Tribunal considered that an EICR would address the issues with electrical installations including the lighting, plugs and extractor fans.

30. In relation to the mould growth in the front bedroom, while the Tribunal observed mould there was no evidence of water ingress or condensation at the inspection. The Tribunal was conscious that condensation mould is a seasonal issue however, in light of the lack of evidence showing that there was an underlying issue with dampness the Tribunal did not find a breach of the repairing standard in relation to this item.
31. Mr Macdonald submitted that there had been difficulties with repairs being carried out due to the conduct of the tenants however no evidence was submitted to support that position. It was also noted that repairs had recently been carried out. The Tribunal noted that there is a duty on both parties to cooperate to ensure repairs are carried out. Mr Macdonald indicated that the landlord was prepared to carry out repairs and it is noted that if reasonable steps are taken by the landlord to arrange access for repairs it is expected that the access will be permitted for the purpose of carrying out repairs.
32. In relation to the Energy Performance Certificate the Tribunal does not consider that failure to provide an EPC constitutes a breach of the repairing standard.
33. The Tribunal considered that 6 weeks was a reasonable period for the repairs to be completed and the appropriate documentation submitted.

#### **34. Decision**

The tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

#### **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.**

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.

M.C Kelly Chairperson  
Date: 16 June 2025