



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

**STATEMENT OF DECISION OF THE TRIBUNAL
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Re: Property at 14 Union Road, Broxburn EH52 6HR ("the House")

Parties:

Mr Mariusz Kuprowski, 14 Union Road, Broxburn EH52 6HR ("the Applicant")

Mr Peter and Mrs Norma Gray, 8-10 Union Road, Broxburn EH52 6HR ("the Respondent")

Chamber Ref: FTS/HPC/RP/24/5777

Tribunal Members:

John McHugh (Legal Member) and Greig Adams (Ordinary (Surveyor) Member)

DECISION

The Tribunal, having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter “the Act”) in relation to the House, and taking account of the evidence led at the inspection and hearing and of the written documentation attached to the application, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 16 December 2024 (hereinafter referred to as “the Application”), the Applicant applied to the Tribunal for a determination of whether the Respondent had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Applicant considered that the Respondent had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Respondent had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

“... (b) 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...”

... (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...

... (h) the house meets the tolerable standard

(i) any common parts pertaining to the house can be safely accessed and used,

(j) the house has satisfactory provision for, and safe access to, a food storage area and a food preparation space...”

The Applicant complained about a leaking roof; the presence of mould and moisture; the presence of cracks in the walls and ceilings; bedroom windows not opening; leaking windows; a broken shower and a need to address dampness in the bathroom.

By letter of 15 February 2025, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson

Greig Adams, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Third Party.

A hearing and inspection were fixed for 2 May 2025. This was postponed until 24 June 2025.

The Tribunal inspected the House on 24 June 2025. The Applicant was present as was Peter Gray.

Following the inspection, the Tribunal held a hearing on the same day at George House, Edinburgh. Again, the Applicant and Mr Gray attended. A Polish interpreter assisted.

Submissions at the Hearing

Parties are agreed that a shower was present at the beginning of the tenancy. Mr Gray described an earlier Tribunal process relating to an application by him to increase the rent and to which the Applicant had objected. Mr Gray's position was that he had reduced the level of rent increase as a result of the shower having to be removed because it was not working. When asked if this had been agreed, he stated that he had made representations about it to the Tribunal hearing the rent increase case in the presence of the Applicant and that the Applicant had not objected at the time. The Applicant denies any agreement was ever reached.

There was a discussion around the moisture issue and the Tribunal explained its findings that the issue relates to condensation rather than there being evidence of penetrating dampness.

The Tribunal explained that the absence of mechanical ventilation or a trickle vent in the window aggravated the issue.

The Tribunal explained that it had found the windows to be hard to open and that they would slam shut. This indicated that the counterbalancing mechanism was not working as it should.

Additionally, the windows were found not to be draughtproof. The Applicant indicated that female occupants of the House found it difficult to open the windows as a lot of strength was required. Mr Gray indicated that he did not think it would be reasonable to replace the window but that they might be capable of repair.

Summary of the Issues

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

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a purpose built four in a block first floor flat.
- 2 The Applicant has occupied the House under an undated tenancy agreement since 3 May 2019.
- 3 Peter Gray and Norma Gray are the registered owners of the House.
- 4 Peter Gray is registered as Landlord of the House.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Applicant notified the Respondent of the defects in the House which are now the subject of the Application by a series of emails including those dated 23 September, 4 and 9 December 2024.
- 7 The inspection on 23 May 2025 revealed:
 - a. The windows in both bedrooms were difficult to open and slam shut. They are not wind and watertight.
 - b. The livingroom window is not wind and watertight.
 - c. Extensive mould is present in the bedroom closest to the front door and in the bathroom.
 - d. There is no means of ventilation in the bathroom other than opening the window. Mould and dampness are apparent in the hall cupboard.
 - e. Wallpaper is peeling from the walls apparently because of high moisture levels.
 - f. Cosmetic cracking is evident in the walls of the bedroom furthest from the front door.
 - g. There is no shower in the bathroom.

A schedule of photographs taken at the inspection has been provided to the parties.

Reasons for the Decision

The shower which had been present at the beginning of the tenancy had been removed by the Respondent. There is no evidence that this was by agreement of the Applicant and so a new shower should be installed.

High moisture is present in the House which is caused by condensation. No evidence of water penetration was found. There is significant mould in the bedroom closest to the front door and in the bathroom which requires to be removed.

The installation of a suitable extractor fan in the bathroom would reduce the condensation issue. It is likely to be sensible to place the fan close to the shower area.

The windows in both bedrooms were hard to open and slam shut. The counterbalance mechanisms are not working as intended. The bedroom and living room windows are not draughtproof. Replacement may prove more practical than repair.

The cracking in the walls of the bedroom furthest from the front door is cosmetic and is not structural. Decoration would be desirable.

The Repairing Standard

The Tribunal considers that the following items represent breaches of the repairing standard: the absence of the shower; the mould; the absence of mechanical ventilation in the bathroom; the condition of the windows. The cracking in the bedroom wall is not considered to constitute a breach of the Repairing Standard.

Accordingly, a Repairing Standard Enforcement Order should be made. Having regard to the nature of the works required at the House, the Tribunal have allowed 60 days for the repairs to be carried out.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

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.

Effect of Section 63 of the 2006 Act

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

J McHugh

John M McHugh

Chairperson

Date: 25 June 2025



**14 Union Road, Broxburn EH52 6HR
“the Property”/ “the House”)**

Chamber Reference: FTS/HPC/RP/24/5777

SCHEDULE OF PHOTOGRAPHS



1 Front Elevation of Property.



2 Areas of peeling wallpaper within Bedroom 1 and mould growth.



3 Mould growth within louvred cupboard within Bedroom 1.



4 Risk of Condensation within Bedroom 1 cupboard.



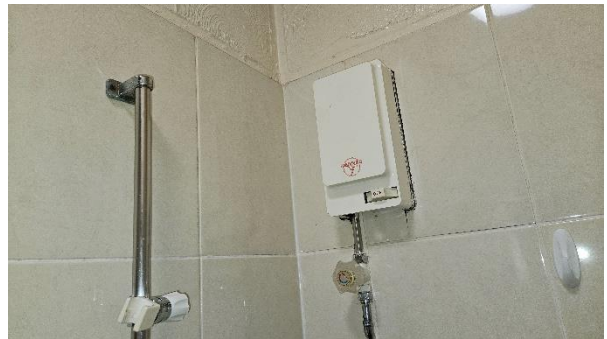
5 Bedroom 2 – minor cracking towards ceiling junctions.



6 Bedroom 2 – blistered paintwork above window area to corner of room.



7 Smoke testing – escape evident.



8 Shower – handset removed and not operational.



9 Bathroom – general heavy mould contamination evident throughout.



10 Bathroom – general heavy mould contamination evident throughout.



11 Example of surface temperatures of walls.



12 Rear Elevation of property.