



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 ("the 2006 Act")

Reference number: FTS/HPC/RP/24/4741

Re: 7 Armadale Road, Whitburn, Bathgate, EH47 0ET ("the Property")

The Parties:

Mr Russell Barrie ("the Applicant")

Mr Gary Compton as executor to the estate of the late Ms Anne Compton, Ms Martha Jennifer Sibbald ("the Respondents")

Tribunal Members :

Alastair Houston (Legal Member); Sara Hesp (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 that the Property does not meet the Repairing Standard in respect of Section 13(1)(a) and (h) of the 2006 Act. The Tribunal therefore issues a repairing standard enforcement order. The decision is unanimous.

1. Background

1.1 This is an application received by the Tribunal on 14 October 2024 whereby the Applicant sought a determination that the Respondents had failed to comply with their duties under section 14 of the 2006 Act. In particular, the Tenant alleged that the Property did not meet the following requirements under the 2006 Act:-

- *the house is wind and water tight and in all other respects reasonably fit for human habitation;*
- *the installations in the house for the supply of water, gas, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order;*
- *the house meets the tolerable standard;*
- *the house has satisfactory provision for, and safe access to, a food storage area and a food preparation space.*

- 1.2 The Applicant had enclosed a substantial volume of email correspondence between him and the agents for the Respondents. Following requests for further information, including evidence of further notification to the Respondents of the precise defects alleged, a letter to the agents was provided. This letter complained of the garage doors not opening due to an electrical fault, the bathroom fan operating noisily, the shower unit leaking due to a faulty seal, the gutters to the front and rear of the Property requiring clearing due to blockages, the inside front porch door being unable to be opened and water ingress to the roof of the conservatory at the rear of the property. The correspondence accompanying the application had also highlighted issues with the smoke detectors within the Property.
- 1.3 The application was accepted by the Tribunal and a notice of acceptance issued. An inspection and hearing was fixed for 30 June 2025 which was intimated to the parties. The Applicant had initially named a sole Respondent, Ms Anne Compton. Subsequent to the inspection and hearing being fixed, the Tribunal received correspondence from the First Named Respondent advising that Ms Anne Compton had passed away. The Tribunal took the decision to order the substitution of Mr Gary Compton as representative to the late Ms Anne Compton as Respondent and postponed the inspection and hearing to allow for confirmation to be applied for by him. The rearranged inspection and hearing then took place on 15 September 2025. At that time, the Second Named Respondent was not yet a party to the application.

2. The Inspection

- 2.1 The inspection of the Property took place on 15 September 2025. All parties were present at the property during the inspection.
- 2.2 The Property is a detached house with separate garage. A schedule of photographs taken during the inspection is produced alongside this decision. During the inspection, the Applicant advised that multiple issues complained of in the notification letter had been resolved, specifically, the shower unit had been resealed, the bathroom fan fixed, the inside front porch door had been fixed and now opened and the guttering had been cleared. The remaining issues were warping to the bathroom floor next to the shower, water ingress to the conservatory and the garage doors not operating properly.
- 2.3 The Tribunal inspected the bathroom and tested the floor for the presence of dampness. The smoke detectors appeared to be operating correctly. The Applicant highlighted the point of the conservatory where water would ingress. He also demonstrated the issues with the garage doors, which appeared to be difficult to open. Access to the garage was possible through a side door. Once inside, the main doors could be opened through the use of force.
- 2.4 The Tribunal noted that the front guttering appeared to have plant material growing in it. This was visible at the front of the Property.

3. The Hearing

- 3.1 The hearing took place at Edinburgh Training and Conference Venue on 15 September 2025. All the parties attended personally and none were represented. The Tribunal first dealt with the issue of the Second Named Respondent. It confirmed that she was joint proprietor of the property. This was confirmed by the title sheet obtained by the Tribunal. The Tribunal further noted that she was named as joint landlord on the tenancy agreement. She wished to be party to the application going forward and the Applicant had no issue with that. The First Named Respondent confirmed that he was now executor to the estate of the late Ms Ann Compton. The Tribunal therefore order the addition of Ms Martha Jane Sibbald as Second Named Respondent and amended the designation of the First Named Respondent to reflect that he had now been appointed executor to the estate of the late Ms Ann Compton.
- 3.2 The Applicant confirmed that there was no issue with the bathroom fan nor the sealing of the shower in the bathroom. He also confirmed that the porch door had been fixed. The gutters of the Property had been cleared, with this most recently having been done around three or four months ago. The smoke detectors were all working properly. The Applicant confirmed that these issues no longer required consideration by the Tribunal.
- 3.3 The Applicant advised that the leak to the conservatory appeared to be occurring between the external wall of the Property and the frame of the conservatory. This had occurred since the commencement of the tenancy. Whilst individual panes of glass had been resealed on two separate occasions, this had not resolved the issue. The garage doors had also not been functioning properly since the tenancy commenced. He had notified the letting agents for the Property, Castlebrae, on numerous occasions by email regarding this. The bathroom floor did not appear warped when he moved in. Carpeting had been down in the bathroom. The floor had warped since the leak from the shower.
- 3.4 The Respondents advised that the floor to the bathroom had always been slightly raised. The Property had previously been occupied by the Second Named Respondent's father. Water from the shower cubicle may have caused this. The Respondents had been unaware of the extent of the issue with the garage doors. They accepted that they did not appear to be operating as they should. They were unaware which of the doors ought to have a electrical mechanism. The Second Named Respondent confirmed that she was aware of the issue of water ingress to the conservatory. Her position was that the conservatory ought to have been excluded from occupation under the tenancy agreement, however, this was not done. She accepted it formed part of the Property let to the Applicant.

4. Findings In Fact

- 4.1 The tenancy between the landlords and the tenant was ongoing at the time of the application being made and the inspection and hearing.
- 4.2 As at 15 September 2025, there was no water leaking from the shower cubicle within the bathroom. The floor was dry with no dampness present. A small area of the floor by the shower cubicle was slightly raised.

- 4.3 The conservatory to the property was subject to water penetration at the junction of the frame and the wall. The Second Named Respondent had been aware of issues with water penetration to the conservatory at the commencement of the tenancy.
- 4.4 The doors to the front of the garage were not operating properly. They could only be opened after gaining access to the garage through the side door. No electrical mechanism was functioning. The said doors had not been properly functioning throughout the tenancy.
- 4.5 The guttering to the front of the property had visible plant material growing from it.
- 4.6 The Property was managed by letting agents, Castlebrae Sales and Lettings, and had been throughout the tenancy. The Applicant had notified the letting agents of the issues with the conservatory and the garage doors.

5. Reasons For Decision

- 5.1 Given that the Applicant considered the issues with the inside porch door, shower cubicle seal and bathroom fan to have been resolved, the Tribunal did not consider them further and made no findings in respect of these issues. The Tribunal inspected the flooring within the bathroom for residual dampness, given that a small area appeared to be raised. The damp meter readings did not show there to be unusual levels of damp present. The Tribunal did not consider the condition of the floor within the bathroom to amount to a breach of the repairing standard.
- 5.2 The Tribunal carried out a visual inspection of the conservatory. The Applicant was able to clearly indicate where the issue of water ingress was occurring. The inspection was carried out during dry conditions and no water ingress was observed, but there was some staining to the wall finish and the Second Named Respondent accepted during the hearing that the conservatory did suffer from water penetration. The Tribunal therefore accepted the Applicant's account of there being an ongoing issue, given no works had been carried out to the specific area at which the issue was said to occur.
- 5.3 The Applicant demonstrated the issues with the garage doors. It was clear that the doors could not be easily opened. Access via the double garage doors was necessary to enable any vehicle to enter or exit the garage. The side door was not sufficient for this purpose. The Tribunal considered that the garage was an outbuilding forming part of the Property let under the tenancy agreement between the parties. In order to comply with the repairing standard, the property must meet the tolerable standard as defined by section 86 of the Housing (Scotland) Act 1987 ("the 1987 Act"). Section 86(1)(i) of the 1987 Act requires a house to have satisfactory access to any outbuildings. Given the issues with the double garage doors requiring to be forcibly opened from the inside, the Tribunal did not consider that satisfactory access to the garage was available.

- 5.4 Although the Applicant was content that the gutters of the Property had been cleared, the Tribunal had noted that the gutter to the front of the Property had visible plant growth from it. The Tribunal considered that the past issues complained of by the Applicant would likely reoccur if this were not attended to. Section 86(1)(g) of the 1987 Act requires the Property to have an effective system for the drainage and disposal of foul and surface water. Should the plant material be blocking the gutter, it would not operate effectively.
- 5.4 The Respondents have failed to comply with their duties under sections 14(1)(b) and 13(1)(a) and (h) of the 2006 Act. The Tribunal is therefore required to make a repairing standard enforcement order under section 24(2) of the 2006 Act. The Tribunal was mindful of the nature of the defects in that they may require some investigation in order to determine exactly what remedial works would be required. The Tribunal considered that any necessary works ought reasonably to be completed within a period of three months.

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.

**Alistair Houston
1 October 2025**