



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

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

**Chamber Ref: FTS/HPC/RP/25/2369**

**Property: Somerville Cottage, 13 Howgate, Midlothian EH26 8QB ('The House')**

**The Parties: -**

**Jill Churchill, c/o Saltouns, 6 1a Queen Street Edinburgh EH2 4NA ("the landlord")**

**Roseanne Bryceland-Carlin, Kingside, Craigburn, West Linton, EH46 7BG ("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

Geraldine Wooley, Ordinary Member (surveyor)

## Background

1. By application accepted on 16 July 2025, 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 Act.
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 copy email correspondence between the tenant and the letting agents, and correspondence between Midlothian Council and the letting agents specifying that a failure was established. Photographs of the property had also been submitted. The following is a summary of the repairs intimated by the tenant:
  - *Guttering – blocked*
  - *Front door – not wind and water tight – damage to the paint and surrounding masonry*
  - *Whitegoods – dishwasher, fridge and extractor fan not in proper working order*
  - *Shed roof- leaking – risk due to electrical installation*
  - *Kitchen cupboards – 2 without back boards*
  - *Chimney breast in kitchen – not sealed*
  - *Kitchen – no heater, cold floor, slug infestation*
  - *Windows – do not open from the inside*
  - *Carbon monoxide (“CO”) monitor – lack of monitor in living room*
  - *Fireplace/chimney – not safe to use with dangerous fumes and smoke entering the property*
  - *Smoke alarms/heat detectors*
4. The tenant intimated that there had previously been issues with the oil heating however these had been remedied.
5. The tenant's address specified in the application is not at the house. The tenant no longer resides in the house. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 22 October 2025.

6. Prior to the hearing the letting agents submitted a number of documents including:

- Written submissions
- Invoice from Hunter Roofing Services dated 25 July 2025
- Electrical Installation Condition Report ("EICR") dated 25 September 2023
- Photographs of the property
- Energy Performance Certificate dated 11 August 2022
- Legionella Risk Assessment dated 18 June 2025
- Portable Appliance Test Report dated 22 July 2025
- Invoice from Paterson Plumbing dated 26 February 2025
- Notice to leave dated 16 June 2025
- Email correspondence with Midlothian Council

### **Hearing and Inspection**

7. The Tribunal inspected the house on the morning of 4 December 2025 at 10am. Mr McBain and Mr Dobbie, the landlord's representatives from Saltouns letting agents were in attendance. The house had been relet and is currently occupied by new tenants who were not present during the inspection.
8. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
9. A hearing took place at George House, Edinburgh at 11.30am. Mr Dobbie and Mr Mc Barin attended on behalf of the letting agents. The landlord's husband Peter Churchill also attended. The tenant, Ms Bryceland-Carlin emailed the Tribunal administration at 10.12am to advise that she would be unable to attend the inspection and hearing as she had the flu.
10. At the inspection and hearing the Tribunal considered each of the issues specified in the application.
11. Guttering: The Tribunal observed that the gutters had been cleared since the application was submitted and were largely free from blockages. The guttering was of significant age however there was no evidence of leakage. An invoice from Hunter Roofing Services that had been submitted included work clearing

the gutters. It was observed that there had been some regrowth of vegetation to the corner of the gutter since they had been cleaned in June. Mr Churchill stated that it was the landlord's intention to replace the guttering in the coming months due to its age.

12. Front door: It was observed during the inspection that the front door was wind and watertight and in proper working order. The Tribunal observed that there were no issues with the condition of the paint and masonry surrounding the front door. Mr Dobbie confirmed that repairs had been carried out to the stonework on the front of the property which had also been recently repainted.

13. Whitegoods: It was observed during the inspection that the dishwasher, fridge and extractor fan all appeared to be in good condition and proper working order. It was evident that the dishwasher was being used by the current tenants. Mr Dobbie stated that a new fridge and extractor fan had been installed in the property. The dishwasher had been used by the previous tenant however he submitted that it was in reasonable condition and proper working order. Mr Dobbie referred to a Portable Appliance Test certificate that had been submitted which certified the safety of the whitegoods.

14. Shed roof: It was observed during the inspection that the shed roof had been repaired and re-felted. No water ingress was observed at the inspection. It was observed that there was a light socket and switch within the shed. The Tribunal noted that the EICR that had been submitted did not cover the electrics in the shed. Mr Churchill stated that he and the landlord previously resided in the property. The electrical circuit which supplied the shed with power was separate from and pre-dated the electrical installation for the rest of the house which had been upgraded and is covered by the EICR. Mr Churchill stated that the power to the shed had been disabled and posed no risk as it was not possible for the current tenant to switch on power to the shed.

15. Kitchen cupboards: It was observed that one base unit had no backing. This was due to the location of the electrical mains switch. The area behind the cupboard was boxed in.

16. Kitchen – no heater/cold floor/slug infestation/chimney breast: The Tribunal observed that the kitchen opened directly onto the dining area which had a functioning radiator. The floor covering in the kitchen had been replaced with

vinyl flooring and there was no evidence of slug infestation. However, the flooring is loose and could present a trip hazard. The room was adequately heated. No issues were observed on the chimney breast in the kitchen. Mr Dobbie stated that the property had not been internally redecorated after the tenant moved out.

17. Windows: It was observed that the external window in the kitchen did not have secondary glazing and a butterfly catch was missing. The window could not be kept open to allow ventilation of the area. The other ground floor windows and secondary glazing were in reasonable condition and proper working order. It was observed that the external window in bedroom 1 was stiff and would not open. It was not possible to check the window in bedroom 2 due to a lack of access. Mr Dobbie accepted that the windows would require certain repairs and that a check of the window in bedroom 2 was required. Mr Churchill stated that the property dated from the 18<sup>th</sup> century and was a grade C listed building, so changes to the window design are not permitted.
18. Chimney/fireplace: An invoice had been submitted which stated that a repair had been carried out to a hole in the chimney breast. Mr Churchill confirmed that there was no chimney liner in place. The fireplace was not in use during the inspection however it was observed that it was in regular use. Mr Churchill stated that the landlord intended to install a chimney liner and wood burner in the property which would address the issue of a lack of chimney liner and prevent the risk of smoke and carbon monoxide leaking from the chimney into the house.
19. CO monitor: It was observed that a CO monitor was located in a cupboard off the living room where the boiler was located. No CO monitor was located in the living room near the open fire. No CO monitor was located upstairs in the property.
20. Smoke/heat detection: It was observed that the house had interlinked smoke and heat detectors which appear to comply with Scottish Government regulations.

## **Summary of the issues**

21. 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: -**

22. The tribunal find the following facts to be established: -

- a. The landlord and tenant entered into a tenancy agreement with a commencement date of 4 December 2024.
- b. The house is a 2 bedroom detached listed property with a small garden to the front and side.
- c. The house has been relet to new tenants since August 2025.
- d. Shortly after moving into the house in December 2024 the tenant experienced repairs issues including issues with the functioning of the chimney.
- e. A repair was carried out to the chimney before November 2025 to fix a hole in the chimney.
- f. The chimney does not have a chimney liner.
- g. The kitchen window does not have a butterfly latch and cannot be kept open.
- h. The window in the smaller bedroom is not in proper working order and does not open.
- i. The guttering has been cleared since the application was submitted.
- j. The guttering has been partially blocked by vegetation regrowth.
- k. The extractor fan, dishwasher and fridge in the property are in reasonable condition and property working order.
- l. The garden shed roof has been repaired and re-felted and is in reasonable condition and proper working order.
- m. The electricity supply to the garden shed is separate from the installation serving the rest of the property and has been disabled.
- n. The house has interlinked smoke and heat detectors that comply with Scottish government regulation.
- o. There was no evidence that the kitchen did not have an adequate heat supply.
- p. There was no evidence of slug infestation in the kitchen.

- q. A kitchen base unit had no backing to allow access to the electrical mains switch.
- r. A CO monitor was located in a cupboard off the living room which houses the boiler.
- s. The front door to the property is wind and watertight and in proper working order.
- t. The masonry and paintwork in the area around the front door was in a reasonable condition and had been recently repainted.

### **Reasons for the Decision**

- 23. The Tribunal determined the application having regard to the bundle of papers which had been available prior to the hearing, the inspection and the oral representations at the hearing.
- 24. The Tribunal was only able to consider those items which formed part of the intimated application.
- 25. The Tribunal noted that repairs had been carried out since the application had been submitted. The Tribunal accepted that a repair had been carried out to the chimney however due to the potential risk posed by carbon monoxide, fumes and smoke from the open fire the Tribunal determined that a chimney liner required to be installed.
- 26. The Tribunal determined that due to the regular use of the open fire an additional CO monitor was required in the living room to ensure compliance with Scottish Government regulations.
- 27. The Tribunal determined that the windows in the kitchen and both bedrooms were not in proper working order. The windows were not opening freely and some lacked butterfly catches.
- 28. The Tribunal accepted that the gutters had been cleared since the application was submitted however it was observed at the inspection that vegetation had regrown over the corner of the gutter which would require to be removed.
- 29. The Tribunal observed that the kitchen and whitegoods were in good condition and property working order. Whilst it was observed that one of the cupboards had no backing this was to allow access to electrical mains switch.

The Tribunal did not determine that this constituted a breach of the repairing standard as the cupboard was still functional.

30. The Tribunal determined that the shed had been repaired and was now wind and watertight. The Tribunal accepted Mr Churchill's unchallenged submissions that the electrical circuit which connected to the shed was separate from the main electrical installation and had been disabled. No breach of the repairing standard was found in relation to his item.
31. The Tribunal found no breach of the repairing standard in relation to the other items listed in the application.
32. The Tribunal considered that 14 weeks was a reasonable period for the repairs to be completed and the appropriate documentation submitted.

### **Observation**

33. It was observed at the inspection that the flooring in the kitchen was loose and presented a trip hazard.
34. It was observed at the inspection that a plug socket in the upstairs hallway was loose and had come away from the wall. This item should be checked for safety by a suitably qualified electrician and repaired as necessary.
35. Due to the regular use of the open fire a CO alarm in the upper landing area would provide addition protection in the event of a carbon monoxide leak.

### **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: 4 December 2025