

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **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/18/2634**

Re: The Stables, 32 Birkhill Road, Stirling FK7 9JS ("the house")

**Land Register Title No: STG70872**

### **The Parties:**

**Mrs Allison McCormick, formerly residing at The Stables, 32 Birkhill Road, Stirling, FK7 9JS ("The former tenant")**

**Mr Adeel Tahir and Mrs Amber Adeel, 18 Aginhills Drive, Monkton Heathfield, Taunton, TA2 8XD ("the landlords")**

**Tribunal Members – Sarah O'Neill (Legal Member) and Mike Links (Ordinary Member, Surveyor)**

### **Decision**

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlords have complied with the duty imposed 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 landlords have not failed to comply with the duty imposed on them by Section 14 (1) (b) of the Act. The tribunal's decision is unanimous.

### **Background**

1. By application received on 10 October 2018, the former tenant applied to the tribunal for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.

2. In her application, the former tenant stated that she believed the landlords had failed to comply with the duty to ensure that the house met the repairing standard as set out in section 13(1) (a) (b), (c), (d) (e) (f) and (g) of the Act. Her application stated that the landlords had failed to ensure that:

- i. the house is wind and watertight and in all other respects reasonably fit for human habitation
- ii. 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
- iii. the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order
- iv. any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
- v. any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed
- vi. the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
- vii. the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

3. The former tenant included the following complaints in her application form:

- Old boiler which was past repair and renewal
- Carbon monoxide leak
- The house was very dirty
- The fridge door was not closing properly until recently repaired
- Shower room 1 -tiles fallen off shower wall
- Shower room 2 – mould and damp on ceiling, wall and under carpet
- Leaks from glass roof in conservatory and from roof in main entrance
- Wood rotting and buckling in conservatory and main entrance areas

4. There were a number of other issues contained in the evidence of notification which the former tenant had sent with her application form. It appeared from the correspondence that most of these had been attended to while she was still residing at the property, and that she had acknowledged this. Given that at the time of the tribunal's inspection the tenant had moved out, the nature of some of these complaints was unclear. The tribunal however considered the following issues which were mentioned in the correspondence:

- Broken steps at front entrance
- Loose slabs at the front entrance.

- Smoke alarms- provision for detecting fires and for giving warning in the event of fire or suspected fire (the former tenant had ticked the relevant box on her application form, but she had given no further details).
5. On 17 October 2018, a Convener of the tribunal, with delegated powers under Section 23A of the Housing (Scotland) Act 2014, issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received on 10 October 2018; and intimating her decision to refer the application to a tribunal for determination.
  6. The tribunal office wrote to the parties on 6 November 2018, notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to a tribunal, and that an inspection and a hearing would take place on 18 December 2018. Written representations were requested by 27 November 2018.
  7. On 7 November 2018, an email was received from the former tenant, advising that she would be moving out of the house on 16 November. On 16 November 2018, the tribunal issued a minute of continuation to a determination under Schedule 2 Paragraph 7(3) of the Act. This stated that, having received confirmation from the tenant that the tenancy had been lawfully terminated, the tenant was to be treated as having withdrawn her application in terms of Schedule 2 paragraph 7 (1) of the Act. It then stated that the tribunal considered that the application should be determined on public interest grounds, due to the nature of the alleged repairs and the potential effects on any future tenants/occupiers if those allegations were substantiated.
  8. On 13 November, written representations were received from the landlords, stating that all of the repairs set out in the application would be addressed once the tenant had left the house.

### **The inspection**

9. The tribunal inspected the house on the morning of 18 December 2018. The weather conditions at the time of the tribunal's inspection were wet and windy. The landlord was represented at the inspection by his friend and handyman Mr Phil Davies, and by Mr Kevin Valentine, Senior Property Manager and Mr Imtiaz Ahmed, Managing Director, both of Martin and Co, which had recently taken over as the landlords' letting agent. The house was unoccupied and unfurnished at the time of the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

## **The house**

10. The house is a two-storey detached house in the region of 25 years old. It comprises an entrance hallway; conservatory; lounge; utility room with toilet off; dining kitchen; dining room and bedroom with ensuite bathroom (downstairs) and two further bedrooms, (bedrooms 1 and 2), both with ensuite shower rooms (upstairs).

## **The hearing**

11. Following the inspection, the tribunal held a hearing at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling FK7 7RP. The landlord was represented by Mr Davies and Mr Valentine.

## **The evidence**

12. The evidence before the tribunal consisted of:
  - The application form completed by the former tenant
  - Registers Direct copy of Land Register title STG708782, which confirmed that the house is owned by Adeel Tahir and Amber Adeel.
  - Private residential tenancy agreement between the landlords and the former tenant and Mr Joseph McCormick in respect of the house dated 13 April 2018.
  - Various emails between the former tenant and Property Bureau, which was the landlords' letting agent until 18 November 2018, and between the landlords and Property Bureau, and numerous 'property logs' by Property Bureau, all regarding the repairs alleged to be required, and dated between 16 April and 27 September 2018.
  - The written representations received from the landlord on 13 November 2018.
  - Letter from Property Bureau to the tribunal dated 8 November, advising that it would no longer be managing the house from 19 November 2018.
  - The tribunal's inspection of the house.
  - The oral representations of the landlords' representatives at the hearing.

## **Summary of the issues**

13. 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 landlords had complied with the duty imposed on them by section 14 (1) (b).

## **Findings of fact**

14. The tribunal made the following findings in fact:

- The house is owned by Adeel Tahir and Amber Adeel, who are the landlords named in the tenancy agreement.
- The landlords' agent, Martin and Co, now manages the letting of the house on their behalf. Property Bureau was the landlords' letting agent prior to that, until 19 November 2018.
- The former tenant and Joseph McCormick entered into a Private Residential Tenancy Agreement with the landlords to rent the house from 13 April 2018.
- The tribunal at its inspection carefully checked the items which were the subject of the complaint. The tribunal observed the following:
  - i. A new gas boiler had been installed in the kitchen.
  - ii. A carbon monoxide monitor had been installed adjacent to the boiler cupboard.
  - iii. The fridge door had been repaired, and it appeared to be operating correctly.
  - iv. The tiles in both shower rooms had been removed, and had been replaced with new wet walls in each room.
  - v. There were no visible signs of mould or dampness on the ceiling, walls or carpet in shower room 2.
  - vi. No leaks, or signs of any recent leaks were observed from either the conservatory roof or the roof in the main entrance.
  - vii. The timber sills, both internal and external, had been replaced in the conservatory.
  - viii. The internal timber sill in the entrance porch had been repaired.
  - ix. New tiles had been installed at the entrance stairs.
  - x. The paving slabs at the entrance had been repaired.
  - xi. There were interlinked smoke alarms in the lounge, the hallway and the landing, and a heat alarm in the kitchen.

## **Reasons for decision**

15. The tribunal's determinations in relation to each of the former tenant's complaints are set out below.

### **1. Boiler needs repair and renewal**

16. At its inspection, the tribunal observed that a new gas boiler had been installed. Mr Valentine provided the tribunal with a copy of a gas safety certificate in respect of the house dated 26 November 2018, produced by a gas safe

registered engineer, LPDS, which showed that the boiler was safe to use and was operating satisfactorily. The tribunal therefore determines that the boiler is in a reasonable state of repair and in proper working order.

## **2. Carbon monoxide leak**

17. Mr Davies told the tribunal that this had been an issue related to the old boiler, which had now been replaced. The tribunal had observed at its inspection that a CO monitor had been installed adjacent to the boiler cupboard, which appeared to have been installed in accordance with the required guidance. The gas safety certificate in respect of the house dated 26 November 2018 showed that the boiler was safe to use and was operating satisfactorily. The tribunal therefore determines that this issue has been addressed.

## **3. The house was very dirty**

18. The tribunal noted that this appeared to have been an issue at the start of the former tenant's tenancy. The house appeared to be in a reasonable state of cleanliness at the time of its inspection. This was not in any case a repairing standard issue, unless it meant that the house was not reasonably fit for human habitation. The tribunal determines that the house is reasonably fit for human habitation.

## **4. The fridge door was not closing properly**

19. The tribunal observed at its inspection that the fridge door had been repaired, and it appeared to be operating correctly. The tribunal therefore determines that the fridge door is in a reasonable state of repair and in proper working order.

## **5. Shower room 1- tiles fallen off shower wall**

20. The tribunal observed at its inspection that the tiles in shower room 1 (off the master bedroom (bedroom1)) had been removed, and these had been replaced with new wet walls. The tribunal therefore determines that the wall around the shower in this room is in a reasonable state of repair and in proper working order.

## **6. Shower room 2 - mould and damp on ceiling, wall and under carpet**

21. The tribunal observed at its inspection that there were no visible signs of mould or dampness on the ceiling, walls or carpet in shower room 2 (off bedroom 2). The wall tiles had been removed and replaced by new wet walls. Mr Davies told the tribunal at the hearing that black mould on the ceiling had been treated with bleach. The tribunal determines that shower room 2 is wind and watertight, and in all other respects reasonably fit for human habitation.

## **7. Leaks from glass roof in conservatory and from roof in main entrance**

22. It was raining at the time of the tribunal's inspection. During the inspection, however, the tribunal observed no leaks, or signs of any recent leaks, from either the conservatory roof or the roof in the main entrance. Mr Davies told the tribunal at the hearing that the conservatory roof had recently been sealed. The tribunal determines on the basis of the evidence before it that the roofs in both the conservatory and the main entrance area are wind and watertight.

## **8. Wood rotting and buckling in conservatory and main entrance areas**

23. The tribunal observed at its inspection that the timber sills, both internal and external, had been replaced in the conservatory. The internal timber sill in the entrance porch had also been repaired. The tribunal concluded that the wood referred to by the former tenant in her application was the sills in these areas, and Mr Davies confirmed that this was his understanding. The tribunal determines that the sills in both areas are in a reasonable state of repair and in proper working order.

## **9. Broken steps at front entrance**

24. The tribunal observed during its inspection that new tiles had been installed at the entrance steps. It therefore determines that the entrance steps are in a reasonable state of repair and in proper working order.

## **10. Loose slabs at the front entrance**

25. The tribunal observed during its inspection that paving slabs at the entrance had been repaired. It therefore determines that the paving slabs are in a reasonable state of repair and in proper working order.

## **11. Smoke alarms**

26. The tribunal observed during its inspection that there were interlinked smoke alarms in the lounge, the hallway and the landing, and a heat alarm in the kitchen. This is in compliance with the current Scottish Government statutory guidance for private rented properties. The tribunal therefore determines that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

## **Summary of decision**

27. On the basis of all the evidence before it, the tribunal found that at the time of its inspection, the house was in a state of repair which met the repairing standard in terms of section 14 (1) (b) of the Act, as regards the issues complained about by

the former tenant. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the former tenant's application.

### **Rights of Appeal**

28. 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.
29. 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.....

19/12/18



# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

### SCHEDULE OF PHOTOGRAPHS

ADDRESS: THE STABLES, 32 BIRKHILL ROAD, STIRLING FK7 9JS

DATE: 18<sup>TH</sup> DECEMBER 2018

REFERENCE: FTS/HPC/RP/18/2634



STREET ELEVATION



FRONT ELEVATION



REPLACED TIMBER SILLS, EXTERNAL AND INTERNAL – CONSERVATORY

*This is the schedule of photographs dated 18 December 2018  
referred to at paragraph 9 of the Foregoy decision dated  
14 December 2018.*

S O'Neill

*Chapman*

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**STREET ELEVATION**



**FRONT ELEVATION**



**REPLACED TIMBER SILLS, EXTERNAL AND INTERNAL – CONSERVATORY**



**ENTRANCE PORCH- INT SILL REPAIRED. NEW TILES AT ENTRANCE STAIR**



**REPAIRED SLABS AT ENTRANCE. NEW GAS CENTRAL HEATING BOILER**



**CO MONITOR AT BOILER**



**HEAT DETECTOR IN KITCHEN**



**SMOKE DETECTOR IN HALL**



**SMOKE DETECTOR IN LOUNGE**



**NEW WET WALLS IN SHOWER ROOMS 1 AND 2**



**SMOKE ALARM IN LANDING**



**SHOWER 2—MOULD TREATED.**

**Mike Links**

**Ordinary Member (Surveyor)**

**Housing and Property Chamber**

**18<sup>th</sup> December 2018**