



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

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Ref: FTS/HPC/RP/22/0406**

**Property at West Nevay farmhouse, Newtyle, Blairgowrie, PH12 8SJ**

**Land Register Title Number: MANG70703  
("the Property")**

**The Parties:-**

**David Vermaak, ("the Tenant")**

**Mr Charles Blair Oliphant, Ardblair Castle, Blairgowrie, PH10 6SA ("the Landlord")**

**Tribunal Members:**

Gillian Buchanan (Chair) and Robert Buchan (Ordinary Member)

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) in relation to the Property, and taking account of the evidence given by the parties at a hearing, determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. By application comprising various documents received between 11 February and 21 March 2022 the Tenant applied to the tribunal 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 ("the Act").
2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - The house meets the tolerable standard.
3. By letter dated 29 March 2022 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
4. On 28 April 2022 the tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant and the Landlord.
5. Following service of the Notice of Referral the tribunal received the following additional written representations from the Tenant:-

- i. Email dated 18 May 2022;
  - ii. Two emails dated 25 May 2022 with attachments.
6. Following service of the Notice of Referral the tribunal received the following written representations from the Landlord:-

Written representations dated 11 May 2022 with attachments.

### **Inspection**

7. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Robert Buchan, Ordinary Member, inspected the Property on the morning of 6 June 2022. The the Landlord and his wife, Mrs Gill Blair Oliphant attended the inspection. The Tenant did not attend and was not represented. Photographs were taken and are contained in a “Pre-hearing summary and schedule of photographs” dated 7 June 2022.
8. At the time of the inspection it was fair and dry.
9. Subsequent to the inspection the tribunal received the following further representations: -
- i. E-mail from the Tenant dated 1 June 2022 stating that he had vacated the Property;
  - ii. E-mail from the Tenant dated 9 June 2022 with attachments; and
  - iii. E-mail from the Landlord dated 9 June 2022.

### **Hearing**

10. Following the inspection of the Property the tribunal held a Hearing by telephone conference on 13 June 2022. The Tenant attended the hearing. The Landlord and his wife attended the hearing and the Landlord was represented by Mr Alex Gunn of Anderson Strathern, Solicitors.
11. The parties made the following submissions:-

#### *Submissions for the Tenant*

- i. The Tenant accepted that the water treatment and filtration system is now installed within the Property and accepted the terms of the Test Report dated 16 February 2022 prepared by Dundee City Council and lodged by the Landlord with his written representations dated 12 May 2022.
- ii. The Tenant indicated that he accepts the attic space to be adequately insulated insofar as shown within the photographs attached to the “Pre-hearing inspection summary and schedule of photographs”. However, he highlighted the other area of the attic not shown within the photographs and questioned whether that area had also been insulated.
- iii. The Tenant restated his position that the Landlord ought to have installed a notice within the Property to let visitors know that they are drinking from a private water supply under and in terms of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.

#### *For the Landlord:*

- i. Mr Gunn stated that the required water filter has been renewed. The Landlord will deal with arrangements for replacing water filters as required.

- ii. The Tenant has returned the keys to the Property and it is not currently clear whether the Landlord will let the property again. The Property is vacant.
- iii. The Landlord appreciates that if the Property is to be re-let then a notice in terms of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 may require to be displayed.
- iv. On questioning from the Tribunal, the Landlord himself stated that the other part of the attic referred to by the Tenant amounts to approximately one third of the roof space. That part of the roof space has floorboards and is cladded and is required for storage. It has not been insulated at this time but will be insulated if required in due course.
- v. Mr Gunn stated that, as before, if there is a requirement for the other part of the attic space to be insulated in order for the Property to be re-let then that work will be undertaken.

### **Summary of the Issues**

12. The issues to be determined are:-
- (a) Whether the Property leased by the Landlord to the Tenant meets the tolerable standard.
  - (b) In particular, whether the water treatment and filtration system installed within the Property is in a reasonable state of repair and in proper working order.
  - (c) Whether the Property is adequately insulated;
  - (d) Whether it is necessary for the Landlord to display a notice to let visitors know that they are drinking from a private water supply in terms of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.

### **Findings in Fact**

13. The Tribunal finds the following facts to be established:-
- (a) That the Landlord is the heritable proprietor of the Property.
  - (b) That the parties entered into a Private Residential Tenancy Agreement in respect of the Property with effect from 18 September 2018.
  - (c) That the Tenant has vacated the Property which is currently empty.
  - (d) That the water treatment and filtration system is in a reasonable state of repair and in proper working order and therefore meets the tolerable standard. In particular the water supply which runs through the treatment and filtration system had been sampled and was considered satisfactory as at 16 February 2022.
  - (e) That the insulation within the Property is satisfactory.
  - (f) That the Property therefore meets the tolerable standard.

### **Reasons for the Decision**

14. The Property is a traditional stone and slate, semi-detached house, thought to be over 150 years old and occupying a rural location in Angus. The Property is presently empty, the

Tenant having recently removed therefrom. The Property leased to the Tenant is situated over two floors with an attic space above. On the day of the inspection of the Property by the Tribunal, the Landlord and his wife took the Tribunal around the Property giving access to those parts of the Property which the Tribunal required to inspect in order to determine this application.

15. On inspection, the water treatment and filtration system located in a cupboard within the kitchen was found to be in good repair and in proper working order. The Tribunal had particular regard to the Test Report issued by Dundee City Council to Angus Council dated 16 February 2022 in terms of which samples taken from the water supply were tested and were found to satisfy the requirements of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017. No notices under and in terms of the 2017 Regulations were on display.
16. At the inspection the Landlord stated to the Tribunal that the water filters had been changed in February 2022 and would require changed every six months. This work would be carried out by his plumber. Testing had also been undertaken three months after installation and again in February 2022. The water supply is shared with other properties and is taken from the Landlord's farm.
17. Whilst the Tribunal did not observe any notices on display under and in terms of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017, the Tribunal is satisfied that the absence of any such notice does not constitute a breach of the Repairing Standard in terms of the Housing (Scotland) Act 2006.
18. Within the attic space the Tribunal found substantial insulation to be installed to a standard higher than that which would ordinarily be required. The Tribunal was advised that the insulation had been laid on 3 June 2022. The Tolerable Standard includes that a house must have "satisfactory thermal insulation". There is no further specification but Government guidance to Local Authorities is that there should be "some" loft insulation.
19. At the time of the inspection the Tribunal was not made aware of the other smaller attic space which the Landlord accepted had not been insulated. However, averaging the insulation laid across the entire roof space, the insulation is satisfactory and the Property therefore meets the tolerable standard.

### **Decision**

20. The Tribunal accordingly determined that the Landlord had not 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**

21. **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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

22. **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**

**the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

Signed

Date : 27 June 2022

Legal Member and Chairperson