

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 section 24(2)

Chamber Ref: FTS/HPC/RP/17/0053

Land Register Title number: INV1304

Property address: First floor left flat, 125 High Street, Fort William, PH33 6DG

The Parties:-

Ms Alexandra Fabiszewska, First floor left flat, 125 High Street, Fort William, PH33 6DG ('the Tenant')

David and Carol McCulloch, 34 Donaldson Avenue, Alloa, FK10 2ET ('the Landlords')

NOTICE TO

David and Carol McCulloch, 34 Donaldson Avenue, Alloa, FK10 2ET

Whereas in terms of their decision dated 9th May 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) has determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to comply in respect of Section 13(1)(a) of the Act to ensure that the House is wind and watertight and in all other respects reasonably fit for human habitation.

The Tribunal now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the House meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlords to:-

1. Ensure that the rhones and gutters are in a reasonable state of repair and in proper working order, and are not contributing to the water ingress within the House. In the event that the rhones and gutters are contributing to the water ingress, repair or replace the rhones and gutters to ensure that they are in a reasonable state of repair and proper working order;

to the water ingress, repair or replace the rhones and gutters to ensure that they are in a reasonable state of repair and proper working order;

2. Ensure that the leaking living room window is fully sealed to prevent water ingress;
3. Install a vent in the living room wall where the chimney stack was removed;
4. Repair or replace the storage heater in the second bedroom;
5. Install a heater within the bathroom.

The Tribunal order that the works specified in this Order must be carried out and completed within a period of 8 weeks from the date of service of this Notice.

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.

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.

Please note that in terms of section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents typewritten on this and the preceding page are executed by Helen Forbes, solicitor, chairperson of the Tribunal at Inverness on 16th May 2017 before this witness:-

H Forbes

witness

chairperson

Alana MacKenzie
16 Union Street
Inverness, IV1 1PL

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: section 24(1) Housing (Scotland) Act 2006 ('the Act')

Chamber Ref: FTS/HPC/RP/17/0053

Land Register Title number: INV1304

Property: First floor left flat, 125 High Street, Fort William, PH33 6DG ('the House')

The Parties:-

Ms Alexandra Fabiszewska, First floor left flat, 125 High Street, Fort William, PH33 6DG ('the Tenant')

David and Carol McCulloch, 34 Donaldson Avenue, Alloa, FK10 2ET ('the Landlords')

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 Landlords have complied with the duty imposed by Section 14(1)(b) of the Act in relation to the House, determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act and in particular that the Landlords have failed to comply in respect of Section 13(1)(a) of the Act to ensure that the House is wind and watertight and in all other respects reasonably fit for human habitation

Background

1. By application received 13th February 2017, the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Act.

The Tenant stated that she considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard, in that the house was not wind and watertight and in all other respects reasonably fit for human habitation. In particular, she stated:-

'The wall (load bearing) is in very bad condition in the living room
The window in living room is not airtight, whilst it's raining, the water is running on the floor.
When it is windy, the windows are shaking.
On the top of the window is mud.
There's dampness in the whole flat which affects my son's health (he coughs mornings and evenings after being in the flat).
Insects appeared – waiting for someone to identify them. They are under beds, fridge, almost everywhere. Every day I use Raid to get rid of them but still find alive (less).
There are holes in the flat so maybe they come from them.
The flat is not airtight and cold.'

The Tenant stated that the following work was required:

'Repair wall in living room and window.
Eliminate insects and prevent them tapping the holes and uncovered places on the floor.'

2. The Tenant lodged screenshots of a series of text messages between herself and the landlord, Carol McCulloch, which were dated January, February, April and November 2016 whereby the parties discussed the problem with the incoming water, and proposed works to be carried out on the outside of the building, and the installation of new windows. The Tenant also lodged photographs of the leaking window and the insects, and a transcript of WhatsApp messages beginning in November 2016 and ending in February 2017. The messages from November to January addressed the fact that the window continued to let in water, and the messages in early February addressed the problem with the insects, and attempts by the Landlord to arrange a visit from pest control. In February 2017, there was also a message from the Landlord to the Tenant stating that a joiner had been to the property and measured to replace the window and repair the wall.

The Tenant informed the Landlords further by notification of repair letter sent on 3rd March 2017, stating:

'Repair the wall in the living room (especially the top of the wall above the window because of leaking) to avoid dampness in the flat and appearing the insects
Clog the gaps in the walls and floor
Repair the window handle in the living room'

3. On 20th March 2017, the Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber), with delegated powers, and having considered the application, referred the application under Section 23(1) of the Act to a Tribunal.
4. The Tribunal members were Ms Helen Forbes (Legal Member) and Mr Harry MacLean (Ordinary Member).

5. The First-tier Tribunal for Scotland (Housing and Property Chamber) served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties dated 29th March 2017.
6. On 5th, 18th and 29th April 2017 the Landlord, Carol McCulloch, made representations to the Tribunal by email. She outlined the work that had been done to date, namely, removal of the chimney stack, replacement of the living room windows, re-skimming the wall in the living room, sealing the vent in the wall, replacement of a velux window in the roof, painting of the gable wall with silicon paint, replacement of leading on the roof, and re-sealing of the bay windows after it was observed the mastic was failing. There had been protracted issues and discussions among the ten owners of the properties within the building, and unavoidable delays in waiting for contractors to begin work. There had been building inspections by specialist contractors and architects, and regular inspections by the Landlords. The issue with water ingress in the living room was narrowed down to a specific area and it was believed there were problems with water ingress in other flats. In particular, the flat above had an ongoing issue with water ingress. Arrangements had been made to have the rhones and gutters checked and cleaned as a contractor for another property had stated that water is being blown off the corner directly above where three flats are experiencing similar water ingress. A quote is awaited and a date to carry out the works.
7. On 11th April 2017 the Tenant wrote to the Tribunal and stated that repairs in the flat were completed. The Tenant emailed the Tribunal on 26th April 2017 stating that water had entered the property after new windows had been installed, and that she was unsure whether the problem was solved.
8. The Tribunal attended at the House on 9th May 2017. The weather was dry, bright and calm. The House is a first floor flat in a mid-Victorian five storey tenement building. There are two bedrooms, a kitchen, living room and bathroom. The flat is heated by wall-mounted storage heaters. The windows are double-glazed UPVC.

The Tenant was present at the inspection. The Landlords were not present.

The Tribunal inspected the alleged defects and found as follows:-

8.1. *The wall (load bearing) is in very bad condition in the living room*

The chimney stack had recently been removed from the load bearing wall, and the wall had been skimmed and decorated. There was some evidence of past damage to the coving. The wall appeared dry and in good condition.

The Ordinary Member took moisture meter readings at various points on the wall. The meter readings from the area where the fireplace had been

sealed and the chimney stack removed indicated a significant level of moisture. This appeared to be due to removal of the chimney vent. Otherwise, the meter readings were normal within the living room.

8.2 *The window in living room is not airtight, whilst it's raining, the water is running on the floor. When it is windy, the windows are shaking. On the top of the window is mud.*

The living room has a bay formed of four adjoining windows. The windows have recently been replaced, consequently, there was no longer a problem with a broken window handle. The Tenant said that the windows did not now let in wind and there was no longer any black mould on the windows. However, the Tenant indicated smear stains on the left-most window, where there had been water ingress from the top of the new window on 3rd April 2017. The weather has been dry since that date so there has been no further ingress of water. The Tenant had reported matters to the local authority and there has been an inspection of the property. She did not have a report from the local authority.

8.3 *There's dampness in the whole flat which affects my son's health (he coughs mornings and evenings after being in the flat).*

Moisture meter readings were taken throughout the House. There was a mildly elevated reading (within normal levels) from the right hand side of the window frame in the first bedroom. With the exception of the aforementioned area within the living room, the moisture meter readings throughout were within the normal range. The Tenant had placed small granule-filled moisture traps in both bedrooms. In the second bedroom, there was water within the trap. The Tenant said that she had been using the traps for approximately 6 weeks and had previously discarded a trap full of water from each bedroom. Although the windows throughout the flat had trickle vents, only one vent in the living room was open. The Ordinary Member showed the Tenant how to open the vents and suggested they were kept open to allow the flat to ventilate.

8.4 *Insects appeared ... they are under beds, fridge, almost everywhere.*

The Tenant said that, after three fumigations by pest controllers, the insects were no longer a problem. She found one beetle in the last few days and she kept it to show to the Tribunal members. It did not appear to be a furniture beetle. The Tenant was satisfied that this was no longer an issue.

8.5 *Holes in the flat*

There were small holes in the wall of the second bedroom, which the Tenant said had been there at the start of the tenancy.

8.6 *The flat is not airtight and cold*

There was no evidence of draughts within the House. The Tenant said there had been gaps between the floor and the skirting in the living room, but beading had now been installed and that had solved the draught problem. The windows throughout the House appeared to be wind-proof and in good working condition.

The storage heater in the second bedroom had been disconnected and removed from the wall. The Tenant said it did not work at the start of the tenancy, and this caused the bedroom to be cold. She was using a portable electric heater in the bedroom; the heater belonged to her.

There was no heater in the bathroom and this caused the room to be cold.

8.7 The Tribunal members inspected the building from the outside. The outer walls appeared to be in good condition. There were no areas of peeling paint and the fascia boards were not rotted. There was no green staining or water staining on the walls; however, the wall on which the windows are situated in the living room, showed signs of becoming increasingly dirtier closer to the ground. The gutters and downpipes appeared to be in good condition; however, the building is high and it was impossible to observe the gutters and downpipes closely.

8.8 *Further observations*

The Tribunal members observed that there were two smoke detectors in the House: one in the hallway and one in the living room. It was not clear if the smoke detectors were mains-wired or in working order. There was no heat detector in the kitchen. This issue had not been included in the application or intimated to the Landlords.

Photographs were taken during the inspection and are attached as a schedule to this report.

9. Discussion on the application

Following the inspection of the Property, the Tribunal held a hearing in An Drochaid, Claggan Road, Fort William. The Tenant attended. The Landlords were not in attendance.

In respect of the matters in the application the Tenant advised as follows:

9.1. *The wall (load bearing) is in very bad condition in the living room*

The condition of the wall in the living room had gradually got worse after the Tenant moved in on 26th August 2015. During the winter, all the problems in the House were worse. The Tenant was satisfied that the wall now appeared

to be in good condition. She confirmed that there had previously been a vent in the chimney wall in the living room.

- 9.2 *The window in living room is not airtight, whilst it's raining, the water is running on the floor. When it is windy, the windows are shaking. On the top of the window is mud.*

The Tenant was satisfied that the windows were no longer shaking and there was no black mould on the windows; however, she was concerned that there had been ingress of water through one of the windows as recently as 3rd April 2017, when the water pooled on the windowsill. She said that, if the rain had continued, the water would have spilled on to the floor. The weather has been dry since that date so there has been no further ingress of water. When the problem was at its worst, she had to use a tray to collect water. When she was away on holiday, she made arrangements for a friend to check the flat, as the problem was so bad, she felt someone had to keep a constant check on the situation. She was unaware if any other tenants within the tenement had similar problems.

- 9.3 *There's dampness in the whole flat which affects my son's health (he coughs mornings and evenings after being in the flat).*

The Tenant continues to be concerned about her son's health although she recognises that the situation within the House is much improved.

- 9.4 *Insects appeared ... they are under beds, fridge, almost everywhere.*

The Tenant said that, after three fumigations by pest controllers, the insects were no longer a problem.

- 9.5 *Holes in the flat*

The Tenant was concerned that the insects were coming into the property through the holes in the wall of the second bedroom.

- 9.6 *The flat is not airtight and cold*

The Tenant accepted that the new windows and the beading had improved the draught-proofing within the flat, but she commented that the weather was warm and dry and it was impossible to know how it would be during the winter. The bathroom and second bedroom are cold without heaters.

10. Summary of the issues

The issues to be determined are:

- 10.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the condition of the windows, including the handle in the living room window, results in the House not being wind and watertight and in all other respects reasonably fit for human habitation.

Whether any damp problem within the House results in the House not being wind and watertight and in all other respects reasonably fit for human habitation.

Whether the holes in the House results in the House not being wind and watertight and in all other respects reasonably fit for human habitation.

Whether the House is cold and this results in the House not being wind and watertight and in all other respects reasonably fit for human habitation.

Whether the insect infestation results in the House not being reasonably fit for human habitation.

11. Findings of fact

The Tribunal determined that:

11.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Housing (Scotland) Act 2006).

The House is not watertight, given the recent ingress of water through the living room window. It was observed from the Landlords' representations that they have not disputed that there is a problem with water ingress and that they are currently in discussion with the other owners within the tenement building to try to find a solution. It was impossible to determine the cause of the water ingress, but the Tribunal noted that investigations are ongoing, including investigating the rhones and gutters. It was noted that the Landlords stated that the external wall had been painted with silicone paint and that the mastic had been replaced on the living room windows; however, water ingress had continued.

The House is not watertight or reasonably fit for human habitation given the existence of damp within the wall from which the chimney stack was removed, and the lack of ventilation in the wall.

The House is not reasonably fit for human habitation given that the second bedroom and the bathroom do not have heaters, and both rooms are cold.

The Tribunal agreed that the insect infestation was no longer a problem.

The Tribunal observed that the holes within the second bedroom wall are unsightly; however, it was not felt that they contributed to the House not being wind or watertight or unfit for human habitation. The Landlords would be advised to remedy the defects within the wall.

The Tribunal made a further observation that the House does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of s13(1)(f) of the Housing (Scotland) Act 2006. The Landlords are recommended to install a mains-wired heat alarm in the kitchen. In the event that the existing smoke detectors are not mains-wired and in working order, the Landlords are recommended to install interlinked mains-wired smoke detectors. The Landlords should ensure that the provision for detecting fires and for giving warning in the event of fire or suspected fire complies with the revised Domestic Technical Handbook and the Scottish Government's guidance on the requirements for smoke alarms.

12. Decision

The Tribunal accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

13. The decision of the Tribunal was unanimous.

Right of Appeal

14. 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.

Where such an appeal is made, the effect of the decision and 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 decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Signed

Date

9th May 2017

Chairperson

This is the schedule of photographs referred to in the
Foregone Statement of Decision dated 9th May 2017
H Forbes
Legal Member



Lounge bay window – no evidence of current water ingress



Rainwater goods – one floor above flat. Some refurbishment required, but fascias good



Ex- position of wall vent to lounge wall. Previously chimney breast.



High moisture reading to ex-vent position



Storage heater to kitchen wall



Bedroom 2 – only form of heating is tenants plug in heater



Smoke detectors to hallway and lounge ceilings



Trickle vents to windows – many closed. Some opened during visit.



Front main elevation. Flat is 3rd level down.