

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006**

**Property: 97 Mid Street, Fraserburgh, Aberdeenshire AB43 9JP (“the Property”/ “the house”)**

**Chamber Reference: FTS/HPC/RT/20/0051**

**Parties:**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie AB51 3WA (“Third Party Applicant”)**

**Mr Artur Kilmek, sometime 97 Mid Street, Fraserburgh, Aberdeenshire AB41 9JP (“the Tenant”)**

**Mrs Gopa Soni, 20 Smiddyhill Road, Fraserburgh, Aberdeenshire AB43 9WL (“the Landlord”)**

**Tribunal Members - George Clark (Legal Member/Chairperson) and Angus Anderson (Ordinary Member/Surveyor)**

#### **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) of the Housing (Scotland) Act 2006 (‘the Act’), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

#### **Background**

1. By application, received by the Tribunal on 10 January 2020, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 the duty to ensure that the house meets the repairing

standard. In particular, the Landlord had failed to ensure (following the sub-section lettering of Section 13(1) of the Act) that

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) any furnishings provided by the landlord under the tenancy are capable of being safely used for the purpose for which they are designed,
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and
- (h) the house meets the tolerable standard.

3. The application was accompanied by a copy of a letter sent by the Third Party Applicant to the Landlord on 22 November 2019 and by a number of Appendices, including Appendix 4, which detailed the works that were required to ensure the Property meets the repairing standard. In summary:-

- The front door and all the windows should be made wind and watertight.
- The letterbox cover should be replaced.
- The front door handle should be repaired or replaced.
- The cause of a damp patch on the wall next to the front door should be investigated and remedial works carried out.
- The cause of condensation/dampness on the ceiling and wall tiles of the bathroom/back door hallway should be investigated and remedial works carried out.
- The wooden bath strip between the bath and the tiles should be removed and replaced to make the area watertight.
- The damaged bathroom wall/tiles should be repaired, and the heater secured back on to the wall.
- The cause of water damage to the flooring/skirting board around the bath and back door hallway should be investigated and remedial works carried out.
- The electrics should be checked and made safe, as part of the Electrical Installation Condition Report (“EICR”).
- The Kitchen flooring should be repaired or replaced.
- A door handle should be fitted on the door between the sitting room and the front hallway.
- The cause of dampness/condensation in the sitting room and both bedrooms should be investigated and remedial works carried out.

- The cause of water penetration into the external outhouse should be investigated and remedial works carried out. The electrics in the outhouse should be checked and made safe, as part of the EICR.
  - The cause of cracks to the external render, affecting the kitchen, bedroom and the bathroom/external outhouse and of missing cement pointing around some of the granite stonework should be investigated and remedial works carried out.
  - All gutters and downpipes should be overhauled and cleared.
  - The soffits should be repainted or replaced.
  - The Landlord should provide a copy of the EICR to the Council and to the Tenant.
  - The Landlord should ensure that the smoke detection in the Property is up to the required standard.
4. On 22 January 2020, the President of the Housing and Property Chamber intimated a decision to refer the Tenant's application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.
  5. On 4 March 2020, the Third Party Applicant advised the Tribunal that the Tenant had vacated the Property. The Tribunal removed him as a Party to the application, but the Third Party Applicant remained an Applicant and indicated its wish to proceed with the case. On 5 March 2020, the Landlord advised the Tribunal that the Property was now for sale through Masson and Glennie, solicitors, Fraserburgh. The Tribunal then considered the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act.
  6. The Tribunal's view was that a number of the items of disrepair mentioned in the application would, if established, constitute such a health and safety hazard for any future Tenant that the Tribunal was not prepared to abandon the application. It remained possible that a purchaser would buy the Property as an investment rather than as an owner/occupier. Accordingly, the Tribunal decided to continue to determine the application.

### **The Inspection**

7. The Tribunal Members inspected the Property on the morning of 17 March 2020 and were admitted by the Landlord and her husband. The Third Party Applicant was unable to be present. The Tenant, having vacated the Property, was no longer a Party to the proceedings and was not present or represented.
8. The Tribunal comprised George Clark (Legal Member/Chair) and Angus Anderson (Ordinary Member/surveyor).

9. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision and the following paragraphs summarise the findings of the Tribunal at the inspection.

### **Findings of Fact**

10. The property is located in an urban setting, around half a mile west of the town centre. It is a self-contained flat, occupying the ground floor of a two-storey building which is upwards of 100 years old. The flat has its own main door directly onto the pavement. The main outer walls are of stone construction and the roof is slated. There is a rear extension of block work construction with a felt with a fibreglass clad flat roof. There is a small concrete outbuilding built against the stairs to the upper flat at the rear of the building. The accommodation comprises: entrance hall, front bedroom 1, lounge with front bedroom 2 off, kitchen, inner hall with wash hand basin and bathroom with WC. The windows are UPVC framed and are double glazed. Space heating is provided by electric panel heaters.
11. The property was vacant and unfurnished with floorcoverings in place. It was cold and dry during the inspection. Weather conditions in the week preceding the inspection had been mainly cold with periods of showery weather.
12. The condition of the front door and windows was assessed. The front door handle came loose when tested. The external flap on the letter plate is missing. There is a draught excluder strip fitted to the front door frame which makes good contact with the door. Internally, the front windows were found to operate normally and closed properly. There was no obvious evidence of draughts, although it was not windy at the time of the inspection. The wall surfaces adjacent to the front entrance door were tested with a moisture meter. Normal levels of dampness (below 20%) were found to the areas tested. Staining to the ceiling adjacent to the front entrance door fanlight was found to have normal moisture when tested.
13. The bathroom and rear hall were inspected. Evidence of slight mould growth was noted to the edges of the ceiling within the inner hallway/wash hand basin area. Meter readings to the ceiling and walls indicated normal moisture content to the bathroom and inner hallway. The timber linings around the edges of the bath are affected by decay. Similarly, the skirting to the bathroom and inner hallway was found to be rotted in places. There was no obvious evidence of any roof leak (such as staining or sagging of the ceiling) or water dripping from the light fitting. The flooring within the kitchen and bathroom area is worn in places. There is a slight change in height at the flooring where it meets the living room floor.
14. The door handle to the kitchen/living room door is missing.
15. Within the sitting room, the door handle to the sitting room/entrance hall is missing. The walls and parts of the ceiling were tested with a moisture meter. In the main, moisture levels were normal, with the exception of a

small patch to the alcove near the door to bedroom 2, adjacent to the skirting. Readings adjacent to the windows were found to be normal.

16. Within bedroom 2, there is evidence of mould growth and loose/peeling wallpaper to the lower areas of the outer walls, adjacent to the skirting boards. The walls were tested with a moisture meter and in the main, moisture levels were found to be normal, with the exception of a small area adjacent to the windowsill and skirting. Moisture readings taken within bedroom 1 were found to show normal moisture content to the wall and skirting boards.
17. The electric panel heaters in the bathroom and bedroom 1 have become detached from the wall.
18. Within the outbuilding, dampness and water ingress were present to the walls and ceiling. Droplets of water were seen at the light fitting, which is affected by corrosion.
19. At the rear elevation, cracks are present to the cement pointing above the lounge window. Although there are cracks to the roughcasting of the rear extension adjacent to the kitchen window and to the outbuilding, the rough casting was found to be soundly adhered.
20. From ground level, the rainwater goods were seen to be choked with vegetation in places. Green staining to the front elevation indicates that there has been leakage from the rainwater goods over a prolonged period. At the rear, the outside light had become detached and was lying in the gutter.
21. The paintwork to the fascia boards to the extension is badly weathered. There are split or cracked timbers in places.
22. There are mains powered, interlinked smoke alarms within each of the bedrooms and the lounge. It was not possible to test these. There is no smoke detector in the entrance hallway nor is there a heat detector in the kitchen.

## **The Hearing**

23. Following the inspection, the Tribunal held a Hearing at Peterhead Sheriff Court. The Landlord was present, accompanied by her husband, Mr Baldey Soni. The Third Party Applicant was not present or represented.
24. The Respondent told the Tribunal that a joiner had had fixed draught proofing to the front entrance door a few months previously and that, until recently, the external letter plate had been in place. The Respondent said that she had the EICR from the time the Tenant moved in and she would provide the Tribunal with a copy. The Respondent also told the Tribunal that the Tenant would not let her in to inspect the Property. In December

2019, she had obtained a quote for various works included in the application and had offered alternative accommodation, to allow the works to be carried out, but the Tenant had refused it. The Tenant had put a double bed in bedroom 1, which was a single bedroom, and had not opened the window for ventilation. The washing machine had not been in the outhouse at the commencement of the tenancy. The Tenant had moved it from the kitchen.

25. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

### **Reasons for Decision**

26. Section 13(1) of the Act states that a house meets the repairing standard if-
- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation,
  - (b) 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,
  - (c) 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,
  - (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
  - (e) any furnishings provided by the landlord under the tenancy are capable of being safely used for the purpose for which they are designed,
  - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and
  - (h) the house meets the tolerable standard.
27. The Tribunal determined that the front door handle and letter plate are not in a reasonable state of repair and that the Property does not meet the repairing standard requirements set out in Section 13(1)(a) of the Act. The Tribunal was satisfied that the windows are in a reasonable state of repair and found no significant dampness in the area of the front door or associated with the windows.
28. The dampness issues in the sitting room and bedroom 2, identified by the Tribunal at the inspection, require to be addressed. At present, as a result of these issues, the Property is not reasonably fit for human habitation and fails to comply with the repairing standard requirement set out in Section 13(1)(a) of the Act.
29. The outbuilding is not in a reasonable state of repair, as a result of damp ingress, the use to which it is put, namely the housing of the washing machine, and the evidence of water penetration. It is part of the let

subjects, so fails to comply with the repairing standard requirements set out in Section 13(1)(a) of the Act.

30. The gutters are choked with vegetation and the Tribunal's view was that the Property does not meet the requirements set out in Section 13(1)(b) of the Act. The fascias are in need of maintenance but are not in such a serious state of disrepair as to fail to meet the repairing standard.
31. The Tribunal noted that the radiators in the bathroom and bedroom 1 have become detached from the wall. Accordingly, the Property fails to comply with the repairing standard requirements set out in Section 13(1)(c) of the Act. Further, although not included in the application, the Tribunal noted at the inspection that the outside light fitting to the rear of the Property is lying in the gutter along the rear wall of the kitchen and, if connected, is clearly dangerous. The Tribunal has requested but has not seen a current Electrical Installation Condition Report (EICR), but a number of defects identified by the Tribunal must have arisen since any such Report was issued. Accordingly, the Tribunal will require to see an EICR dated after the completion of the works set out in the Repairing Standard Enforcement Order that the Tribunal proposes to make and containing no C1 or C2 items of disrepair.
32. The skirting in the bathroom and inner hall and the timber lining around the edges of the bath are affected by rot and are not in a reasonable state of repair. In addition, two internal door handles are missing, as a result of which the affected doors cannot be properly closed to cut out draughts, kitchen smell and noise. The kitchen flooring is also not in a reasonable state of repair. Accordingly, the Property fails to comply with the repairing standard requirements set out in Section 13(1)(d) of the Act.
33. The Tribunal noted the condition of the roughcasting and cement pointing to the walls at the rear of the Property and decided that the cracking was typical of a property of its age and construction and that it did not fail to meet the repairing standard.
34. There do not appear to be any furnishings provided by the Landlord, so the Tribunal did not find that the Property failed to comply with the repairing standard requirements set out in Section 13(1)(e) of the Act.
35. As there is no smoke detector in the hallway and no heat detector in the kitchen, the Property fails to comply with the repairing standard requirements set out in Section 13(1)(f) of the Act. A label affixed to the electrical consumer unit indicates that the existing smoke alarms were fitted in 2010 and it seems likely that the existing alarms are life expired.
36. The Tribunal did not find that the Property fails to meet the tolerable standard.

## **Decision**

1. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided to make a Repairing Standard Enforcement Order in respect of the Property.
2. The decision of the tribunal was unanimous.

## **Right of Appeal**

**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.**

G Clark

Signed  
Date: 17 March 2020

..... Legal Member/Chairperson