

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/1507

Title: Subjects at Frasers House, Lighthouse Cottages, Rattray, Peterhead, AB42 3HA ("the Property"), registered until Title Number ABN19151

Parties:

Ms Eleanor Whittow, Auchenheath House, Auchenheath, Lanark, ML11 9UX; ("the Landlord")

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

Whereas in terms of their decision dated ^{23 June 2022 @ RWH} ~~28 April 2022~~, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and in particular that the landlord has failed to ensure that:-

- (i) the house is wind and watertight and in all 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; and
- (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.

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned 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 landlord to:-

- (a) Instruct a SELECT, NICEIC or NAPIT accredited electrician to inspect the property, with particular regard to the items listed in the accompanying decision and thereafter to provide a current Electrical Installation Condition Report (EICR) in respect of the property, containing no category C1 or C2 items of disrepair;
- (b) Repair or replace the back door pertaining to the kitchen to ensure it is wind, watertight and in proper working order;
- (c) Carry out such works to the ducting pertaining to the ventilation fan from the back bedroom to the right hand side of the house to ensure it expels humid air externally;
- (d) Install suitable covering to the external drainage installation servicing the property to ensure these are not exposed.

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

Right of Appeal

In terms of Section 46 of the Tribunal (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 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 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 type written on this and the preceding page(s) are executed by Ruth O'Hare, Chairperson, c/o Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT before this witness:-

R O'hare

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/1507

Re: Property at Frasers House, Lighthouse Cottages, Rattray, Peterhead, AB42 3HA ("the Property")

Parties:

Ms Eleanor Whittow, Auchenheath House, Auchenheath, Lanark, ML11 9UX; ("the Landlord")

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the Act.

Background

- 1 By application to the Tribunal, Mr John Dellow and Ms Kirsty Griffiths ("the former Tenants") applied to the Tribunal for a determination as to whether Mr Robert Keeble and Ms Valerie Keeble ("the former Landlords") had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the former Tenants considered the former Landlords had failed to comply with their duty to ensure that the house meets the Repairing Standard and in particular that the former Landlords had failed to ensure:-
 - (i) The house was wind, 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) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and
- (vi) The house met the tolerable standard.

3 The former Tenants listed a number of items of disrepair which can be summarised as:-

- (i) Rising damp within the house;
- (ii) The foam on the walls required to be replaced with plasterboard;
- (iii) Rotten beams above the living room ceiling causing a bowing of the ceiling;
- (iv) The guttering required to be replaced due to parts missing;
- (v) The roof was not wind and watertight;
- (vi) The plug sockets, light switches and electrical access equipment required backboxes;
- (vii) The boiler also served three other properties when there should only be one boiler for the property;
- (viii) Man holes and sewage tanks on the property required proper covers and posed a health and safety issue;
- (ix) The flashing board on the garage had rotted and required to be replaced and lead flashing between the garage and the house also required to be replaced;
- (x) A window in the garage had broken and required to be replaced;
- (xi) The chimney stack required to be extended so that the fire could be used;
- (xii) One shower had a failed heating element and another shower room had no proper ventilation;
- (xiii) Electrical cables in the property were left exposed and wiring in the loft required to be made safe;
- (xiv) A plastic round window required to be replaced with a glass window;
- (xv) Items on the property including pallets, scrap, a camper van, rubble, rubbish and animal corpses required removal to make the site safe;
- (xvi) The loft hatch could often fall down and required to be made safe;
- (xvii) The back door was not wind and watertight and caused flooding in the kitchen;
- (xviii) The central heating boiler required to be serviced;
- (xix) There were no carbon monoxide detectors in the property;

- (xx) The back step was made of pallets and required to be replaced with bricks;
 - (xxi) TV aerials required to be connected; and
 - (xxii) All window frames required to be resealed.
- 4 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the parties under Schedule 2, Paragraph 1 of the Act. Under normal circumstances the Tribunal would have carried out an inspection following the Notice of Referral to assist in the determination of the application. Due to the restrictions imposed by the Covid-19 pandemic at the time this was not possible. A Case Management Discussion was therefore arranged for 29 September 2021 to enable the Tribunal to discuss further procedures and ascertain if an inspection was required.
 - 5 On 1 September 2021 the Tribunal received an email from the former Landlords advising that the former Tenants had left the property and the former Landlords had now sold the property to the Landlord. A title certificate from the Land Register of Scotland was provided in support of this.
 - 6 Having noted that the tenancy had been terminated, the Tribunal proceeded to consider, under paragraph 7(3) of Schedule 2 of the Housing (Scotland) Act 2006, whether the application should be determined or abandoned. The Tribunal had cognisance of the extent of the issues outlined in the application and the potential risk to the health and safety of any occupants. The Tribunal therefore concluded that it would be in the public interest to continue to determine the application.
 - 7 The Case Management Discussion assigned for 29 September 2021 was subsequently postponed to allow for service of the application paperwork on the Landlord. A further Case Management Discussion was assigned for the 8 November 2021. A copy of the application paperwork was intimated upon the Landlord by recorded delivery.

The Case Management Discussion

- 8 The Case Management Discussion took place on 8 November 2021. The Landlord was not in attendance. The Tribunal considered that it required further information from the Landlord in order to ascertain her intentions regarding the property, particularly whether she was herself residing in the property or intending on letting to tenants. The Tribunal considered that it would be helpful to see documentation provided as part of the sale of the property which would evidence its condition, for example the Home Report, Energy Performance Certificate or Electrical Installation Condition Report. On that basis the Tribunal determined it would adjourn the Case Management Discussion. A Direction was issued to the Landlord requiring her to provide confirmation of the residential status of the property and copies of any documentation relating to the condition of the property.

- 9 At the same time the Tribunal considered it appropriate to undertake its own investigations and therefore sought further information regarding the condition of the property from the former Landlords to assist it in the determination of the application. The former Landlords subsequently provided an Energy Performance Certificate dated 12 May 2014 confirming a rating of Band E and an Electrical Installation Condition Report dated 29 June 2018.
- 10 No response was received from the Landlord to the terms of the Direction. On that basis, and in light of the relaxation of Covid-19 restrictions, the Tribunal determined to proceed with an inspection of the property which was scheduled for the 30 May 2022, with a hearing assigned for later that day. Notification of the inspection and hearing was intimated to the Landlord by recorded delivery.
- 11 On 17 May 2022 the Tribunal received an email from the Landlord. She advised that she had emailed the Tribunal in December 2021 but had not received a response. On that basis she had presumed the application was not proceeding. She stated that she had not been informed of the previous Case Management Discussion. A copy of the application paperwork was emailed to the Landlord on 18 May 2022.
- 12 On 18 May 2022 the Tribunal received a response from the Landlord to the terms of the application. In summary the Landlord stated that she had purchased the property in July 2021. The former Tenants had subsequently vacated the property. The Landlord surmised that the application had been a result of a deposit dispute between the former parties to the tenancy. The items raised in the application had mostly been addressed. The house had been refurbished, with the Landlord's original intention to reside in it. However she had been unable to do so and had instead rented it out to new tenants. The Landlord listed the items in the application and provided an update on recent works undertaken.

The Inspection

- 13 An inspection of the house took place at 10.00am on 30th May 2022. The new tenant was in attendance and allowed access. The Landlord was not present. It was windy and showery with showery weather over the preceding days.
- 14 The house is a two-storey detached building, constructed upwards of 60 years ago originally as two semi-detached houses which have been combined to a form a single dwelling in recent years. The property is in a rural, coastal setting around 8 miles south-east of Fraserburgh town centre.
- 15 The main outer walls appear to be of cavity brickwork, roughcast externally and the roof is pitched and slated. There are single storey extensions to each side of the building and an attached two car garage. There is an oil-fired central heating system. The communal boiler is located in an adjacent building

together with the water storage tank. There are water filled radiators throughout the house. The windows are double glazed throughout.

- 16 The accommodation comprises on the ground floor an entrance hall, kitchen with access to side entrance, lounge with dining room off, utility area, sitting room, shower room with wc. Stairs lead up to the first floor which contains the landing, bedroom one with ensuite shower room with wc, 2 further bedrooms, bedroom with ensuite shower room with WC, bedroom with ensuite shower only, bathroom with WC.
- 17 A full inspection was undertaken, limited to the items within the application.
- 18 The internal areas were inspected and with regards to dampness. No evidence of damp ingress, escape of water, rising damp or mould were found within the property.
- 19 Thin polystyrene style foam was noted beneath the wallpaper within the lounge. Throughout the house the walls are "plastered on the hard", a form of construction that is relatively "cold to touch" internally.
- 20 The lounge ceiling has been recently re-plastered and redecorated. No obvious deformation of the ceiling was evident. Within the first floor apartments, no obvious deflection was noted to the flooring.
- 21 The rainwater goods are a mixture of PVC and metal fittings. Visible parts were found to be intact. It was not raining during the inspection.
- 22 There are a number of dislodged, missing and chipped slates to the various roof pitches. Within the roof space and first floor apartments, there was no evidence of water ingress.
- 23 Accessible parts of the electrical installation were inspected. Certain aspects installation give cause for concern. The flexible conduit over the wiring to a number of the showers is not properly sealed at each end and can be easily pulled off to expose cabling. There are some areas of wiring which is not properly affixed to wall surfaces. There is a hole in the surface mounted socket in one of the bedrooms, fitted near the ceiling. A section of cabling within the roof void is connected by block connector wrapped with insulating tape. There is no evidence of recent testing in the form of visible labelling to the consumer unit. Externally, the door to the main electric meter is missing and the installation is exposed to weather.
- 24 The boiler is as described above. It was operating and the property was relatively warm during the inspection.
- 25 The Tribunal inspected the accessible and obvious parts of the drainage and installation on the site adjacent to the house. There is an inspection chamber at the corner of the adjacent building which is covered by a wooden pallet. There are fence posts around with a string between. There are a further two

drainage openings, each covered with wooden pallets and enclosed by a post and sheep wire fence. The openings to these parts of the installation are at the bottom of moderately steep sloping ground.

- 26 The fascia boards around the garage are weathered. The ground level inspection of the flashing between the garage did not reveal any obvious defects. There was no evidence of water ingress internally. There is a broken window to the rear of the garage which has been boarded over.
- 27 There is a single chimney stack to the rear of the building. The chimney can terminate below the height of the adjacent roof ridge. The fireplace was not in use at the time of inspection. The tenant explained that he had removed the enclosed solid fuel stove. The fireplace is currently incomplete.
- 28 The Tribunal undertook only a visual inspection of the showers; none were tested to check operation. The ensuite shower (no WC) has a combined light and extractor fan. However, within the roof space, it was noted that the duct is not connected to outside air and moisture laden air would discharge within the roof space.
- 29 The round window to the main bedroom was intact. New putty was seen around the edges indicating recent replacement.
- 30 There is no evidence of pallets, scrap nor a campervan within the adjacent grounds. There are some areas of rubble on site, consisting mainly of boulders or stones. No animal corpses were seen.
- 31 The main loft hatch was tested for operation and found to function as intended.
- 32 The side door from the kitchen area is ill-fitting and binds in the frame. The lower panel is split with daylight evident.
- 33 A carbon monoxide detector was present within the lounge.
- 34 The side entrance step has been recently replaced in masonry and slabs.
- 35 There is a TV aerial within the loft. A number of aerial cables were seen within the property, some of which had been cut. The tenant was watching television at the time of our inspection.
- 36 The external inspection of the accessible windows did not reveal any significant defects with the frames or mastic.

The Hearing

- 37 The hearing took place on 30th May 2022 by conference call. The Landlord was in attendance. For the avoidance of doubt, this statement of decision is not a verbatim account of what was said at the hearing but a summary of the evidence relevant to the Tribunal's determination of the application.
- 38 The Tribunal took the Landlord through the areas inspected and a summary of their evidence is as follows:

Rising damp

- 39 The Tribunal confirmed that it had inspected every room in the property and had looked for evidence of any water ingress or mould. No evidence had been found. The Landlord agreed that there was no evidence of rising damp in the property.

Replacement of foam on walls

- 40 The Tribunal confirmed that it had noted thin polystyrene type foam on the walls which were cold to touch. It was noted that this was used to insulate the walls internally. The Landlord explained that she understood this to be standard practice and appropriate material had been used.

Rotten beams

- 41 The Tribunal confirmed that it had found no evidence of rotten beams. The bedrooms had been checked and there was no movement underfoot and no evidence of distortion of the slopes to the bedroom floors, nor the living room ceiling. The Landlord agreed there was no evidence of the disrepair alleged.

Guttering

- 42 The Tribunal had inspected the guttering which appeared intact and in place all around the house. It was not raining during the inspection so it could not be confirmed whether the guttering performed as it should. Splashmarks had been noted around the front elevation of the house which indicated there may have been leaks in the past. The Landlord confirmed that the former Tenants had been right in raising this issue but it had now been repaired.

The roof

- 43 The Tribunal confirmed that the roof had been viewed from the ground level. On most pitches there were one or two slates missing. Internally the ceilings of the upstairs roof had been inspected however there was no evidence of water ingress. The Landlord confirmed that the whole roof had been redone. There had been some storm damage since but there was no water ingress. The roof would need ongoing maintenance.

The electrical cabling and installations

- 44 The Tribunal confirmed that it had inspected the shower in the back bedroom to the left of the property. The electrical cable to the shower was quite easy to expose due to a flexible duct. There was loose cabling in the utility area off the lounge and some broken ducting. In a further back bedroom a socket close to the ceiling had a finger sized hole. Within the roof space some wires were seen to be connected to a block connector. Externally it was noted that the meter on the side of the garage was missing an external cover, leaving it exposed. It was not clear from looking at the main consumer unit when the electrics were last tested, there was no recent Electrical Installation Condition Report.

The Landlord confirmed that there was an existing Electrical Installation Condition Report from 2018, however she had instructed an electrician to produce a new one. He had come out to the property to commence the report and had noted the crack in the socket in the bedroom, as well as some issues with the ducting which was not secure and the labelling on the consumer unit. He had not noted the wiring in the attic and she would raise this with him. The Landlord confirmed that the electrician was scheduled to return to the property later that week. The Landlord confirmed that recent storms had caused the damage to the external meter. She did not realise it was a hazard but would make sure it was addressed.

The boiler

- 45 The Tribunal confirmed the boiler appeared to be in working order, albeit there was a slight smell of fuel which could indicate a problem. The Landlord confirmed she would arrange for an engineer to inspect the boiler.

The external drainage and septic tank

- 46 The Landlord confirmed that she had tried to get a metal cover for the drainage openings which the new tenant had been assisting with however they were not the right size. She was sourcing metal grills. The current situation was not a permanent state of affairs. She noted that the septic tank was not on the property but sat out with the site.

The flashing on the garage

- 47 The Tribunal confirmed that it had inspected the garage externally from ground level. Some of the fascia boards were rotted. Internally it had been difficult to ascertain whether this caused any issues in terms of water ingress. The Landlord confirmed that initially one of the boards was fixed wrongly which resulted in water being diverted to the main house. She did not dispute that some were rotted, but the significant elements had been fixed.

The garage window

- 48 The Tribunal noted that the broken window in the garage had been boarded up. The Landlord confirmed this to be the case.

The chimney stack

- 49 The Tribunal confirmed that it had viewed no obvious defects to the chimney stack. However it had been noted that the top of the chimney can was lower than the ridge of the adjacent building. Internally the new tenant had removed the stove and boarded up the fireplace opening. The Landlord confirmed that the stove had been used by the new tenant initially and had been working fine. There was no smoke in the property. The chimneys had been cleared. The new tenant had asked if the fireplace could be replaced to improve its appearance. The Landlord intended to do this over the summer along with the new tenant who wanted to source the new fireplace.

The shower in the back bedroom to the left of the property

- 50 The Tribunal confirmed that it had not tested the shower, as was the case with all showers in the property, however it appeared to be in use. The Landlord confirmed that the shower was in proper working order and had been repaired. It had been put on to mains, previously it was an electric shower however the new tenant had requested a mains shower as it would have better pressure. The other showers in the property were electric. The Tribunal queried whether the Landlord had any invoices for the works undertaken to the shower however the Landlord indicated that she would be unable to produce this as the plumber had not provided an itemised invoice.

The ventilation in the shower room in the back bedroom to the right of the property

- 51 The Tribunal noted it had inspected a further ensuite shower room which had an internal ceiling light with integral fan. The ducting had been inspected in the loft and it appeared that this terminated within the roof space. It was not therefore conveying the humid air externally. The Landlord confirmed that she had asked for this to be remedied however had not picked up on the fact that the contractor had not returned to the property to do this. She would arrange for this as soon as possible. She agreed that it would not be appropriate for the air to discharge into the roof space.

Flashing between the garage and the house

- 52 The Tribunal confirmed that it had inspected the junction of the garage roof and house wall and could see flashing there. The flashing did not appear to be particularly new and there was no evidence of rectification works. Internally, no evidence of water ingress was found to that part of the house. The Landlord confirmed her agreement with these findings.

The round plastic window

- 53 The Tribunal confirmed that it had noted a round window in a bedroom which had been recently replaced. The Landlord confirmed that the plastic window had been replaced with a glass window.

Pallets, scrap, camper van, rubble and animal corpses in external areas

- 54 The Tribunal confirmed that it had inspected the external areas of the property and found no evidence of these items. It was noted that there were two areas of rubble and some debris in the tractor shed.

The loft hatch

- 55 The Tribunal confirmed it had inspected the loft hatch at the top of the stairs which appeared to be in working order. The Landlord confirmed agreement with these findings.

The back door

- 56 The Tribunal confirmed it had noted splits in the timber framed door which led off the kitchen, through which daylight could be seen. Internally there was some mould and when the door opened and closed it bound in the frame. It could be unlocked but it was not easy to relock and it looked as if the door had sagged. There was no evidence of water ingress. The Landlord had no comments regarding these findings.

The carbon monoxide detector

- 57 The Tribunal confirmed that it had noted a carbon monoxide alarm in the main lounge, where the fireplace was located, which looked relatively modern. The Tribunal queried whether the fireplace in the front sitting room was operable, where no carbon monoxide alarm was found. The Landlord confirmed the chimney had been blocked up and was not in use. The Tribunal further confirmed that it had tested the smoke and heat alarms and found these to be working correctly.

The back steps

- 58 The Tribunal confirmed the back step appeared recently constructed and made from block and slabs. The Landlord confirmed the steps were previously made from pallets and had been replaced.

The TV aerials

- 59 The Tribunal noted that there were some aerial cables that came into the rooms in the property that had been disconnected and cut. The TV aerial was in the loft. The new tenant did have the television in the lounge on during the inspection. The Landlord advised that the tenant used 4G to access television and the aerials were therefore redundant and not used.

The window frames

- 60 The Tribunal confirmed that it had inspected the accessible ground floor windows. It seemed that the mastic and the cement work around the window

frames were in order. No gaps or cracks were noted. The Landlord confirmed that the windows had been repaired.

Findings in Fact

The Tribunal found the following facts to be established:-

- 61 The Landlord purchased the property on 1st July 2021.
- 62 The property has subsequently been relet and is currently occupied by the new tenant.
- 63 The Landlord has carried out refurbishment works to the property since taking ownership.
- 64 There is no evidence of damp or water ingress within the property.
- 65 The foam installed for insulation purposes does not affect the walls such that they are not in a reasonable state of repair.
- 66 There is no evidence of rotten beams within the property.
- 67 The guttering installed externally is in a reasonable state of repair.
- 68 The roof is wind and watertight.
- 69 It cannot be established that the electrical installations within the property are in safe working order and in a reasonable state of repair.
- 70 There is no obvious evidence that the boiler is not in proper working order.
- 71 The absence of proper covers to the drainage installation mean the installation is not in a reasonable state of repair.
- 72 The fascia boards on the garage are rotten in parts but generally in a reasonable state of repair, considering the age and use of the building.
- 73 The broken window in the garage has been boarded up and is therefore in a reasonable state of repair having regard to the nature of that area of the property.
- 74 It cannot be concluded within the confines of the inspection that the chimney stack and fireplace are in proper working order or otherwise, due to works undertaken since the application was lodged. The fireplace is currently boarded up and not in use.

- 75 There is no obvious evidence that the showers within the property are not in proper working order, in that no visible defects were identified within the confines of the inspection.
- 76 The shower room in the back bedroom to the right of the property has a ventilation fan which discharges humid air into the roof space. As a result the ventilation fan is not in proper working order.
- 77 The lead flashing between the garage and the property is in a reasonable state of repair. There is no evidence of water ingress in the internal area.
- 78 The round plastic window has been replaced and is in a reasonable state of repair.
- 79 There is no evidence of pallets, scrap, campervans, significant rubble and rubbish or animal corpses in the external areas of the property.
- 80 The loft hatch is in a reasonable state of repair and in proper working order.
- 81 The back door is not in a reasonable state of repair, nor wind and watertight, due to cracks in the door and sagging.
- 82 The property has sufficient provision for the detection of carbon monoxide. There is a carbon monoxide detector installed in the lounge area.
- 83 The back step is constituted of blocks and slabs and is in a reasonable state of repair.
- 84 The TV aerial is not in use. The property has provision for television through the use of 4G.
- 85 The windows are in a reasonable state of repair.

Reasons for decision

- 86 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, the findings of the Tribunal's inspection and the verbal submissions of the Landlord at the hearing. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 87 The Tribunal was aware that the application had been lodged prior to the Landlord having taken ownership of the property and she had therefore effectively inherited the matter. The Tribunal accepted that the Landlord had carried out significant works to the property since taking ownership. Her submissions at the hearing were found to be credible in this regard and the

Tribunal did not doubt her intentions to carry out the additional works she outlined at the hearing.

- 88 Notwithstanding the background and circumstances of this particular application, the sole focus of the Tribunal must be whether or not the property complies with the Repairing Standard. Despite the works undertaken by the Landlord, there were a number of areas in which the property did not meet the legal test in this regard.
- 89 The Tribunal had significant concerns regarding the electrical installations in the property, in particular the cabling in the bedroom shower, the wiring in the loft and utility area and the broken socket in the bedroom. The Tribunal concluded that it could not therefore be satisfied that the electrical installations in the property are currently safe and in a reasonable state of repair. It was noted that the Landlord was aware of a number of these issues and was in the process of arranging a further electrical installation condition report.
- 90 The Tribunal further concluded that the back door required repair or replacement. Whilst no evidence of water ingress was noted during the inspection, it was clear from the cracks in the door, through which daylight could be seen, that the door cannot be said to be wind, watertight and in a reasonable state of repair.
- 91 The Landlord had installed a ventilation fan to the shower room in the bedroom, however on the basis that this currently discharges humid air into the roof space, the Tribunal could not conclude that it is in proper working order. The duct will require to be altered so that the humid air is discharged externally. It was noted that the Landlord accepted this and confirmed she would arrange for this to be done.
- 92 Externally the Tribunal had significant concerns regarding the exposed drain holes and septic tank, which currently pose a health and safety risk to occupants, despite steps having been taken to fence these areas off. Whilst the septic tank may fall outwith the footprint of the property, nevertheless it is a structure that services the house and the Tribunal therefore found that it fell within the scope of the application.
- 93 Whilst the Tribunal did have concerns regarding the position of the chimney can, the alterations to the fireplace rendered it difficult to assess the impact on the internal area and the Tribunal was therefore unable to make any findings regarding this item.
- 94 The Tribunal found the boiler to be in working order at the time of the inspection. However, in light of the faint smell of fuel emanating from the area, the Tribunal would recommend as an observation that the Landlord take steps to ensure this poses no risk to the safe operation of the boiler.

- 95 With regard to the remainder of the items narrated in the application and with reference to its findings in fact, the Tribunal found no breach of the Repairing Standard in respect of these matters.
- 96 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:
- (i) In respect of section 13(1)(a), the house is not wind and watertight and in all respects reasonably fit for human habitation;
 - (ii) In respect of section 13(1)(b), the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;
 - (iii) In respect of section 13(1)(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; and
 - (iv) In respect of section 13(1)(d), any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.
- 97 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal "must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard". The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is ten weeks.
- 98 The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

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is abandoned or determined.

R O'Hare

Date *23 June 2022*