

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

FTS/HPC/RP/18/2103

Miss Karen Walker, 50 Wallace Avenue, Stevenston, KA20 4BN ("the Tenant")

Mr Manpinder Kaur, 1 Langmuir Avenue, Irvine ("the Landlord")

50 Wallace Avenue, Stevenston, KA20 4BN registered under Title Number AYR65722 ("the Property").

Tribunal Members: Martin McAllister, Solicitor (Legal Member) and Donald Wooley, Chartered Surveyor

NOTICE TO

Mr Manpinder Kaur

Whereas in terms of their decision dated 24th October 2018, 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 and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to demonstrate that the house is wind and water tight and in all other respects reasonably fit for human habitation, that 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 and that the installations in the house for the supply of electricity and any electrical appliances supplied by the Landlord are in a reasonable state of repair and in proper working order the tribunal now makes a repairing standard enforcement order (RSEO) in the following terms:

The Landlord is to

- 1. Instruct a suitably qualified timber and damp specialist contractor to prepare a report detailing the source of damp, condensation and possible timber decay affecting the bathroom, bedrooms, living room**

and entrance hall, the extent of any remedial action required, complete all recommended repairs as advised and thereafter redecorate as necessary. (Sections 13 (1) (a) and 13 (1) (b) of the 2006 Act).

2. Repair or replace as necessary any defective bath, shower fittings and bathroom wall linings ensuring that there is a continuous and adequate seal between the bath, shower screen and surrounding wall linings. Thereafter redecorate as necessary. (Section 13 (1) (a) of the 2006 Act).
3. Repair or renew defective door handle at entrance to the property. (Section 13 (1) (b) of the 2006 Act).
4. Provide a current and satisfactory Electrical Installation Condition Report for the Property including PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property together with copies of documentary evidence in support of the checklist. (Section 13 (1) (c) of the 2006 Act).
5. A suitably qualified electrical contractor should investigate, report on and complete any necessary repairs relating to the intermittent fault in the living room electrical socket, situated to the right hand side of the window, ensuring that it complies with all current regulations. (Sections 13 (1) (c) of the 2006 Act).
6. Repair and or renew as required the defective concrete slab driveway, ensuring that it is in good general condition, fully functional and fit for purpose. (Section 13 (1) (a) of the 2006 Act).

The Landlord requires to comply with the repairing standard order within two months of service of it on him.

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 2006 Act.

A landlord, tenant or third party applicant 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.

In witness whereof these presents typewritten on this and the preceding page are executed by Martin Joseph McAllister, solicitor, legal member of the First-tier Tribunal for Scotland at Kilwinning on 24th October 2018 before Kayleigh Guthrie, witness, 83 Main Street, Kilwinning.

K Guthrie

M McAllister

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Case Reference FTS/HPC/RP/18/2103

Miss Karen Walker, 50 Wallace Avenue, Stevenston, KA20 4BN ("the Tenant")

Manpinder Kaur, 1 Langmuir Avenue, Irvine and care of Ayr Estate and Letting Agents,
2 Parkhouse Street, Ayr, KA7 2HH ("the Landlord")

50 Wallace Avenue, Stevenston, KA20 4BN registered under Title Number AYR65722
("the Property").

Tribunal Members: Martin McAllister, Solicitor (Legal Member) and Donald Wooley,
Chartered Surveyor, (Ordinary Member)

Background

1. By application received by the Tribunal on 17th August 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (the Tribunal) for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act. The Application was accompanied by a number of emails.

2. The Application stated that the Property does not meet the repairing standard set out Section 13 of the 2006 Act. It states that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that 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 and that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Application refers to specific matters:

1. Broken window seal.
2. Some floorboards not properly secured.

3. Ill fitting shower door.
4. Moisture and mould on skirting board, walls and ceilings in bathroom and two bedrooms.
5. Hole in loft.
6. Large gap in sealant at the bath.
7. Front door opening in wind.
8. Hole in downpipe.
9. No carbon monoxide detector in the kitchen.
10. Uneven and broken slabs in the driveway.
11. Mould mites.
12. Faulty plug in living room.
13. Kitchen tap has missing spray control .
14. Infestation of insects from under bath.

3. On 29th August 2018 a legal member of the Tribunal, acting under delegated powers, referred the matter to a tribunal for determination of the application. Parties were advised of this and such notification was in terms of Schedule 2, Paragraph 4 of the 2006 Act.

4. On 29th September Ayr Estate and Letting Agents, as representatives of the Landlord, submitted representations to the Tribunal. These were written by Mr Alan Lavelle. The agents stated that numerous problems had been encountered with gaining access to the Property. They stated that on 7th October 2017 they tried to carry out an inspection of the Property but that access was denied by the Tenant and again on 27th September 2017. The agents stated that on 27th October 2017 they received a letter from the Tenant's solicitor which stated that only female employees could carry out inspections of the Property. Mr Lavelle stated that he had no female members of staff trained or insured to carry out inspections. The representations state that in September 2017 a tradesman had been instructed to attend the Property but that he had difficulty in gaining access because he could not contact the Tenant. The representations stated that access was eventually achieved and that repairs were carried out.

The representations state that in June 2018 the Tenant raised further issues in connection with the Property and that some consisted of repairs which had previously been carried out. Mr Lavelle said that the Tenant agreed for him to get access on 7th June 2018 to allow him to assess what repairs were required but that the Tenant was not present.

Mr Lavelle said that, after attending the property and carrying out an assessment, the details were sent to the Landlord who advised that a maintenance company would attend but queried the necessity for the repairs since works had been done to the Property six months previously. Mr Lavelle stated that the Landlord queried whether or not the Tenant had been looking after the Property.

The representations state that a contractor, who had been instructed to carry out the repairs, attempted to contact the Tenant in July and August 2018 but was unable to arrange access.

Mr Lavelle said that in September 2018 he arranged for a maintenance company he had previously used to try and contact the Tenant to carry out repairs. This company attended the Property, were allowed access by a gentleman who contacted the Tenant "who then became very irate" that the contractor had turned up at the Property.

According to Mr Lavelle, the Tenant acknowledged that she had received voicemails from the contractor but that she had not called him back. According to Mr Lavelle the Tenant became irate and the contractor left the Property and later advised Mr Lavelle that he was not prepared to return.

Mr Lavelle states that they have a tenant who is hard to contact, won't return calls and becomes irate quite easily.

The representations state that repairs have been carried out to the Property but that it is considered that the Tenant is not looking after it in a responsible tenant like manner. Mr Lavelle stated that the Landlord has agreed for repairs to be carried. He stated that unless the Tenant is more forthcoming to allow access then the agents would be left in a difficult situation.

6. The day prior to the Inspection and Hearing, the Tenant submitted written representations.

7. The members of the tribunal attended at the Property on 23rd October 2018. The Tenant was present and allowed access. The Tenant was accompanied by her parents.

8. The Property comprises a two storey three bedroomed semi-detached house. The property is estimated to be in the region of 75 years in age and the outer walls are of brick construction rendered with rough cast under a pitched roof clad externally with tiles. Originally built by and on behalf of the local authority, the subjects together with a number of surrounding properties are now in private ownership. A schedule of photographs by the ordinary member is attached.

9. Findings on Inspection:

9.1 A significant proportion of the application relates to damp issues specifically affecting the bathroom, bedrooms and living room areas. Considerable evidence of mould and damp staining was identified affecting the bathroom, two bedrooms and the living room ceilings and walls.

Around the bath, which is fitted with a shower attachment, and fixed to the walls is a "wet wall" lining. This, in places, is very poorly secured (photograph 6), lifting easily from the rim of the bath with no evidence of a permanent or satisfactory seal between the lining and bath fitting. An inspection below the bath and behind the side panel identified significant damp and possible decay affecting the flooring and wall lining (photograph 8) both of which are in need of repair.

As a result of movement between the wet wall lining and the original wall, the shower head is no longer capable of being supported by the appropriate wall bracket which is now broken (photograph 5). A gap has also opened between the shower screen trim and the wall to which it was originally secured further contributing to damp in the surrounding area.

During the inspection the tenant demonstrated a lack of stability in the bath which moved when she was standing in it, further contributing to the deterioration of the "seal" around the rim of the fitting.

9.2 The window seal in the bedroom was inspected and no significant defects were noted.

9.3 The tenant confirmed that since the application to the Tribunal she had addressed the problem relating to the broken and poorly secured floorboards and that this was no longer an issue.

9.4 Access to the property is taken via a door in the gable wall leading from the driveway. The door is capable of closing and remaining closed without recourse to using the "snib" which was recently installed by the tenant for reasons of security. To ensure that the door remains closed it requires to be shut firmly. The internal door handle is loose, poorly secured and is in need of repair. Internally in the hall there is evidence of significant damp staining on the wall (photograph 15) adjacent to the entry door.

9.5 The Tribunal noted no evidence of "mites" in the kitchen cupboards although "bugs" in the form of a slater / wood louse was noted in the bathroom (photograph 9).

9.6 Within the attic there is a visible hole in the timber sarking of the roof construction exposing functional bitumen underfelt below the roof tiles. There was no evidence of any recent water ingress although there are signs of significant older damp staining affecting roof timbers (photograph 16).

9.7 The application refers to a lack of a carbon monoxide (CO) detector in the kitchen where there is a gas cooking facility although no other fixed combustion appliance. In such circumstances and in accordance with "Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing" there is no requirement to fit a CO detector in the kitchen.

9.8 There is a mixer tap attached to the sink unit within the kitchen. It was functioning at the time of the inspection and adequately provides a suitable supply of water to the sink. A former "spray control" attachment originally within the tap has been removed

9.9 The tenant connected a lamp to each outlet in the "faulty" dual socket electrical power point within the living room. On each occasion electrical power was supplied to the lamp which appeared to be functioning satisfactorily. The tenant indicated that the socket was affected by an intermittent fault. No Electrical Installation Condition Report (EICR) was exhibited.

9.10 On the external face of the rear wall of the building is a painted cast iron soil pipe. The only connection into the pipe is a waste disposal outlet from the ground floor bathroom and a condensate pipe from the gas boiler. A recent "sleeve repair" (photograph 3), undertaken by the tenant, has been completed to the pipe immediately above the connection with the waste disposal inlet and no obvious leaks or signs of disrepair, other than signs of corrosion, were noted.

9.11 There are several broken and defective concrete slabs in the driveway which provides both vehicular and pedestrian access from the public road. In their present condition the slabs represent a health and safety hazard.

8. The Hearing

Following the Inspection, a Hearing took place at Ardrossan Civic Centre, Glasgow Street, Ardrossan.

The Tenant was present and was accompanied by her parents and also Mr Alistair Meek of Community Housing Advocacy Project (CHAP), a housing charity.

Mr Alan Lavelle of Ayr Estate and Letting Agents was present as the Landlord's representative.

9. Preliminary Matters.

It was noted that the Tenant's latest written submissions had not been submitted timeously and were not considered by the tribunal but it was noted that a significant amount contained within them had already been lodged with the application.

Mr Lavelle said that the Landlord is prepared to carry out any necessary repairs but that difficulties had been experienced in contractors getting access to the Property. The Tenant disputed that she had not been cooperative in providing access but said that it was not acceptable that contractors would turn up unannounced and without prior agreement.

10. Evidence

Mr Lavelle reiterated that the Landlord had agreed to carry out what work was necessary. He said that there was a current Electrical Installation Condition Report and that the Tenant should have a copy of it but he advised that his company had not managed the Property at the inception of the tenancy.

Miss Walker said that the fault with the electrical socket in the living room was intermittent and that sometimes the left hand socket did not work. Mr Lavelle was advised of what had been found at the Inspection and said that he could not comment and referred to his written representations.

11. The Issues

Sections 13(1) (a),(b), (d) and (g) of The 2006 Act provide that the house must be wind and watertight and in all other respects reasonably fit for human habitation, the structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the landlord under the tenancy must be in a reasonable state of repair and in proper working order, that the Property must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The specific issues which the tribunal required to address were those detailed in the application.

12. Findings

The tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the Property fails to meet it.

13. Reasons

The tribunal had regard to what it had found at the inspection. It noted that some matters raised in the Tenant's application had not been found as failures of the repairing standard.

Scottish Government Statutory Guidance for the provision of carbon monoxide alarms does not require a carbon monoxide detector in the kitchen if it is only a gas cooker which is situated there and there is no other fixed combustion appliance.

The tribunal found no fault with the bedroom window and could not identify mites in the kitchen. It also noted that the matter of the floorboards was no longer an issue. Following the "sleeve repair", completed by the tenant to the waste disposal pipe on the rear wall, there was no evidence to suggest that this area remained defective and there was no sign of a "hole". The tribunal noted that, although there may be a current EICR, the Tenant stated that there is an intermittent fault in the electrical socket in the living room and this was not challenged by Mr Lavelle. Although a spray control fixture had been removed from the kitchen tap it did not significantly affect its operation.

The tribunal made no finding with regard to whether the Tenant had denied access to the Property and considered that it was the condition of the Property now that was important.

14. Determination

The tribunal determined to make a repairing standard enforcement order in the following terms:

The Landlord is to

- 1. Instruct a suitably qualified timber and damp specialist contractor to prepare a report detailing the source of damp, condensation and possible timber decay affecting the bathroom, bedrooms, living room and entrance hall, the extent of any remedial action required, complete all recommended repairs as advised and thereafter redecorate as necessary. (Sections 13 (1) (a) and 13 (1) (b) of the 2006 Act).**
- 2. Repair or replace as necessary any defective bath, shower fittings and bathroom wall linings ensuring that there is a continuous and adequate seal between the bath, shower screen and surrounding wall linings. Thereafter redecorate as necessary. (Section 13 (1) (a) of the 2006 Act).**

3. **Repair or renew defective door handle at entrance to the property. (Section 13 (1) (b) of the 2006 Act).**
4. **Provide a current and satisfactory Electrical Installation Condition Report for the Property including PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property together with copies of documentary evidence in support of the checklist. (Section 13 (1) (c) of the 2006 Act).**
5. **A suitably qualified electrical contractor should investigate, report on and complete any necessary repairs relating to the intermittent fault in the living room electrical socket, situated to the right hand side of the window, ensuring that it complies with all current regulations. (Sections 13 (1) (c) of the 2006 Act).**
6. **Repair and or renew as required the defective concrete slab driveway, ensuring that it is in good general condition, fully functional and fit for purpose. (Section 13 (1) (a) of the 2006 Act).**

The Landlord requires to comply with the repairing standard order within two months of service of it on him.

Note

The tribunal noted that there were defects in the Property which could have been included in the Application and which the Landlord may want to attend to when doing other work. An example is that further damp was noted below the lower / mid landing window at the internal stair although this specific area was not included in the original application.

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.

M McAllister

Martin Joseph McAllister,
Solicitor, legal member of
Tribunal.
24th October 2018

ETS/MPC/RP/18/2103
M McAllister

50 Wallace Avenue, Stevenston KA20 4BN

Schedule of Photographs taken at the inspection on 23rd October 2018



1. External View



2. Driveway



3. Rear waste pipe



4. Gap at shower trim with wall



5. Broken showerhead rail support



6. Poorly secured "wet wall" at shower



7. Substantial gap at "wet wall" & bath



8. Damp below bath



9. Remains of a "slater / woodlouse"



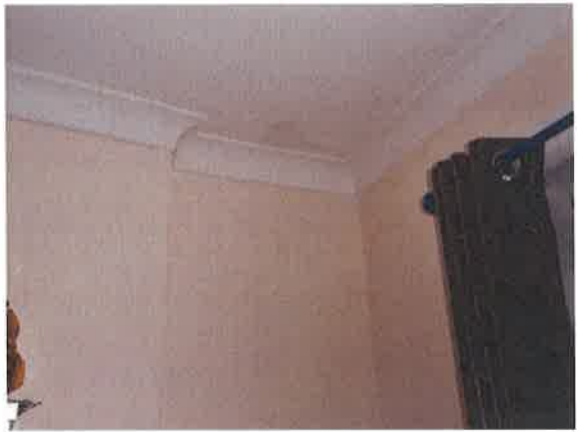
10. Bathroom condensation



11. Bathroom condensation



12. Bedroom condensation



13 Bedroom condensation



14 Front bedroom window



15. Skirting / wall adjacent to front door



16. Hole in timber sarking in attic exposing bitumin underfelt below external roof tiles.