

Housing and Property Chamber First-tier Tribunal for Scotland



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

REPAIRING STANDARD ENFORCEMENT ORDER Ordered by the Tribunal

RE: All and Whole the dwelling house known as 44 Robert Street, Stonehaven AB39 2DJ registered in the Land Register and having Title No KNC23341 (hereinafter referred to as "the House")

The Parties:

Mr Gordon Dickson ("the Tenant")

Mr Roger Clarke, Mr Roger Martin Clarke, Mrs Carolyn Clarke, Mrs Carolyn Sarah Clarke, c/o Aberdein Considine, 5/9 Bon Accord Crescent, Aberdeen, AB11 6DN; 33 Delamere Road, London, Ealing, W5 3JL; c/o Aberdein Considine, 5/9 Bon Accord Crescent, Aberdeen, AB11 6DN; 33 Delamere Road, London, Ealing, W5 3JL ("the Landlord")

Tribunal Members:

John McHugh (Chairman) and Colin Hepburn (Ordinary (Surveyor) Member).

Tribunal Ref: FTS/HPC/RP/19/0904

NOTICE TO ROGER MARTIN CLARKE AND CAROLYN SARAH CLARKE

WHEREAS in terms of their decision dated 6 June 2019 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 to ensure that the House meets the repairing standard in that:

"(a) the house is wind and water tight 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,...

...(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"

The Tribunal now requires the Landlord 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 Landlord to:

1 Take action to ensure that the House is put into a condition so that it is reasonably free from penetrating dampness. Particular regard should be had to the rooms which have an exterior wall forming part of the south gable and those rooms adjacent to the cracked cast iron downpipe on the opposite side of the building (described at 2 below).

2 to replace the cracked cast iron downpipe which runs on the exterior wall outside the laundry room and bathroom and to ensure that the drain beneath it is running freely

3 To paint or redecorate all areas where water staining is evident to include, in particular: the ceilings in the basement and ground floor kitchens; the small hallway adjacent to the ground floor kitchen; the master front facing bedroom; the front facing dining room (or den); the rear facing music room; the rear facing ground floor bedroom; the basement en suite bathroom; and the rear facing bedroom (which has pink heart wallpaper); and the basement living room.

4 To lay suitable flooring and/or kick boards beneath the new cooker in the ground floor kitchen so that there are no longer exposed floor boards.

5 To repair or replace the games room floor.

6 To decorate the games room so that all wall and ceiling surfaces are finished with a decorated surface.

7 To replace the rotten wood present in the door frame between the games room and the garden.

8 To repair or replace the window in the basement bedroom such that the window is reasonably draught resistant.

9 To ensure that there is effective drainage at the exterior doors at basement level outside both the bedroom and the games room to allow water to run away without ponding against the door and door frames.

The Tribunal orders that the works specified in this Order must be carried out and completed within 42 days from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 decision and the

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 three preceding pages are signed by John Miller McHugh, Chairperson of the Tribunal at Edinburgh on the Sixth day of June Two Thousand and Nineteen in the presence of the undernoted witness:

J McHugh

Chairperson

A Johnston

Witness *ALASTAIR JOHNSTON*

Witness Address *65 HAYMARKET TERRACE, EDINBURGH EH12 5HD*

Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION OF THE TRIBUNAL
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 44 Robert Street, Stonehaven AB39 2DJ (hereinafter referred to as "the House")

The Parties:

Mr Gordon Dickson ("the Tenant")

Mr Roger Martin Clarke and Mrs Carolyn Sarah Clarke, c/o Aberdein Considine, 5/9 Bon Accord Crescent, Aberdeen, AB11 6DN; 33 Delamere Road, London, Ealing, W5 3JL; c/o Aberdein Considine, 5/9 Bon Accord Crescent, Aberdeen, AB11 6DN; 33 Delamere Road, London, Ealing, W5 3JL ("the Landlord")

Tribunal Members:

John McHugh (Chairman) and Colin Hepburn (Ordinary (Surveyor) Member).

Tribunal Ref: FTS/HPC/RP/19/0904

DECISION

The Tribunal, having made such enquiries as are 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 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the inspection and hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 21 March 2019 (hereinafter referred to as "the Application") the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

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 and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

"(a) the house is wind and water tight 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,...

...(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"

The Tenant complained that: the House was extensively affected by dampness; the conservatory windows did not function; a window frame was rotten; exterior drains were damaged causing dampness; drain covers were dangerous; the Aga cooker was not working; a fireplace was not able to be used; a shower was not working; two toilet seats were damaged; the games room floor was damaged and the room requires decoration.

By letter of 17 April 2019, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson
Colin Hepburn, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Tribunal had considered and refused a request by the Landlord that the inspection and hearing be delayed to allow the Landlord to attend in person.

A hearing and inspection were fixed for 28 May 2019.

The Tribunal inspected the House on 28 May 2019. The Tenant was present and accompanied by his wife). The Landlord was neither present nor represented.

Following the inspection, the Tribunal held a hearing at the Credo Centre, John Street, Aberdeen. The Tenant was present and the Landlord was represented by Adrian Sangster of Aberdeen Considine. The Tribunal considered the written evidence submitted by the parties and their submissions.

Submissions at the Hearing

Mr Sangster's position was that the Landlord accepted that some repairs were to be carried out. In relation to each of the matters where the Tribunal had identified issues at the inspection and considered that there may be a breach of the repairing standard, Mr Sangster did not offer any contrary view.

He explained that certain repairs were underway and that there had been a need to cap the chimney which serves the games room which was thought to be responsible for water ingress. That work was required to be completed before the games room floor could be addressed. He has been advised that the floor supplier would take four weeks to install the new floor. The Tenant considers that certain repairs remain outstanding.

The Tenant confirmed that the following repairs had been addressed to his satisfaction: the rotten window; the shower; the conservatory windows; the toilet seats; the exterior drains covers and the Aga had been replaced albeit the replacement cooker being a smaller size had created an issue.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a very substantial detached house consisting of a basement, ground and first floor.
- 2 The Tenant holds a private residential tenancy of the House with effect from 27 December 2018.
- 3 The Landlord is the registered owner of the House.

- 4 The Tenant took possession of the House from 27 December 2018 and remains resident there with his family.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Tenant notified the Landlord of some of the defects in the House which are now the subject of the Application at the time of the handover of the House and in email correspondence to the Landlord's agent dated 5 February 2019.
- 7 The inspection on 28 May 2019 revealed:
 - a. There is evidence of dampness and/or water staining to walls in a number of rooms being: the basement and ground floor kitchens; the small hallway adjacent to the ground floor kitchen; the master front facing bedroom; the front facing dining room (or den); the rear facing music room; the rear facing ground floor bedroom; the basement en suite bathroom; and the rear facing first floor bedroom (which has pink heart wallpaper); and the basement living room.
 - b. The cast iron downpipe which runs on the exterior wall outside the laundry room and bathroom is cracked.
 - c. The games room floor is damaged where a section has been taken up and is damaged by water ingress at the exterior door.
 - d. There is exposed plaster in the games room which has not been decorated.
 - e. The new cooker in the ground floor kitchen is smaller than that it replaces, leaving exposed floorboards.
 - f. The shower is in working order.
 - g. The toilet seats have been replaced.
 - h. The fireplace in the rear facing music room has a notice indicating it should not be used.
 - i. The wooden frame of the door between the garden and the games room is rotten.
 - j. The basement bedroom window has been repaired recently but there are still gaps allowing draughts to pass through.

A schedule of photographs taken at the inspection is attached to this Decision.

Reasons for the Decision

Dampness/Water Staining

There is evidence of dampness and/or water staining to walls in a number of rooms being the basement and ground floor kitchens; the small hallway adjacent to the ground floor kitchen; the master front facing bedroom; the front facing dining room (or den); the rear facing music room; the rear facing ground floor bedroom; the basement en suite bathroom; and the rear facing bedroom (which has pink heart wallpaper); and the basement living room. Many of these appear to relate to either water ingress at the recently repointed south gable or the cracked cast iron downpipe. Some may relate to a historic leak from the shower.

Kitchen Floor

The new cooker in the ground floor kitchen is smaller than that which it replaces leaving exposed floorboards. Arrangements should be made to cover the exposed floor boards and this might be done by flooring and/or installation of a suitable kickboard beneath so that there are cleanable surfaces present. The new arrangements need not be an exact match for the existing flooring.

Cast Iron Downpipe/Drains

The cast iron downpipe which runs on the exterior wall outside the laundry room and bathroom is cracked and requires replacement. The drains beneath should be checked to establish that they are running freely.

Games Room Floor

The games room floor is damaged where a section has been taken up and is damaged by water ingress at the exterior door. It requires repair or replacement.

Games Room Walls

There is exposed plaster in the games room which has not been decorated and decorative finishes are required.

Games Room/Garden Door and Basement Bedroom/Bedroom Doors

The wooden frame of the door between the garden and the games room is rotten. It appears that water is ponding at both basement doors.

Basement Bedroom Window

The basement bedroom window has been repaired recently but there are still gaps allowing draughts to pass through.

Music Room Fireplace

The fireplace in the rear facing music room has a notice indicating it should not be used. We consider that the fireplace is of an age and character that the fact it is not in usable order is not a breach of the repairing standard. In some situations, a tenant may have a legitimate expectation that a fireplace is capable of being used but in this case we do not consider that the absence of a working fireplace would not

constitute a breach of the repairing standard. We note that the room is served by a central heating radiator.

The Repairing Standard

The Tribunal considers that the condition of: the areas identified which show evidence of penetrating dampness and water damage; the kitchen floor; the cast iron downpipe; the basement bedroom window; the games room walls; the games room floor; the games room exterior door and the drainage outside the games room and bedroom basement doors constitute a breach of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made in respect of them. The condition of the fireplace in the music room is consistent with the repairing standard having regard to the age and character of the House and fireplace and the presence of central heating.

Comments

The house is a substantial one of a reasonable age and is likely to require ongoing maintenance. Other issues not included in the application were noted on inspection including that the side conservatory was in need of maintenance and the first floor landing ceiling is sagging. The Landlord would be well advised to consider obtaining a report from a building surveyor on the current condition of the property with a view to planning future maintenance and repairs.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of Section 63 of the 2006 Act

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

J McHugh

John M McHugh
Chairperson

Date: 6 June 2019

Schedule of photographs taken during the inspection of:

44 Robert Street , Stonehaven

By: Colin F Hepburn MRICS, Ordinary Member of the First-Tier Tribunal for Scotland(Housing and Property Chamber) on the 28th May 2019























