

Housing and Property Chamber

First-tier Tribunal for Scotland



REPAIRING STANDARD ENFORCEMENT ORDER

In respect of an application in terms of Section 22(1A) of the Housing (Scotland) Act 2006 ("the Act")

Chamber reference: FTS/HPC/RP/17/0172

The Parties:

Ms. Joy Fielding residing at Flat 4, 2, Craigmore Road, Rothesay, Isle of Bute PA20 9LB ("the Tenant")

Mrs. Alison Johnston on behalf of Bute Advice Centre, 22/26, Bishop Street, Rothesay, Isle of Bute PA20 9Dg ("the Tenant's Representative")

Mr. Craig Alexander Wilkie residing sometime at Aldersyde, Craigmore Road, Rothesay, Isle of Bute PA20 9LB and now at Flat 0/1, Firlea, Kilchattan Bay Rothesay, Isle of Bute PA20 9NG ("the Landlord")

Re: Property at Flat 4, 2, Craigmore Road, Rothesay, Isle of Bute PA20 9LB being the southmost house on the attic or second floor above the ground floor of the property known as Aldersyde, Craigmore Road, Rothesay being the subjects more particularly described in and disposed by Disposition by Alexander McCorquodale and Rachel Graham McCorquodale in favour of Craig Alexander Wilkie recorded in the Division of the General Register of Sasines applicable to the County of Bute on 4th May 1994 ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Donald Wooley (Ordinary Member)

NOTICE TO THE LANDLORD

Mr. Craig Alexander Wilkie residing sometime at Aldersyde, Craigmore Road, Rothesay, Isle of Bute PA20 9LB and now at Flat 0/1, Firlea, Kilchattan Bay Rothesay, Isle of Bute PA20 9NG ("the Landlord")

Whereas in terms of their decision dated 19 July 2017, the First-tier Tribunal for Scotland determined that the Landlord had 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 comply in respect of Section 13(1)(a), Section 13(1)(c) and

Section 13(1)(d) of the Act and failed to ensure that the Property is wind and watertight and reasonably fit for human habitation, that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, the First-tier Tribunal now requires the Landlord to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlord must on or before 14 September 2017:-

1. Repair defective seals in the kitchen window top hung hoppers and refurbish or replace all timber windows in the property to ensure that they are wind and watertight, capable of opening where applicable, secure and in proper working order and that all necessary ancillary works including, pointing, making good and decoration are satisfactorily completed;
2. Instruct and have carried out a detailed survey of the property by a suitably qualified and RICS registered Chartered Surveyor to identify the cause of the dampness and damp staining therein and, thereafter, carry out such works as are recommended by the surveyor to remedy the dampness and any associated defects arising therefrom;
3. Remove all polystyrene ceiling tiles from the Property and make good the decoration;
4. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICR to the tribunal;
5. Renew the bathroom wash hand basin;
6. Repair or replace the shower rail to ensure that it is properly and adequately fitted and
7. Make good any décor damaged as a result of these works.

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.

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the two preceding pages are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 19 July 2017 before this witness, Norman William Moore, solicitor, 11 Muirfield Court, Cumbernauld.

N Moore

Witness

K Moore

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber reference: FTS/HPC/RP/17/0172

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act 2006

The Parties:

Ms Joy Fielding residing at Flat 4, 2, Craigmore Road, Rothesay, Isle of Bute PA20 9LB ("the Tenant")

Mrs. Alison Johnston on behalf of Bute Advice Centre, 22/26, Bishop Street, Rothesay, Isle of Bute PA20 9DG ("the Tenant's Representative")

Mr. Craig Alexander Wilkie residing sometime at Aldersyde, Craigmore Road, Rothesay, Isle of Bute PA20 9LB and now at Flat 0/1, Firlea, Kilchattan Bay Rothesay, Isle of Bute PA20 9NG ("the Landlord")

Re: Property at Flat 4, 2, Craigmore Road, Rothesay, Isle of Bute PA20 9LB ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Donald Wooley (Ordinary Member)

Background

1. By application received on 3 May 2017 ("the Application"), the Tenant's Representative applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the

Repairing Standard in respect of Sections 13(1)(a), 13(1) (c), 13(1) (d) and 13(1) (e) of the Act.

Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard for the following reasons: -

The windows in the Property are in a very poor state of repair and are rotten;

There are polystyrene tiles in the kitchen/dining area and hallway;

The bathroom ceiling has an irregular leak;

The shower rail is inadequately fixed;

The sink in the bathroom has a crack in it;

The electrical appliances which had been in the Property were not repaired or replaced by the Landlord;

One of the storage heaters in the Property does not work and

There are loose and uneven floorboards.

2. A Convenor of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the act, intimated to all parties by Notice of Referral dated 2 June 2017, a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 5 July 2017 at 10.30 a.m. and 11.30 a.m., respectively.

Notice of Direction

3. On 27 June 2017, the tribunal having considered the Application made a Direction in terms of Schedule 2, Paragraphs 2(1) and 3 (1) (b) to the Act directing the Landlord to provide a current Electrical Installation Condition Report for the Property, to provide a Portable Appliance Testing Report and, if there is a mains gas or liquified petroleum gas supply in the Property, to provide a current Landlord Gas Safety Record for the Property.

4. The Landlord did not respond to the Direction and did not submit the documents requested by the tribunal.

Inspection

5. The Inspection took place on 5 July 2017 at 10.30 a.m. at the Property. The Tenant was present at the Inspection and the Tenant's Representative was present for part of the Inspection. The Landlord was not present at the Inspection.
6. The tribunal inspected the Property and all of the matters complained of in the Application. No Electrical Installation Condition Report was available for inspection. There is no gas supply in the Property. With regard to the leak in bathroom ceiling, at the Inspection the Tenant stated that she was unaware of any external repairs having been completed to the roof and stated that the water ingress was intermittent.
7. At the Inspection, the tribunal took digital photographs which photographs form the Schedule annexed to this decision.

Hearing

8. Following the Inspection, a Hearing was held at Moat Community Education Centre, Stuart Street, Rothesay, Isle of Bute, PA20 0EP on the same day at 11.30 a.m. The Tenant and the Tenant's Representative were both present at the Hearing. The Landlord was not present at the Hearing.
9. The Tenant and the Tenant's Representative both addressed the tribunal. The Tenant advised the tribunal that she has resided at the Property for twelve years but does not have a written tenancy agreement. The Tenant produced a Rent Book in her name which she explained had been given to her by the Landlord and from which the tribunal could see that there is a record of rent having been paid and received for the Property. The Tenant explained that the Landlord had furnished her with a letter in April 2009 to confirm her tenancy. This letter forms part of the Application.

10. The Tenant also produced documentary evidence that electric storage heaters had been installed at the Property in February 2012 having been funded by a Scottish Government grant scheme. The Tenant explained that the company which installed the heaters also supplied and fitted a smoke detector in the hall of the Property. She explained that she removed this smoke detector. She could not recall if it had been hard wired or battery operated.
11. With regard to the specific elements complained of in the Application, the Tenant advised the tribunal that the front windows let in wind and rain. The frame of the living room window had collapsed two weeks prior to the Inspection and Hearing and the Landlord had arranged a repair. The bedroom window could not be opened and so the bedroom could not be ventilated. The Tenant advised the tribunal that mushrooms had grown in the mould at the bedroom window and that she had done her best to eradicate the growth and had carried out a temporary repair with putty.
12. With regard to the bathroom, the Tenant advised the tribunal that the sink had been cracked at the outset of her tenancy and has not been fixed by the Landlord. She explained that she had effected a repair using waterproof tape. Further, the shower curtain rail has been unstable throughout her tenancy and, again, she effected a repair by tying the rail to the ceiling.
13. With regard to dampness, the Tenant advised the tribunal that she is aware of dampness at the front windows and on the gable wall.
14. The Tenant advised the tribunal that, at the outset of her tenancy, the Landlord had supplied a mattress which did not fit the bed frame, a sofa, a cooker and a fridge, all of which have since fallen into disrepair and have been replaced by the Tenant. She explained that there are now no fittings or furnishings supplied by the Landlord.
15. The Tenant advised the tribunal that the polystyrene ceiling tiles have been in the Property from the beginning of the tenancy.

16. The Tenant and the Tenant's Representative both advised the tribunal that the Landlord had been called upon to carry out the repairs but that he refused to do so. Both advised the tribunal that the Landlord's position is that, as he did not require the Tenant to lodge a security deposit or bond, the Tenant is not entitled to have repairs carried out.

Summary of the Issues

17. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (a), 13(1) (c), 13(1) (d), and 13(1) (e) of the Act at the date of the Inspection and Hearing.

Findings of Fact

18. The Landlord is the owner of the Property. Although there is no written tenancy agreement, the letter dated April 2009 lodged as part of the Application and the Rent Book produced by the Tenant at the Hearing are sufficient to establish that a tenancy exists and, in the absence of any evidence to the contrary, the tribunal is satisfied that Miss Joy Fielding is the tenant of the Property and, accordingly, is satisfied that the tribunal has jurisdiction.
19. The Property comprises a living room, a kitchen/ dining area, one bedroom, hallway and a bathroom and is one of two second floor "attic" flats within a three storey detached building estimated to be in the region of 100 years in age. There is a total of four flats within the building. The date that the existing "attic" accommodation was created is unknown. Shared access to the property is taken via an entrance door to the rear of the building. The access stair to first floor level is of traditional solid construction. From first to second floor it is steeply pitched and timber in design. The outer walls are of stone construction, part painted, part rendered. The original roof was timber framed, pitched and clad with slates. Following conversion/alteration to create the existing attic

accommodation, it is now predominantly flat clad with what appears to be a felt covering.

20. From the Inspection, the tribunal found the following in respect of matters specifically complained of in the Application:

- i) The general maintenance of the windows has, with the exception of the bathroom window, been neglected. The principal bay window in the living room is in poor general condition. It is of traditional timber framed sash and casement design. There is a missing sash cord and following a recent collapse of the upper section of the window, a temporary repair was completed by securing a vertical timber support to the external frame to support the upper sash section. This section of the window can no longer be opened;
- ii) The lower section of the bay window, as a result of a failure in the operating mechanism, does not, without assistance, remain open. At the date of the Inspection it was temporarily supported in the open position by a block of wood inserted for the purposes of ventilating the living room;
- iii) There is a small timber framed window at the gable wall of the living room which appears to have has been damaged and is in need of repair as a result of exposure to condensation and/or penetrating damp;
- iv) The kitchen window is of double glazed design and comprises a large deadlight section and two top hung hoppers. The seals on both hoppers have failed and there is evidence of condensation/misting between the panes;
- v) The bedroom window is of pivot design with a separate hopper section. The working mechanisms on both sections were inoperative and the window could not be opened. There was no evidence of mushroom growth. A temporary repair at the base of the frame where additional putty

or similar sealant has been added was noted and moisture readings taken at the surrounding area identified no evidence of recent damp;

- vi) Externally, all of the timber window frames and surrounds display evidence of neglect and are in need of general repair or renewal;
- vii) There is evidence of residual damp staining affecting the polystyrene tiles on the bathroom ceiling. It was tested with the aid of a moisture meter and established to be dry;
- viii) The shower rail in the bathroom is inadequately supported and a temporary "bracket" secured to the ceiling has been fitted;
- ix) The wash hand basin in the bathroom is very badly cracked. A temporary patched repair has been completed with waterproof tape covering the affected area;
- x) There are polystyrene ceiling tiles in the dining/kitchen area, hall and bathroom which appear to predate the tenancy. An electrically operated wall mounted warm air heater is situated immediately below and close to the bathroom ceiling tiles. As this type of tile is combustible and a source for spreading both flames and smoke, and as the only means of fire escape from the flat is via a steep timber stair which does not comply with current building regulations, the tiles represent a fire hazard;
- xi) At the entrance door from the hallway to the living room the flooring is slightly uneven and there are several slightly loose floorboards. However, this is not significant;
- xii) Moisture readings taken at the gable wall/chimney breasts in both the kitchen dining area and living room proved positive. From the inspection, it was not possible to determine the precise source of the dampness and this will require further more detailed investigation to determine if the

cause relates to a defect in the external fabric of the building or a concealed blockage/defect in the flues;

xiii) The electric storage heater stated as “not working” in the application has, according to the tenant been repaired and is now working satisfactorily. Due to the nature of the operating mechanism this could not be tested;

xiv) None of the alleged defective electrical appliances were available for inspection.

21. From the Inspection, the tribunal found the following general matters in respect of the Property and the common parts of the building of which the Property forms part

i) While not forming part of the application, there was no evidence of any form of smoke or heat detection and

ii) There is a threadbare carpet covering the steep timber access stair which is shared with the neighbouring second floor proprietor.

22. The tribunal found that both the Tenant and the Tenant’s Representative gave their evidence in a truthful, fair and straightforward manner and so the tribunal accepted their evidence without reservation.

Decision of the tribunal and reasons for the decision.

23. The tribunal’s decision is based on the Application with supporting documents, the Inspection and the evidence heard at the Hearing.

24. In respect of the complaint in terms of Section 13 (1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the tribunal found that poor condition of all of the timber windows, is such that the Property is not wind and watertight. The tribunal found that the dampness at the living room and dining kitchen gable walls / chimney breasts is such that the Property is not reasonably fit for human habitation. The tribunal further found that the presence of the polystyrene ceiling tiles

in the dining/kitchen area, hall and bathroom combined with limited means of escape in the event of fire is a serious hazard to the health and safety of the Tenant and so the Property is not reasonably fit for human habitation. Accordingly, the tribunal found that at the date of the Inspection and Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

25. In respect of Section 13(1) (c) of the Act, the tribunal found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that as the bathroom sink is badly cracked and, as there is no apparent Electrical Installation Condition Report for the Property, the tribunal is not satisfied that the installations in the Property 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.
26. In respect of Section 13(1) (d) of the Act, the Committee found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that the shower rail is not properly fitted and so the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.
27. In respect of Section 13(1) (e) of the Act, the Committee found that at the date of the Hearing the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that the Landlord no longer provides any furnishings under the tenancy.
28. Although no complaint was made in the Application in respect of the lack of smoke and heat detectors in the Property, the Landlord's attention is drawn to the revised statutory guidance detailed in Domestic Technical Handbook prepared by the Scottish Government and to the findings of the tribunal at paragraph 20.x of this decision. The Tribunal's advice to the Landlord is that sufficient hard wired and interlinked smoke, heat and fire

detectors to comply with current regulations should be installed without delay.

29. The decision was unanimous.

Repairing Standard Enforcement Order

30. Having determined that the landlord has failed to comply with the duty imposed by section 14(1) (b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

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.

Effect of Section 63

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

K Moore

Karen Moore

Chairperson

19 July 2017

*This is the Schedule of Photographs referred to
in decision for case reference FTS/HK/RP/17/0172*

K Moore

Flat 4, 2 Craigmore Road, Rothesay, Isle of Bute PA20 9LB

Schedule of Photographs taken at the inspection on 5th July 2017



Photograph 1:- Front Elevation



Photograph 2:- Living Room Window



Photograph 3

Living Room Window Missing Sash Cord



Photograph 4

Living Room Window : Block "Support"



Photograph 5:- Temporary external
timber support living room window.



Photograph 6:- Temporary repair base of
bedroom window.



Photograph 7:- Residual damp staining and temporary shower rail support



Photograph 8:- Polystyrene ceiling tiles and wall hung bathroom warm air heater



Photograph 9:- Temporary strip repair to wash hand basin in bathroom



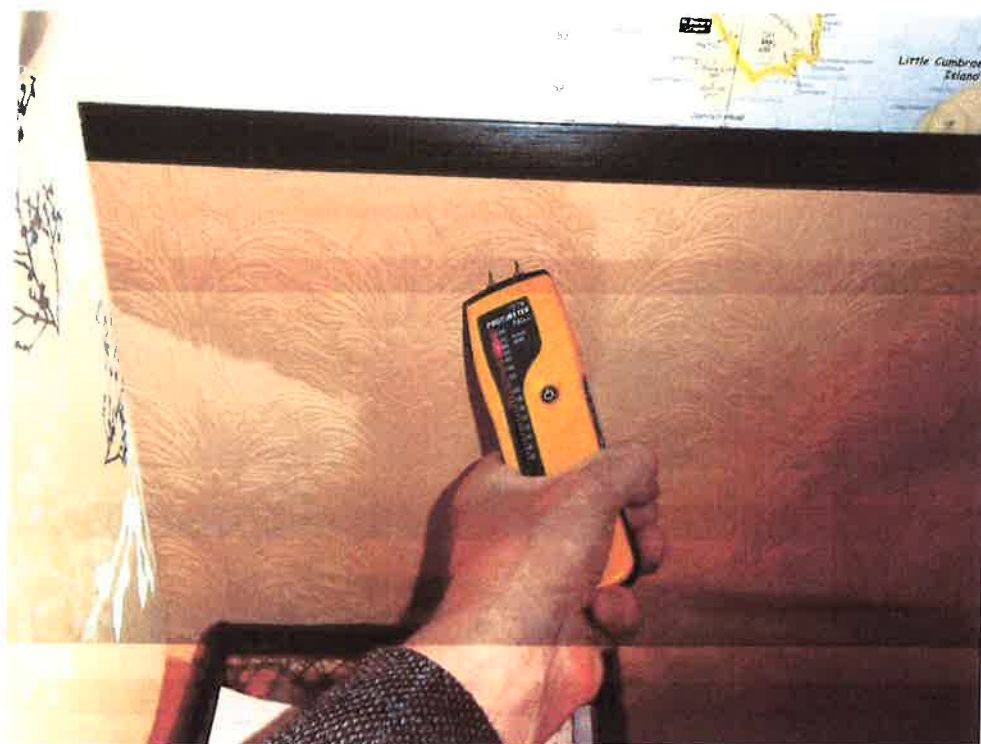
Photograph 10:- Failed seals at kitchen window hoppers.



Photograph 11
Polystyrene ceiling tiles kitchen area



Photograph 12:- Damp / Condensation around gable wall window



Photograph 13

Damp reading in gable wall/chimney flue in living room.



Photograph 14

Damp reading in gable wall/chimney flue in kitchen/dining area