

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order **Ordered by the First-tier Tribunal for Scotland** **(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/RP/18/1534

Title no: FFE6232

Lambsha Cottage, Cluny, Kirkcaldy, Fife, KY2 6QX being the subjects registered in the Land Register of Scotland under Title Number FFE6232 ('The Property')

The Parties:-

John Taylor residing at Avenuehead Cottage, Auchenbowie, Stirling, FK7 8HB ('the Landlord').

Maxine McLeary residing at Lambsha Cottage, Cluny, Kirkcaldy, Fife, KY2 6QX ('the Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Harry Maclean (Ordinary Member).

NOTICE TO **The said John Taylor**

Whereas in terms of their decision dated 19th October 2018 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 the Landlord has failed to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; 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 proper working order; the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order and the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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. Repair the dampness to the wall situated to the left of the toilet in the bathroom to render it water tight.
2. Install a tap/ valve to enable the stop cock to be easily opened and closed.
3. Repair or replace the front door and door frame in the Property to render them wind and watertight and in proper working order.
4. Repair or replace the defective double glazed unit to the dorma window at the top of the stairs.
5. Repair the coping stones on the wall round the back garden to render them secure.
6. Repair or replace the external light at the rear of the Property to render it in proper working order.
7. Implement a rodent eradication strategy to effectively eradicate the vermin in the Property.
8. Exhibit a valid and compliant EICR and PAT Certificate.
9. Install:
 - 9.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
 - 9.2 One functioning smoke alarm in every circulation space, such as hallways and landings.
 - 9.3 One heat alarm in every kitchen and
 - 9.4 All alarms should be hardwired and interlinked.

The Tribunal orders that these works must be carried out and completed by 15th December 2018

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.

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 and landlord's successor in title) 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 RSEO has effect in relation to the house.

This is in terms of section 28(5) of the Act: IN WITNESS WHEREOF these presents typewritten on this and the preceding page are subscribed at Irvine on 19th October 2018 by Jacqui Taylor, chairperson of the Tribunal, in the presence of the witness Keirsten Byrne, 65, High Street, Irvine.

J Taylor

Signed.....

Chairperson

L Byrne

.....witness

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of decision 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/18/1534

Title no: FFE6232

Lambsha Cottage, Cluny, Kirkcaldy, Fife, KY2 6QX being the subjects registered in the Land Register of Scotland under Title Number FFE6232 ('The Property')

The Parties:-

John Taylor residing at Avenuehead Cottage, Auchenbowie, Stirling, FK7 8HB ('the Landlord').

Maxine McLeary residing at Lambsha Cottage, Cluny, Kirkcaldy, Fife, KY2 6QX ('the Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Harry Maclean (Ordinary Member).

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. The Tenant leases the Property from the Landlord in terms of the Short Assured Tenancy between the parties. The Tenant applied to 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 ('the Act').

2. The application stated that she considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. She advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; 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 proper working order; the fixtures, fittings and

appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order and the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

In particular the application stated:-

Roof

- 2.1 Flat area of roof is needing attention
- 2.2 Grey slate roof tiles are extremely noisy.
- 2.3 Chimney pots on roof. The chimneys on both sides of the property and the exterior walls are in disrepair.
- 2.4 Waterproof membrane under roof tiles seems to be non-existent.
- 2.5 Gutters have not been cleaned.
- 2.6 There was a dead rat stuck in between the gutter and roof tile.
- 2.7 An electric cable lying in the gutter was live.
- 2.8 Bridge of roof- leaking into bedroom ceiling.
- 2.9 Roof area above the landing stair window leaking- on landing and bedroom ceiling.

Bathroom

- 2.10 Bathroom area is riddled with dampness to the walls. In particular the bathroom wall is extremely wet in the corner to the left hand side of the toilet bowl possibly as a result of penetrating damp.
- 2.11 Heating in bathroom is inadequate.
- 2.12 The plumbing to the bath is in need of attention as it is slow to empty.
- 2.13 Toilet is leaking
- 2.14 Stop cock valve is missing.

Front door

- 2.15 The front door is in a poor condition and is draughty. It is badly rotten and there is a very large gap under the front door.

Living room

- 2.16 Area of wall in living room is in disrepair and plaster is falling off.
- 2.17 Part of the wall above the fireplace is extremely wet possibly as a result of penetrating damp.

Hall

- 2.18 There is a large split in the wall paper on the hall ceiling.

Daughter's bedroom

- 2.19 Dampness in daughter's bedroom/The bedroom to the left at the top of the stairs is extremely damp on all of the external walls and ceilings. This may be due to the roof being defective.

Windows

- 2.20 Dormer window at top of stairs is rotten and leaking and there is moisture between the layers of glass in the double glazing.

Heating and water

2.21 Heating is electric convector heating only.

2.22 Hot water tank is insufficient.

Electrics

2.23 The electrical installations in the property are defective.

In particular:

- Earth cable on consumer tails electricity box needs replaced and protected.
- Defective wiring, lights dimming, oven/hob tripping.
- Replace damaged kitchen socket.
- Investigate and repair broke Electric shocks from the cooker.
- Electrical safety inspection required.
- PAT tests on portable appliances required.
- Alter DB for radial.

Smoke detectors

2.24 The fire detection system does not meet current standards and it is necessary to replace 2 smoke detectors.

Outside

2.25 Many of the coping stones on the wall round the back garden have become detached and should be cemented back in the interests of safety and to prevent further deterioration to the wall.

2.26 There is no cover over the drain at the front of the house.

2.27 Make safe missing cover on outside lights.

2.28 Rat infestation.

3. Maurice O'Carroll a Convenor of the Private Rented Housing Panel, having considered the application, comprising documents received between 27th June 2018 and 31st July 2018, referred the application under Section 22 (1) of the Act to a Tribunal.

4. On 22nd August 2018 the President of The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. The Tribunal attended at the Property on 27th September 2018. The Tenant was present at the inspection. The Landlord was not present at the inspection and was not represented.

The Property, Lambsha Cottage, Cluny, Kirkcaldy, Fife, KY2 6QX, is a detached bungalow which dates from circa 1920. The accommodation comprises 4 bedrooms, livingroom/ kitchen and bathroom. There is an area of slabbed garden ground to the rear and also an area for off street parking to the side of the Property.

The Tribunal inspected the alleged defects and found:-

Roof

5.1 Flat area of roof is needing attention.

The Flat area of roof referred to forms the roof of the dorma projection. There were no sign of any defects when viewing the roof from the outside of the Property. Inside the Property the ceiling at the top of the landing, which is below the dorma projection, was dry.

5.2 Grey slate roof tiles are extremely noisy.

The grey slate roof tiles are located on the sides of the dorma projection. At the inspection the Tenant explained that when it is windy they flap and are very noisy. There was no sign of any defect with the grey slate roof tiles at the inspection.

5.3 Chimney pots on roof. The chimneys on both sides of the property and the exterior walls are in disrepair.

There are two sets of chimneys on the roof of the Property. The chimney on the left handside of the Property, when facing the Property from the road, have cowls fitted. However the chimney on the right handside of the Property, when facing the Property from the road, does not have a cowl fitted. Also no lead flashing had been fitted around the base of the chimneys.

5.4 Waterproof membrane under roof tiles seems to be non-existent.

There did not appear to be any roof felt below the roof tiles.

5.5 Gutters have not been cleaned.

At the inspection the gutters were clear of debris.

5.6 There was a dead rat stuck in between the gutter and roof tile.

There was no evidence of the dead rat, mentioned in the application, at the inspection.

5.7 An electric cable lying in the gutter was live.

The electric cable which was visible on the roof at the rear of the Property from a distance it seemed as if it had been capped and a terminal box had been fitted.

5.8 Bridge of roof- leaking into bedroom ceiling.

The Tenant advised that the cement/ render to the roof ridge tiles had been redone in March 2018. The Tribunal noted that cracks in the cement/ render had started to appear.

5.9 Roof area above the landing stair window leaking- on landing and bedroom ceiling.

The Ordinary member of the Tribunal tested the ceilings of the bedrooms and the landing with a damp meter and found that the ceilings were dry.

Bathroom

5.10 Bathroom area is riddled with dampness to the walls. In particular the bathroom wall is extremely wet in the corner to the left hand side of the toilet bowl possibly as a result of penetrating damp.

The Ordinary member of the Tribunal tested the walls of the bathroom with a damp meter and found that they were dry, with the exception of the wall to the side of the wc, approximately 300 mm from the floor, which was damp. The damp meter read 27% indicating that there is dampness present in the wall.

5.11 The heating in the bathroom is inadequate.

The convector heater mounted on the wall of the bathroom worked properly at the inspection.

5.12 The plumbing to the bath is in need of attention as it is slow to empty.

The Tenant partially filled the bath with cold water during the inspection and the Tribunal members saw that the water drained away, albeit that it drained slowly.

5.13 The toilet is leaking.

There was no evidence of water leaking from the toilet at the inspection.

5.14 Stop cock valve is missing.

The main cold water entry to the Property is located behind the bath. There is no lever or tap fitting to enable the cold water supply to be turned off easily.

Front door

5.15 The front door is in a poor condition and is draughty. It is badly rotten and there is a very large gap under the front door.

The front door is a timber panelled door. The panels are soft and the door frame is rotten. There is a gap between the wooden flooring below the front door and the threshold, which had been covered with wooden floor boards.

Living room

5.16 Area of wall in living room is in disrepair and plaster is falling off.

There is an area of loose plaster and paint on the internal wall of the living room.

5.17 Part of the wall above the fireplace is extremely wet possibly as a result of penetrating damp.

The Ordinary member of the Tribunal tested the walls of the bathroom with a damp meter and found that they were dry.

Hall

5.18 There is a large split in the wall paper on the hall ceiling.

There is a split in the wall paper on the ceiling of the hall between the light fitting and the smoke detector.

Daughter's bedroom

5.19 Dampness in daughter's bedroom/ The bedroom to the left at the top of the stairs is extremely damp on all of the external walls and ceilings. This may be due to the roof being defective.

The Ordinary member of the Tribunal tested the walls of the bathroom with a damp meter and found that they were dry.

Windows

5.20 Dormer window at top of stairs is rotten and leaking and there is moisture between the layers of glass in the double glazing.

There is moisture inside the double glazed window unit at the top of the stairs.

Heating and water

5.21 Heating is electric convector heating only.

There are convector heaters in every room of the Property.

5.22 Hot water tank is insufficient.

The hot water tank is located in the eaves of the Property. The Ordinary member of the Tribunal gained access to the eaves and was able to see the hot water tank and confirmed that it is a small sized cylinder.

Electrics

5.23 The electrical installations in the property are defective.

In particular:

- Earth cable on consumer tails electricity box needs replaced and protected.
- Defective wiring, lights dimming, oven/hob tripping.
- Replace damaged kitchen socket.
- Investigate and repair broke Electric shocks from the cooker.
- Electrical safety inspection required.
- PAT tests on portable appliances required.
- Alter DB for radial.

The Tenant had provided the Tribunal with an EICR report dated 16th February 2018. The report had been prepared by Frazer Cornwall of GSM Electrical Fife Limited of 9 Merlin Way, Dalgety Bay, KY11 9JY. The Report summary assessed the Electrical Installation as being Unsatisfactory and included a number of C1 (Danger Present) and C2 (Potentially Dangerous) classifications.

Smoke detectors

5.24 The fire detection system does not meet current standards and it is necessary to replace 2 smoke detectors.

There are smoke detectors located in the hallway ceiling and the ceiling of the landing at the top of the stairs. They are not interlinked. There is no smoke detector present in the living room and no heat detector present in the kitchen.

Outside

5.25 Many of the coping stones on the wall round the back garden have become detached and should be cemented back in the interests of safety and to prevent further deterioration to the wall.

The coping stones on the top of the wall in the rear garden are loose.

5.26 There is no cover over the drain at the front of the house.

The rainwater downpipe and the kitchen waste pipe are connected and enter a drain at ground level at the front of the Property. Where the waste pipe enters the drain there is a small grating over the hole but it does not fully cover the hole and part of the hole is open and uncovered.

5.27 Make safe missing cover on outside lights.

There is no cover over the external light on the rear wall of the Property.

5.28 Rat infestation.

There was evidence of the presence of vermin at various places in the Property. The electric cables and pipe insulation in the eaves and also the wooden ceiling cladding in the attic had been chewed. Poison pellets had been placed in the attic area.

The Tenant had covered a hole in the floor boards of the living room with wooden slats. There was some evidence of chew marks to the carpet that had been fitted over the area where the wooden slats had been fitted.

Photographs were taken during the inspection and are attached as a Schedule to this report.

6. Following the inspection of the Property the Tribunal held a hearing at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT.

The Tenant attended the hearing. She was accompanied by her son Craig Scally and Linda Bulle from Shelter.

As a preliminary matter the Tribunal considered the terms of the written representations received from the Landlord's solicitor, which were as follows:-

'The Claimant and Respondent entered into a lease which commenced on 1 October 2016 (hereinafter referred to as 'the lease') for the property Lambsha Cottage, Cluny, Kirkcaldy, Fife, KY2 6QX (hereinafter referred to as 'the property').

The ish date of the lease is 30 September 2018. A Notice to Quit and Notice under Section 33 of the Housing (Scotland) Act 1988 (hereinafter referred to as 'S.33 Notice') were served on the Claimant in accordance with clause SECOND a) of the lease legally terminating the lease as of 30 September 2018. Copy Notice to Quit and S.33 Notice are enclosed herewith for reference.

The Respondent's primary motion is that the application should be dismissed on the basis of Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("R2017") "The Overriding objective".

Rule 2 (1) states:

"The overriding objective of the First-tier Tribunal is to deal with the proceedings justly. "

Further, Schedule 2 Section 7 (1) of the Housing (Scotland) Act 2006 ("2006 Act") states:

"A tenant may withdraw an application under section 22(1) at any time (and the tenant is to be treated as having withdrawn it if the tenancy concerned is lawfully terminated). "

Section 7 (3) of the 2006 Act goes on to state:

" Where an application is withdrawn after it has been referred to the First-tier Tribunal, the First tier Tribunal may—

- (a) abandon its consideration of the application, or
- (b) despite the withdrawal—
 - (i) continue to determine the application, and
 - (ii) if it does so by deciding that the landlord has failed to comply with the duty imposed by section 14(1), make and enforce a repairing standard enforcement order.

As per rule 26 (4) of R2017, the First-Tier Tribunal must provide a written statement of reasons for their decision:

"In relation to applications mentioned in Part 2 and Chapters 2, 3, 5 and 7 of Part 3 of these Rules, a statement of reasons must be prepared by the chairing member with the assistance of the other members of the First-tier Tribunal (if any). "

The lease will legally terminate on 30 September 2018, if no decision and written statement of reasons has been provided as per Rule 26 (4) of R2017 by 30 September the application will be treated as withdrawn in accordance with S.7 (1) of the 2006 Act, as above. The Respondent submits that the Tribunal should not continue its consideration of the application in terms of S.7 (3) of the 2006 Act; there being no grounds upon which to do so. The Tribunal has a period of 21 days to make a determination of the matter and provide the written statement of reasons, ensuring proper consideration is given to the facts and the law. It would be prejudicial to both parties and against the overriding objective to expedite the decision making process and produce a statement of reasons of the decision in an unreasonably short timescale in order to avoid the application being withdrawn. Upon the withdrawal of the application there is no basis upon which the Tribunal should continue its determination of the Claimant's application.

Accordingly, the Respondent submits that the Claimant's application should be dismissed.

The Respondent's secondary motion is that the Respondent cannot be deemed to be in breach of S.14(1)(b) of the 2006 Act to "ensure that the house meets the repairing standard...(b) at all times during the tenancy" in accordance with S. 14(4) which states:

'The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required..

Following notification by the Claimant of repairs required within the property the Respondent arranged a visit to the property on 1 June 2018. The Claimant was not present at the time and was unable to enter the property to carry out the inspection.

An alternative visit was arranged at 11:00 on 26 June 2018. The Respondent attended the property with Mr Edward Macauley of Edward Macauley Joiners. The

purpose of this visit was to inspect the property and ascertain the repairs which were required to ensure compliance with the repairing standard,

Following a number of delays a letter was produced by Edward Macauley, enclosed herewith for reference, outlining the necessary repairs to be carried out by the Respondent. It is also recommended by Edward Macauley that the property is vacant for a period of 6-8 weeks to ensure the repairs are carried out in full. In view of this requirement and the extended timescale involved there would be no merit in commencing the repairs prior to the legal termination of the lease on 30 September.

The Respondent continues to adhere to his duty under S. 14 of the 2006 Act and has taken reasonable steps since arranging an inspection of the property on 1 June 2018 to attempt to resolve the maintenance issues within the property.

Accordingly, the Respondent submits that he is not in breach of the repairing standard having not yet failed to comply with S. 14(1) as he continues to take reasonable steps to ensure the repairs are carried out. As such, no order should be granted against the Respondent.'

The Tribunal considered the terms of the Landlord's written representations and determined as follows:

1. In connection with the Landlord's first motion, the Tribunal acknowledge that the Landlord has served the Tenant with Notice to Quit and section 33 Notice requiring her to vacate the Property as at 30th September 2018. However the lease between the parties will not legally terminate on 30 September 2018. If Notice to Quit has been validly served on the Tenant a statutory assured tenancy will continue until an order for Eviction is issued by the First-tier Tribunal. The tenancy will not be terminated in terms of Schedule 2 Section 7 (1) of the Housing (Scotland) Act 2006 until the Order for Eviction has been made. In the event that the Tribunal are wrong in their finding that the lease between the parties has not been terminated as a result of the Landlord issuing the Notice to Quit and Section 33 Notice they determine that they will continue to determine the application as the application contains matters that are health and safety concerns and accordingly the Tribunal consider it to be reasonable for them to continue and determine the application, in terms of Schedule 2 Paragraph 7(3) of the said 2006 Act.

2. In connection with the Landlord's second motion, the written representations are to the effect that the Landlord has taken reasonable steps to carry out the required works since arranging an inspection of the property on 1 June 2018 to attempt to resolve the maintenance issues within the property.

Section 11(1) of the Housing (Scotland) Act 2006 places the Landlord under an obligation to comply with the Repairing Standard at the commencement and throughout the tenancy. The Tribunal acknowledges that Landlord must be given a reasonable opportunity to carry out the repairs after being notified of the repairs that are required.

The Tenant has provided with the application copies of correspondence that has been sent to the Landlord regarding the required repairs. These include:-

1. A letter from Christine Hay of Economy, Planning and Employability Services, Glenrothes dated 12th March 2018 advising the Landlord that the Property does not comply with the Repairing Standard. Many of the items listed in the Application are detailed in that letter, including the fact that the property does not have the necessary smoke and heat detectors, the fact that the EICR report commissioned by the Tenant details works that need to be carried out and also that he needs to carry out Portable Appliance Tests on the portable appliances.

2. A copy of letter the Tenant sent to the Landlord dated 15th March 2018 detailing repairs that are required. The letter was signed for by the Landlord on 20th March 2018.

The Tribunal determine that the Landlord has been given a reasonable opportunity to carry out the works that are required, but has failed to do so.

The Landlord's written representations in relation to his second motion also state that the repairs were not carried out as access was not made available and further the Landlord's contractor has advised that the works may take 6-8 weeks. Consequently they submit that the required repairs should be carried out after the Tenant has vacated the Property.

The Tribunal determine that if the Landlord had experienced difficulties in obtaining access to the Property to carry out necessary repairs he could have made an application to the First- tier Tribunal for assistance in gaining access. No evidence has been provided to the effect that such an application has been made to the First-tier Tribunal. Also the fact that it may be expedient for the Landlord to carry out the required repairs after the Tenant has vacated the Property does not relieve the Landlord from an obligation to comply with the Repairing Standard throughout the tenancy.

Accordingly, for the reasons stated the Tribunal do not accept the Landlord's submissions to the effect that the application should be dismissed and continued to consider the Tenant's oral representations.

The hearing had been intimated to the Landlord and his solicitor replied on 10th September 2018 advising that he did not wish to attend the hearing.

In respect of the matters in the application the Tenant advised as follows:

Roof

6.1 Flat area of roof is needing attention.

There was some black mould on the ceiling of the landing, which indicates that there is dampness present.

6.2 Grey slate roof tiles are extremely noisy.

She explained that when it is windy the tiles lift and they are very noisy.

6.3 Chimney pots on roof. The chimneys on both sides of the property and the exterior walls are in disrepair.

She pointed out that the two chimneys on the right hand side of the property do not have chimney cowl.

6.4 Waterproof membrane under roof tiles seems to be non-existent.

She advised that they have had wind and snow in the attic as a result of there being no waterproof membrane under the roof tiles.

6.5 Gutters have not been cleaned.

She acknowledged that the gutters were clear at the inspection.

6.6 There was a dead rat stuck in between the gutter and roof tile.

She acknowledged that there was no dead rat in the gutter at the inspection.

6.7 An electric cable lying in the gutter was live.

She confirmed that the electric cable that leads into the gutter on the roof had been made safe.

6.8 Bridge of roof- leaking into bedroom ceiling.

The Tenant explained that some repairs had been carried out to the ridge tiles on the roof in March/ April however cracks are appearing and she does not believe that the repair will last.

6.9 Roof area above the landing stair window leaking- on landing and bedroom ceiling.

The Tenant advised that there was black mould on the ceiling of the landing which she believes confirms that there is dampness in the ceiling.

Bathroom

6.10 Bathroom area is riddled with dampness to the walls. In particular the bathroom wall is extremely wet in the corner to the left hand side of the toilet bowl possibly as a result of penetrating damp.

The Tenant advised that there is dampness in the wall to the left of the toilet, which the Tribunal saw at the inspection.

6.11 Heating in bathroom is inadequate.

The Tenant acknowledged that the wall mounted convector heater in the bathroom works. However the wall switch operates both the convector heater and the extractor fan. The Tenant's son explained that as both appliances are connected to the same switch the fan effectively cancels out the effect of the heater.

6.12 The plumbing to the bath is in need of attention as it is slow to empty.

The Tenant acknowledged that the bath had emptied when it was tested at the inspection.

6.13 Toilet is leaking.

The Tenant's son explained that he had recently repaired the toilet. The Tenant acknowledged that there was no evidence of a leak at the inspection.

6.14 Stop cock valve is missing.

The Tenant explained that the stop cock valve is missing. To turn off the water supply to the Property it is necessary to pull away the front panel of the bath and use pliers to turn off the stop cock.

Front door

6.15 The front door is in a poor condition and is draughty. It is badly rotten and there is a very large gap under the front door.

The Tenant explained that the front door is rotten, as the Tribunal members saw at the inspection.

Living room

6.16 Area of wall in living room is in disrepair and plaster is falling off.

The Tenant had nothing to add beyond what the Tribunal members observed at the inspection.

6.17 Part of the wall above the fireplace is extremely wet possibly as a result of penetrating damp.

The Tenant made no comment.

Hall

6.18 There is a large split in the wall paper on the hall ceiling.

The Tenant had nothing to add beyond what the Tribunal members observed at the inspection.

Daughter's bedroom

6.19 Dampness in daughter's bedroom/ The bedroom to the left at the top of the stairs is extremely damp on all of the external walls and ceilings. This may be due to the roof being defective.

The Tenant acknowledged that there was no evidence of dampness at the inspection but advised that she had moved her daughter out of that room due to the damp.

Windows

6.20 Dormer window at top of stairs is rotten and leaking and there is moisture between the layers of glass in the double glazing.

The Tenant explained that she suspects that the window seal has failed as there is water inside the double glazed window unit.

Heating and water

6.21 Heating is electric convector heating only.

The Tenant explained that the Energy Performance Certificate states that there are storage heaters in the property but she advised that this is not correct as there are only electric convector heaters. The convector heaters do not effectively heat the Property and are expensive to run.

6.22 Hot water tank is insufficient.

The Tenant explained that the hot water cylinder is too small.

Electrics

6.23 The electrical installations in the property are defective.

In particular:

- Earth cable on consumer tails electricity box needs replaced and protected.
- Defective wiring, lights dimming, oven/hob tripping.
- Replace damaged kitchen socket.
- Investigate and repair broke Electric shocks from the cooker.
- Electrical safety inspection required.
- PAT tests on portable appliances required.
- Alter DB for radial.

The Tenant explained that she had instructed the EICR report that had been produced. She was concerned that the Landlord had not carried out the repairs that were stated as being necessary in the report.

Smoke detectors

6.24 The fire detection system does not meet current standards and it is necessary to replace 2 smoke detectors.

The Tenant had no comment to make.

Outside

6.25 Many of the coping stones on the wall round the back garden have become detached and should be cemented back in the interests of safety and to prevent further deterioration to the wall.

The Tenant had nothing to add beyond what the Tribunal members observed at the inspection.

6.26 There is no cover over the drain at the front of the house.

The Tenant suspects that the rats are getting into the Property as there is no cover on the drain at the front of the Property.

6.27 Make safe missing cover on outside lights.

The Tenant had nothing to add beyond what the Tribunal members observed at the inspection.

6.28 Rat infestation.

The Tenant explained that she had contacted the pest control department at the Council and they had recommended that she put down the rat poison.

7. Decision

The Tribunal made the following findings in fact:-

- There is no evidence of water ingress to the flat roof of the Dormer window.
- There is no evidence of the grey roof tiles being noisy.
- There is no evidence of any build up of debris in the gutters.
- There is no evidence of a dead rat in the gutter.
- There is no evidence of the ridge of the roof leaking.
- There is no evidence of dampness above the fireplace in the living room.
- There is no evidence of dampness in the Tenant's daughter's bedroom, being the bedroom to the left at the top of the stairs.

- There is no longer a gap under the front door.
- There is no evidence of the toilet leaking.

Therefore the issues to be determined are:-

7.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the dampness in the wall of the bathroom, the condition of the double glazed dormer window and the evidence of rat infestation results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

7.2 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 (Section 13(1) (b) of The Housing (Scotland) Act 2006).

Whether the condition of the chimney pots, the condition of the front door, the absence of a waterproof membrane under the roof tiles, the condition of the roof area above the landing stair window, , the condition of the coping stones on the wall in the back garden and the absence of a cover over the drain at the front of the property results in them not being in a reasonable state of repair and proper working order.

7.3 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

Whether the condition of the electric cable that is on the roof at the rear of the property, the heating in the bathroom, the electric convector heating in the property, the hot water tank, the electrical installations in the property and the absence of a cover to the outside light result in them not being in a reasonable state of repair and proper working order.

7.4 The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1) (d) of The Housing (Scotland) Act 2006).

Whether the condition of the plumbing to the bath, the split in the wall paper on the hall ceiling and the stop cock valve result in them not being in a reasonable state of repair and proper working order.

7.5 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (f) of The Housing (Scotland) Act 2006).

Whether the existing smoke alarms in the Property meet the statutory requirements.

8. Decision

8.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1) (a) of The Housing (Scotland) Act 2006).

The Tribunal determine that the dampness in the wall of the bathroom near to the toilet and the presence of water/ moisture within the double glazed dormer window results in these items not being wind and water tight. They also determined that the evidence of vermin in the Property results in the Property not being reasonably fit for human habitation.

8.2 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 (Section 13(1) (b) of The Housing (Scotland) Act 2006).

The Tribunal determine:-

8.2.1 That absence of cowls to the chimney on the righthand side of the Property, when facing the Property from the road; the absence of lead flashing around the base of the chimneys; the absence of a waterproof membrane under the roof tiles does not result in them not being in a reasonable state of repair and proper working order.

8.2.2 The condition of the roof area above the landing stair window was dry even though there were three small black mould spots. Accordingly it is in a reasonable state of repair and proper working order.

8.2.3 The split in the wall paper on the hall ceiling was cosmetic accordingly it is in a reasonable state of repair and proper working order.

8.2.4 The absence of a cover over the drain at the front of the property does not result in it not being in a reasonable state of repair and proper working order.

8.2.5 That the condition of the front door (namely the rotten door panels and door frame) and the loose coping stones on the wall in the back garden results in them not being in a reasonable state of repair and proper working order.

8.3 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

The Tribunal determine that the convector heater in the bathroom and the electric convector heating in the Property were working at the inspection and accordingly they are in proper working order. The misdescription in the EPC does not result in the electric convector heating in the Property not being in a reasonable state of repair and proper working order.

The Tribunal note that the hot water tank is small but they determine that this fact does not result in it not being in a reasonable state of repair or proper working order.

The Tribunal determine that the absence of a cover to the outside light results in it not being in a reasonable state of repair and proper working order.

The Housing (Scotland) Act 2014 introduced the requirement for landlords to have an Electrical Installation Condition Report (EICR) carried out on all electrical installations, fixtures and fittings within their rental properties. All tenancies must have a valid EICR, a copy of which must be provided to the tenant. The EICR lasts for 5 years and must include Portable Appliance Tests (PAT) for all electrical appliances within the tenancy supplied by the landlords.

The Landlord had not provided the Tenant with a valid EICR Report or a PAT test. The Tenant had commissioned her own EICR report dated 16th February 2018, which was produced with her application. The EICR assessed the electrical installation as Unsatisfactory. Accordingly the Tribunal determine that the electrical installations in the Property, including the electric cable that is on the roof at the rear of the property (which was categorised C1 (Danger Present) in the EICR Report), are not in a reasonable state of repair and proper working order.

8.4 The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1) (d) of The Housing (Scotland) Act 2006).

The Tribunal determine that the fact that the bath drains slowly and the split in the wall paper on the hall ceiling is cosmetic and consequently does not result in them not being in a reasonable state of repair and proper working order.

The Tribunal also determine that the absence of a tap/ valve fitting to enable the stop sock to be easily turned off does result in the stop cock not being in a reasonable state of repair and proper working order.

8.5 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (f) of The Housing (Scotland) Act 2006).

The Tribunal acknowledged that the statutory guidance requires:

- One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
- One functioning smoke alarm in every circulation space, such as hallways and landings.
- One heat alarm in every kitchen.
- All alarms should be interlinked.

The Tribunal determined that the absence of the required interlinked smoke and heat detector results in the Property NOT having satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Decision

9. The Tribunal accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(a), 13(1)(b), 13(1)(c), 13(1)(d) and 13(1)(f) of the Act, as stated.

10. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

11. The decision of the Tribunal was unanimous.

Appeal

12. 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.

J Taylor

Chairperson

19th October 2018

This is the Schedule of Photographs
referred to in the foregoing decision
dated 19/10/11
J Taylor



Lambsha Cottage – front elevation



Loose coping stones to wall at rear



Defective light fitting at rear



Cable in gutter at rear



Main entrance door in poor condition



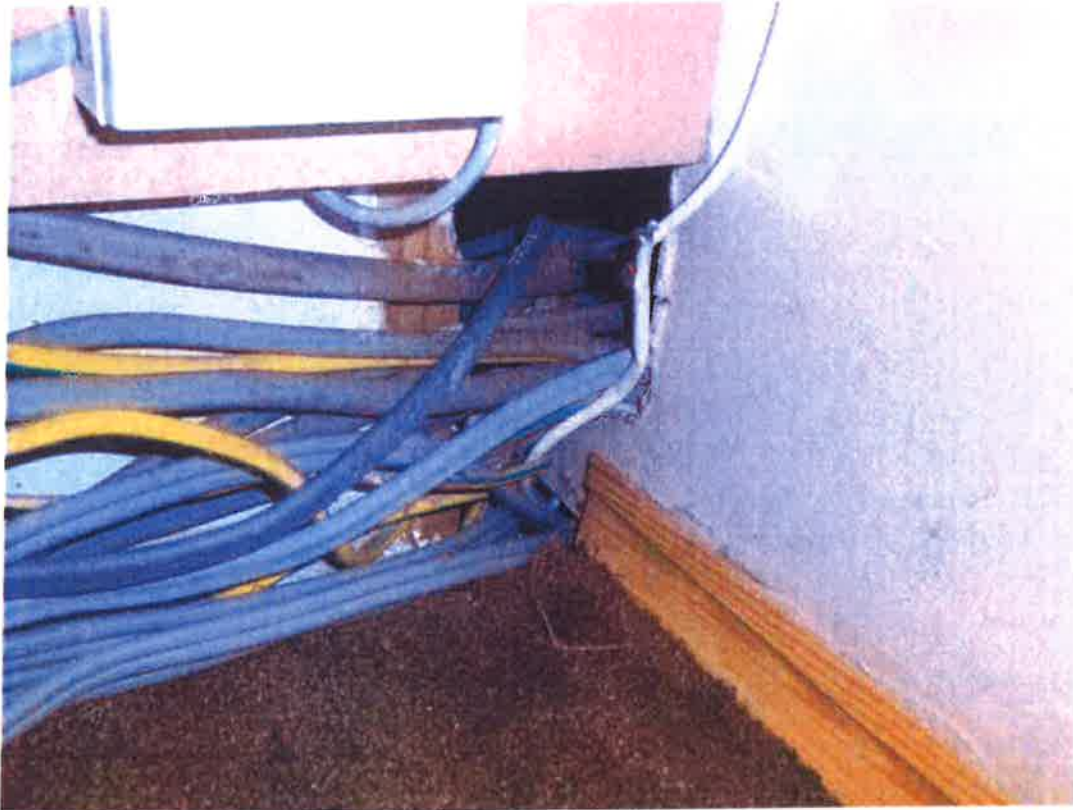
Wet area inside bathroom at low level – only around WC bowl



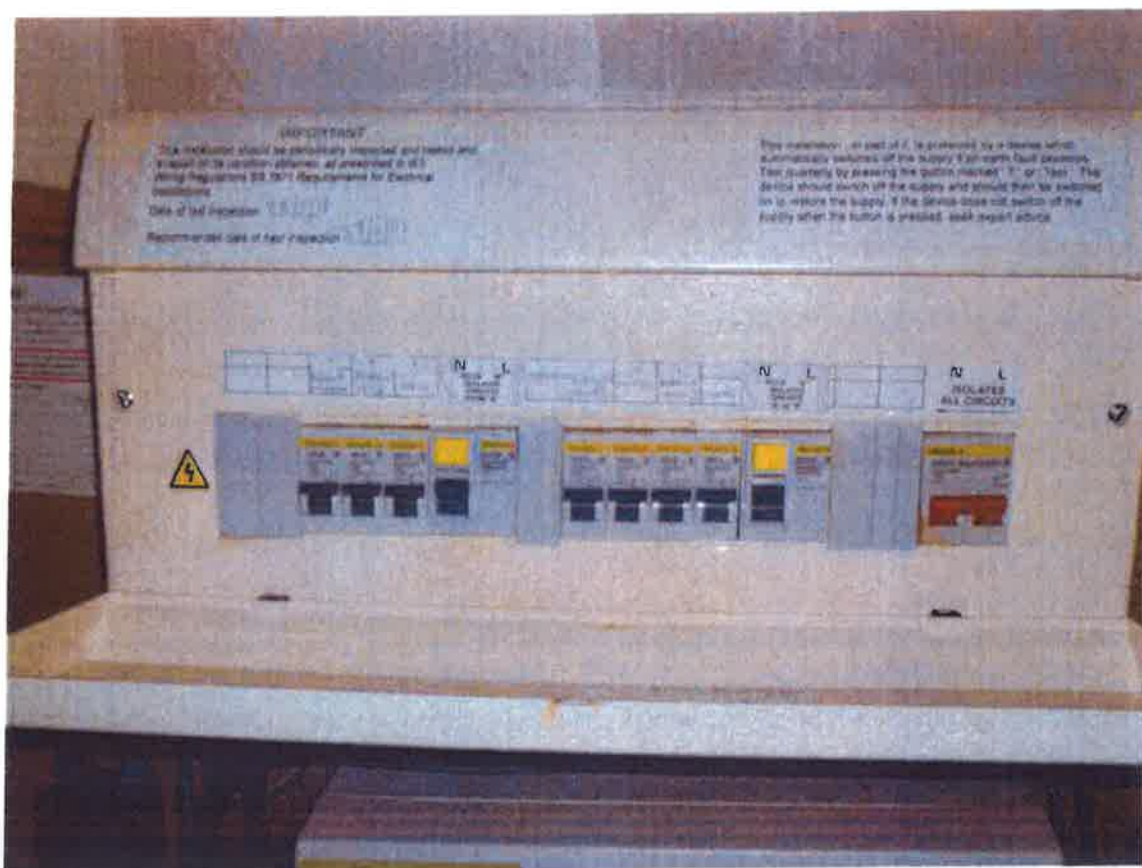
Flaking and peeling plaster and paint – high level sitting room



Defective broken socket in kitchen – signs of scorching



Chewed and frayed mains electrical cables



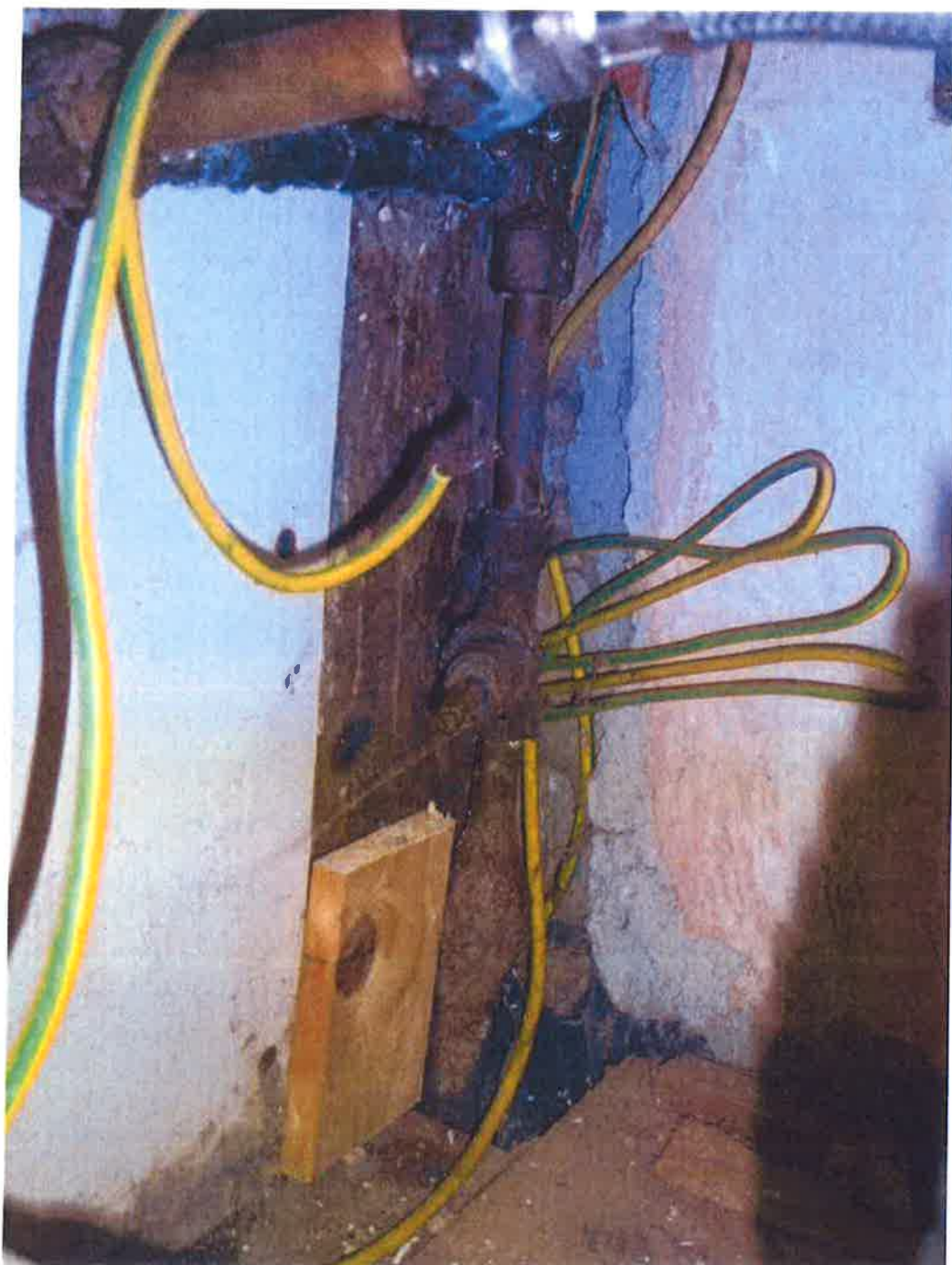
Mains distribution board



600mm x 450mm hot water cylinder to loft area



Rodent and vermin damage to loft space



Mains top cock below bath – missing valve top and poor access