

**First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)**

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

**Housing (Scotland) Act 2006 (“the 2006 Act”)**

**Chamber reference number: FTS/HPC/RP/22/3088**

**109 Flures Drive, Erskine, PA8 7DG (“the House”)**

**The Parties:-**

**Miss Katarzyna Zawalidroga, 109 Flures Drive, Erskine, PA8 7DG (“the Tenant”)**

**Mrs Anne Shaw, care of Let-It, 26 Causeyside Street, Paisley, PA1 1UN (“the Landlord”)**

**Tribunal Members: Mrs N Weir, Legal Member and Ms S Hesp, Ordinary Member**

**DECISION**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. By application received on 29 August 2022, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House. The Tenant claimed that the garden shed needed removed and replaced; that the kitchen units and front door needed repaired or replaced and that the kitchen wall needs painted. Supporting documentation was lodged including a copy of the tenancy agreement

and some email correspondence between the Tenant and Landlord's letting agent and between the Landlord and letting agent.

2. On 28 October 2022, a Convener of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 19 December 2022, requesting that any written representations should be lodged with the Tribunal by 9 January 2023.
3. Written representations were lodged by the Landlord by email on 6 January 2023. The Landlord's position was stated that she is not resident in the UK, that the Tenant has been living in the House at a reduced rental, with little or no increase over the years, that it is fully furnished, that the Landlord has in this time replaced the washing machine twice, the cooker, the electrics and has had the central heating repaired and serviced regularly, that a walk-through assessment of the House was done by the letting agent on 7 December 2022 and it was found that only the kitchen needs work, that the Tenant had been given the go-ahead to remove the shed and that she had no knowledge of any work having been done by the Tenant.
4. The Tribunal Members inspected the House on the morning of 30 January 2023. The Tenant was present as was a Polish Interpreter, Ms Magdalena Moore, who had been requested by the Tenant whose first language is Polish and whose attendance had been arranged by the Tribunal Administration. The Landlord was not present as she is resident abroad but was represented at the Inspection by Mr Derek Torrens of the Landlord's letting agents, Let-it. Mr Andrew Taylor, Ordinary Member (Observer) was also in attendance but took no part in the proceedings.
5. Following the Inspection of the House, the Tribunal held a Hearing by telephone conference call at 2pm on 30 January 2023. The same persons were present as had been present at the Inspection, other than Ms Sandra Rooney of the Landlord's letting agents, Let-it, who attended, rather than Mr Torrens.

### **Findings on Inspection**

6. A Schedule of Photographs taken during the Inspection by the Ordinary Member is attached to this Statement of Decision.
7. At the time of the Inspection, the weather was dry and bright. The Tribunal noted that the House is a two storey detached house within a private housing development. On inspection, it was noted that:-
  - (a) The garden shed which had been situated in the rear garden had been removed and items which the Tenant stated had been

some of the contents of the shed were piled elsewhere in the garden. The area where the shed had been situated was apparent. Reference is made to photograph 2 in the Schedule of Photographs. The Tenant also showed the Tribunal Members a photograph on her mobile telephone which showed the shed prior to its removal.

- (b) In the kitchen, there were some issues apparent with the kitchen units. A drawer front was missing, some of the cupboard doors did not close properly and some of the cupboard door hinges appeared to be dropping. It was noted that within the cupboard unit beneath the sink, a bowl (which contained some water) and a number of towels had been placed below the sink waste pipe to catch an apparent leak. Reference is made to photographs 3-7 in the Schedule of Photographs.
- (c) A section of the wallpaper on the kitchen wall to the left of the window was damaged and appeared to have torn and peeled off the wall in places, exposing the wall below. The Tenant indicated that this was as a consequence of water damage from a leak which has now been rectified. Dampness readings were taken on this section of the wall by the Ordinary Member using a dampness meter which indicated that no unusual levels of dampness were present. Reference is made to photographs 8 and 9 in the Schedule of Photographs.
- (d) The front door was not fitting properly, with gaps apparent between the door and its frame which the Tenant indicated let draughts in. It was noted that the lock was operational but did not work well such that the door was not particularly secure, even when locked. A metal plate was missing from the door frame and both the door and frame were not in good condition. Reference is made to photographs 11, 12 and 13 in the Schedule of Photographs.
- (e) In the kitchen, where the gas boiler is situated, the carbon monoxide detector was flashing orange which it should not, indicating an issue with it. The smoke alarm situated on the kitchen ceiling was missing its cover and the battery had been removed. There was no heat alarm in the kitchen. There were old smoke alarms still in position and also newer smoke alarms situated in the living room, hallway and upstairs. The smoke alarms in the living room and hallway were noted to be wall mounted, rather than ceiling mounted. The Ordinary Member tested the smoke alarms and they were operational and inter-linked. Reference is made to photographs 14-17 in the Schedule of Photographs.

## Evidential Hearing

8. The Evidential Hearing was due to commence at 2pm but was delayed as neither the Tenant nor Ms Moore, the Interpreter, was initially present. The Clerk contacted them both and ascertained that there had been some confusion over the arrangements for joining the call, following which both successfully joined the call and participated, with Ms Moore interpreting the proceedings throughout for the Tenant.
9. After introductions and introductory comments from the Legal Member, the Tenant was asked to provide the background to her application to the Tribunal. She confirmed that she had been the Tenant of the Landlord and resided in the House for around 16 years but had signed up to a new tenancy in 2018 when her partner moved out. There had been issues with the House which she paid for herself, including a new boiler, floors and various repairs. However, as she is now on her own, she can no longer afford to pay for repairs. The Landlord lives in South Africa so there have been additional problems with contact. She has had to go through the letting agent and they have not always had responses back from the Landlord. The Landlord has said that the Tenant is being unreasonable, that she cannot afford repairs and has now decided to sell the House. The Tenant said she had been reporting the repair issues covered by her application over a long period, she stated at least two years for the shed, kitchen units and kitchen wall and approximately a year ago regarding the front door.
10. Ms Rooney, the Landlord's letting agent referred to the written response her client had submitted to the Tribunal. Essentially, the Landlord cannot afford to get some of the work done, such as a replacement kitchen, but she will get essential or urgent work done. She is 74 years old, lives abroad and relies on the income from the House. She does not dispute the Tenant's position. An emergency contractor was instructed to attend to the issue with the front door locks so that the door could be secured but it is accepted by the Landlord that the front door needs replaced. Ms Rooney wanted to make the Tribunal aware that there is also a side door of the House that can be used. The Landlord does not expect the Tenant to pay for repairs herself but is simply not in a financial position to replace the kitchen or shed. The Tenant responded that she had not had any choice but to spend her own money to make the House liveable. The Landlord has served notice but the Tenant does not wish to move and hopes the Landlord will change her mind about selling.
11. Ms Rooney confirmed that it had cost £300 to have the shed removed. There was no dispute that it had been in a disgraceful condition but the Landlord will probably not replace it. The Tenant said that when she had raised this issue two years ago, she was told that she could remove it and replace it herself but she did not agree with that as the shed belongs to the property and was in a very bad state. However, the Tenant then

indicated that she was pleased that the shed had been removed and was content to leave this matter as it is.

12. As to the kitchen units, Ms Rooney indicated that the Tenant had asked for a replacement kitchen but that the quote she got for this was between £5000 and £7000. The Landlord has no funds to cover this. When asked if the Landlord would consider repairing the defects identified with the kitchen units, Ms Rooney indicated that the Landlord would attend to the repairs required to the drawer carcass, cupboard doors, etc and they have agreed with the Landlord to retain the repair costs from the rental payments received. Ms Rooney stated, however, that the finished result might not cosmetically look the best as it will not be possible to get an exact match with the existing units. The Tenant responded that she was surprised at this offer as nothing was proposed to be done before. Ms Rooney conceded that it was regretful that matters had reached this stage.
13. Likewise, as to the front door, it was accepted by Ms Rooney on behalf of the Landlord that it requires to be replaced and she has today received a quote from a contractor for a new UPVC door which is £1296. She intends to authorise this work as soon as she can. When asked by the Tribunal how long Ms Rooney expected it to be for the front door and kitchen unit repairs to be instructed, given that she had indicated that the costs would have to be held back from ongoing rental payments, Ms Rooney clarified that they intend to instruct the works as soon as possible, pay for the costs up front and then recover them back from the rental payments. The Tenant indicated that she would like the front door replaced as soon as possible because she considers it a safety issue.
14. In relation to the kitchen wall, the Ordinary Member explained to Ms Rooney, who had not been present at the Inspection that she had tested the section of the wall where the damage was apparent for damp using a damp meter, given that the Tenant had indicated that a leak had caused the damage, and that no damp was detected in the wall. Ms Rooney explained that the damage to the wall finish had not yet been rectified as it was not deemed to be urgent and was more cosmetic in nature. She stated that this section of wall would be fixed but again, that it may not be possible to match the blue paint on the rest of the wall. The Tenant then indicated that, provided the kitchen units were fixed, she would be agreeable to attending to the wall repairs herself, now that she knows there is no dampness issue remaining.
15. The Legal Member explained that, although no issues had been raised in the application concerning the smoke alarms, heat alarm and carbon monoxide detector, the Tribunal will, as a matter of course, on Inspection have regard to these matters. It was explained what the Tribunal had noted at the Inspection. The Ordinary Member also explained that, in terms of the Tolerable Standard and government guidance, smoke alarms should be ceiling mounted, rather than wall mounted. The Tenant advised that the carbon monoxide detector had been beeping and

flashing over the weekend and that a contractor was to replace it the following day. Ms Rooney advised that she had not been aware of this and that the Tenant had instructed this herself. As to the smoke alarms and lack of heat detector, she will require to check with the contractor as she was sure a heat alarm had been installed, together with the new smoke alarms in July 2022 and wondered if the Tenant had removed this, as well as the battery in the smoke alarm in the kitchen. The Tenant indicated that she had not.

16. The parties were invited to sum up. The Tenant indicated that she had nothing to add. Ms Rooney stated that they have always attended to any urgent matters on behalf of the Landlord as quickly as they could and that it has been agreed that they will instruct the kitchen unit repairs and replacement front door to make the House more liveable for the Tenant. She urged the Tenant to report everything to them as it happens rather than instructing works herself. Finally, Ms Rooney requested on behalf of the Landlord that the Tribunal does not make an RSEO at the moment and gives them an opportunity to carry out the works agreed.

### **Findings in Fact**

1. This tenancy commenced on 22 May 2021 by virtue of a Private Residential Tenancy between the parties, although the Tenant had a previous joint tenancy and had been in occupation of the House for approximately 16 years.
2. The House was let on an unfurnished basis, with a monthly rental of £530.
3. The Tenant had notified the Landlord prior to submitting this application to the Tribunal of repair issues outstanding.
4. There was email correspondence involving the Tenant, Landlord and Landlord's letting agents lodged in support of this application regarding some of the repair issues included in this application dating back to 2021.
5. This application was lodged with the Tribunal on 29 August 2022.
6. A Notice to Leave has been served on the Tenant on the basis of the Landlord's stated intention to sell the House.
7. Reference is made to the Tribunal's Findings on Inspection, which took place on 30 January 2023.
8. Of the repair issues included in the Tenant's application to the Tribunal, the garden shed had been removed by the Landlord prior to the Inspection and some repairs had been carried out to the front door.
9. As at 30 January 2023, some repairs issues were outstanding.

10. The House does not meet the Repairing Standard in some respects.

### **Reasons for decision**

1. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the written representations and documents lodged by the parties prior to the Evidential Hearing and the oral evidence heard on behalf of both parties at the Evidential Hearing.
2. Given the present condition of the kitchen units, the Tribunal is satisfied that some of the kitchen fixtures and fittings provided by the Landlord are not in a reasonable state of repair or in proper working order in terms of Section 13(1)(d) of the 2006 and that repairs/replacement of some of the kitchen units and their fixtures and fittings require to be carried out to ensure that the Repairing Standard is met. It is the Tribunal's view from its findings on Inspection and from the evidence heard that the kitchen units have been there for a number of years and their condition is likely down to wear and tear from many years of use. The Tenant would like a replacement kitchen installed but the Landlord has indicated that this is not affordable for her. The Landlord did concede through her agent that repairs are required and it is proposed that repair works will be undertaken to the kitchen in the near future to address the issues identified. It was pointed out on behalf of the Landlord that it may not be possible to match the existing units and that the result may not be as aesthetically pleasing as the Tenant might like. The Tribunal was of the view that, provided repairs carried out put the kitchen units into a proper state of repair and working order, that would be acceptable. However, if the kitchen units are found to be beyond economic repair, the Tribunal considers that the kitchen units, or parts of them may require to be replaced.
3. The Tribunal was also satisfied that the front door is not in a reasonable state of repair or in proper working order and that due to its condition and the gaps between the door and doorframe when the door is closed results in it not being wind and watertight, in terms of Sections 13(1)(a) and (d) of the 2006 Act. This is conceded on behalf of the Landlord and it is intended that a replacement front door will be fitted as soon as possible. The Tribunal is of the view that a replacement front door is required in order to meet the Repairing Standard.
4. Given that the garden shed has already been removed, the Tribunal did not consider that there is any breach of the Repairing Standard. In any event, it was noted from the evidence given by the Tenant at the Hearing that she is content that this particular issue has been resolved to her satisfaction.
5. The Tribunal accepted the evidence of the Tenant that the damage to the section of kitchen wallpaper had been caused by a leak which is now

resolved. As there was no damp evident in the section of the kitchen wall where the wallpaper was damaged, the Tribunal was of the view that, although unsightly, the condition of the wall/wallpaper is not a breach of the Repairing Standard. Again, it was noted that agreement between the parties had been reached on this issue in the course of the Hearing with the Tenant indicating that she would attend to this matter herself now that she knows there is no ongoing issue with damp affecting the wall.

6. The Tribunal was satisfied that the Repairing Standard is not met in terms of Section 13(1)(f) and (g) of the 2006 Act in that the carbon monoxide detector situated in the kitchen appeared to be faulty and there was no heat detector in the kitchen interlinked to the smoke detection system within the House.
7. The Tribunal is of the view that it requires to make a Repairing Standard Enforcement Order (“RSEO”) in respect of the outstanding matters specified in paragraphs 2,3 and 6 above. Given the nature of the required works, the Tribunal is of the view that a period of 6 weeks is an adequate and reasonable timescale for these works to be completed.
8. Although there was a smoke detection system in the House which appeared to have been installed fairly recently and to be inter-linked and working properly, the Tribunal had noted that the smoke alarms installed in the living room and hallway were wall-mounted, as opposed to ceiling-mounted. The Tribunal accordingly wishes to make the observation that current government guidance stipulates that such smoke alarms should be ceiling-mounted and that it is hoped that by drawing this to the attention of the Landlord and her agent, that the Landlord will now consider re-positioning these alarms.

### **Decision**

9. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act to ensure that the House meets the Repairing Standard.
10. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
11. 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 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.**



In terms of Section 63 of the Act, 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.

Signed..... Date: 16 February 2023  
N Weir, Legal Member of the Tribunal