

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Statement of Decision under section 24(1) of the Housing (Scotland) Act 2006**

**Chamber Reference: FTS/HPC/RP/22/0018**

**Sasines Description: Subjects forming part and portion of the farm and lands of Wester Calcots in the County of Moray being the subjects more particularly described in Feu Disposition to Robert Petrie Mutch recorded in the Division of the General Register of Sasines for the County of Moray on 26<sup>th</sup> May 1926**

## **The Parties**

**Mr Kevin Lynch and Mrs Kelly Lynch, Wester Calcots Farm, Elgin, IV30 5PH (“The Tenants”)**

**Mr Alistair MacKay, Brackla Farm, Cawdor, Nairn, IV12 5QY (“The Landlord”)**

**Subjects: The Farmhouse, Wester Calcots Farm, Elgin, IV30 5PPH (“the Property”)**

## **Tribunal Members**

Ms H Forbes (Legal Member)

Mr M Andrew (Ordinary Member)

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) 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 Property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b).**

## **Background**

1. By application dated 4<sup>th</sup> January 2022, made under section 22 of the Act, the Tenants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.

2. The Tenants indicated on the application form that the Landlord has failed to comply with their duty to ensure that the Property meets the repairing standard, in that the Property is not 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 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 in proper working order; any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order; and the Property does not meet the tolerable standard.

3. The Tenants listed the issues as follows:

*Rotten timbers in the roof space*

*Possible subsidence on kitchen wall*

*Leaking utility room roof*

*Damp issues in utility room*

*Internal damage to walls, ceiling and floor in utility room & flooring that is breaking up.*

*Guttering to rear and side (kitchen wall) of property*

*Broken sections of guttering at front of property*

*Repair/repoint roof ridge (multiple locations)*

*Penetrating damp in back bedroom, play room, front room, kitchen, main bedroom and bathroom, and internal damage*

*Two leaking skylights and internal damage*

*Penetrating damp and water ingress in cellar*

*Garden fence and gates rotten, broken and too low*

*Bathroom requires extractor fan*

*Defective cement render on stone walls around utility room*

4. The Tenants formally notified the Landlord's representative of the defects on 12<sup>th</sup> January 2022.

5. By email dated 13<sup>th</sup> April 2022, the Landlord's representative lodged written representations and productions.

## **The Inspection**

6. An inspection of the Property took place on 27<sup>th</sup> April 2022. Both Tribunal members were in attendance. The Tenant, Mr Lynch, was in attendance. Mr Charlie Beck, Cluny Estate Agents, attended on behalf of the Landlord.
7. The Property is an old farmhouse built over three stages with the front elevation (west) being the most recent. Internally the 3 parts are interlinked by corridors and externally by valley gutters to provide good sized rooms with storage space beneath.
8. A schedule of photographs was prepared by the Ordinary Member and issued to parties prior to the hearing, and the findings of the Tribunal were discussed at the hearing, as set out below.

## **The Hearing**

9. A hearing took place by telephone conference on 4<sup>th</sup> May 2022. The Landlord was not in attendance and was represented by Mr Monteith, Solicitor. The Landlord's son, Mr Matthew MacKay was in attendance. The Tenant, Mr Lynch, was in attendance.

## **Utility Room**

10. Mr Andrew explained the findings of the inspection, in that there were signs of historical water ingress to the utility room shown by chalk markings on the roof. The roof timbers were rotten. It was impossible to see if the position was the same in the adjacent WC/laundry room, as the ceiling is still intact, but it is likely to be the same. There are signs of mould growth on the WC ceiling. There is a question mark over the quality of the workmanship on the roof and it is possible there is no vapor barrier. Externally, electric cables have been compressed during roof works. The rendered harling has come away from the walls externally and requires replacement.
11. Mr Lynch said the roof of the Property had been fixed last winter. Thereafter, water dripped through the utility room roof. He thought this was due to the failure to fit a vapor barrier. When the ceiling was brought down due to mould, rotten timbers were exposed. The room has been in its current state for six months, with the plasterboard and ceiling removed. The concrete flooring is crumbling. Mr Lynch detailed the external issues, including the rendering and compressed cables. It was his position that the building standards had not been good. The external rendering was deficient and has caused water ingress. He had passed photographs to Building Standards. There had been issues with contractors turning up early, at which time he had told them they could get access in half an hour. They had also turned up unannounced, on which occasion he was unable to give access as he was running late and had to go out. Otherwise, access had not been denied.

12. Mr Monteith said it was accepted there were issues with the roof and work was not yet complete. Contractors had found Mr Lynch to be intimidating and problematic, and they had been turned away on occasion. A Notice to Quit has now been served and the Landlord will be happy to attend to repairs when the Notice expires. The contractors are adamant that the work has been carried out appropriately, but they require access to check. They have been turned away on occasion. On other occasions, Mr Lynch has created a working condition that contractors are not happy with. If there are issues, they will be addressed. There is no desire to delay matters until the Notice expires and the Tenants leave, but access issues have created difficulties.
13. Mr MacKay said the roof work had been carried out, then the wall began to leak. The wall was rendered, but the penetration continued. A joiner had attended without giving notification, but he and Mr Lynch were not on the best of terms. Mr Lynch had said there would be no access until the external works were completed. The Landlord wishes to check and replace the insulation, install new stud walls, vent the stonework and install extractor fans.

### **Guttering**

14. Mr Andrew explained there are issues with the guttering at the front elevation, due to corroded sections of cast iron guttering. At the side elevation, the gutter bows close to the chimney, and it requires a downpipe to avoid rainwater overspill, leading to damage to the walls. To the rear of the Property, the downpipe requires to be repositioned or a new gulley and soakaway installed beneath the downpipe to avoid water ingress to the cellar
15. Mr Lynch said the front guttering is cracked and broken, and rainwater sometimes splashes out over the bay window. Contractors have done a great job to the back, with the exception of the issue at the cellar, where there is no gulley and the downpipe outflow runs over the surface and into the cellar. The roofer said an extra downpipe at the side elevation may help the issue where the gutter bows at the chimney.
16. Mr Monteith said a contractor had looked at the guttering and said the guttering was age appropriate. The Landlord will consider matters in terms of the wind and watertight requirement in the Act.
17. Mr MacKay said the contractor had been told to fix everything. The Landlord had considered the front guttering to be working fine, based on the contractor's advice.

### **Damp**

18. Mr Andrew explained that the Tribunal found no penetrating damp in the back bedroom, which is situated over the cellar, and has been plastered on the hard. In the play room, there were indications of possible damp either from the roof or the gutters. There are no signs of penetrating damp in the kitchen. There are signs of damp in the main bedroom on either side of the roof valley gutter. There is condensation mould in the bathroom, due to a lack of

ventilation, as the window opens onto a busy farmyard. The bathroom requires mechanical ventilation.

19. Mr Lynch said there are signs of water ingress in the play room, particularly when the weather is wet. There are cracks on the wall. There is damp and mould on the walls of the back bedroom. The gutter outside used to overflow, so this may have been solved when the gutter was fixed, but there is damp in the gable end, which may be related to the roof. There is a lack of privacy and a problem with dust in the bathroom if the window is open. There are issues around the valley gutter in the main bedroom. There were signs of damp in the other bedroom, which may have been helped by the guttering works, as there have been no further problems since the room was decorated.
20. Mr Monteith said the Landlord was happy to investigate the cause of the dampness and has no issues with carrying out repair works.
21. Mr MacKay said it had been hoped the matter would improve after guttering repairs. A fan will be installed in the bathroom. The Landlord would like to carry out all the repairs at the same time.

## **Roof**

22. Mr Andrew said there were no issues with the roof ridge. During the inspection of the attic, he had observed problems in the roof trusses, which are of concern as to the structural integrity of the roof. Daylight can be seen at the front-most hip over the play room. It is not clear if this is causing water ingress. On the old gable wall, which is constructed of stone with mud and lime mortar, the new cement harling has locked water in. The wall may need to be repointed and harled with lime. There had been a dry spell before the inspection, and the issues need to be investigated after heavy rain.
23. Mr Lynch said the end gable is saturated and the water cannot evaporate. The damp in the house is worse after heavy rain. There is some historic rot apparent in the loft. No one has been in the Property to inspect these matters. Moray Council asked for this to be done months ago and nothing has happened. He understood the Landlord had been told to get a surveyor to look at the issues.
24. Mr Monteith said the Tenants have carried out internal works, which is tied to the fact that there has been no rent increase. The Tenants require to make the Landlord aware of problems and they have not done that. There has been no recent communication, other than from Moray Council. Contractors had indicated to the Landlord that they had fixed the issues.
25. Mr MacKay said he had spoken to Environmental Health at Moray Council several times. There has been a reliance on contractors to carry out work.

## **Skylights**

26. Mr Andrew said the skylight in the central corridor above the valley gutter is leaking. The skylight beside the back bedroom is not intact, and there is evidence of water ingress. This may be due to storm damage.
27. Mr Lynch said both skylights were initially plastic, which leaked profusely, and he replaced the plastic with double glazing. They are very rusty on the outside and are not sealed. There is water ingress when it is raining. The roofer mentioned that work was required.
28. Mr Monteith confirmed the work would be carried out.

## **Cellar**

29. Mr Andrew said the penetrating damp had been dealt with following work to the gutters. The location of the downpipe and gully to the rear is causing water ingress.
30. Mr Lynch said he uses sawdust in the corner to soak up water. He has installed a drip bar and sill to the front of the door which has helped, but driving rain bounces over the bar and enters. The problem is not as bad as it was.
31. Mr Monteith said it is accepted there is a duty to ensure the Property is wind and watertight. If there is an issue, it will be dealt with.

## **Fence/Gates**

32. The Tribunal explained that the issue raised by the Tenants regarding the height of the fence is not a repairing standard issue.
33. Mr Andrew said some wooden panels on the fence are adrift and there are rotten posts. The hinge pin on the gate is missing.
34. Mr Lynch said the gate is very heavy, difficult to use and unsafe. Part of the driveway has been included in the road and the verge has been removed. The Tenants asked for the fence to be taken back and the Landlord agreed. The Landlord has admitted there was a bad batch of timber and they have replaced the farm fence opposite because of this problem. Mr Lynch asked for the same fence as the farm, as it is higher. The Landlord agreed but has not done this, despite repeated requests. The road use has changed and there is very heavy traffic passing the Property now, which is dangerous.
35. Mr Monteith said Mr Lynch had resisted offers to repair the fence because he wants a higher fence. The Landlord is happy to repair the fence and gate, but he will not install a higher fence.

## Kitchen wall

36. Mr Andrew said there are signs of very minor subsidence. It is an old house. There are issues in the kitchen which might indicate the floor timbers are failing. There are cracks in the wall but they may be historic. The outside step is giving way and this is more urgent than the wall.
37. Mr Lynch said the wall may be deteriorating because the cracks were filled with cement mortar. The step has got worse over the last year. The soil pipe on the back wall leaks sewerage. This has been notified to the Landlord.
38. Mr Monteith said he was not sure if this formed part of the repairing standard.

## Tribunal discussion

39. The Tribunal determined that:

- (a) The House 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 Property is not wind and watertight due to water ingress to the utility room, the cellar, through the skylights, and through the void render applied around the utility room. There may be issues in respect of water ingress through the roof, which require to be investigated. The flooring in the utility room requires repair or replacement.

- (b) The structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order.**

Work is required to the gutters and pipes to ensure the standard is met. Investigation is required to ensure the structural integrity of the roof trusses. The void render requires to be replaced.

- (c) The installations in the house 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.**

The Tribunal made no findings in respect of this section, as there was no complaint made in this regard, despite it being ticked on the application form.

- (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 made no findings in respect of this section, as there was no complaint made in this regard, despite it being ticked on the application form.

**(e) The Property does not meet the tolerable standard.**

The Property does not meet the tolerable standard in respect of the condensation issues within the bathroom.

**Observations**

- 40. The Tribunal found there was no evidence of water ingress at the gable wall, affecting the back bedroom. It is a cold room, and any mould may have been due to condensation. In the main bedroom, there was no evidence of damp, and the cracking may be historic. It is a concern, but does not constitute a failure in terms of the Act. The other signs of damp within the Property may be improved by works to the guttering and roof.
- 41. The Tribunal made no findings in respect of subsidence, given the age and character of the Property.
- 42. The Tribunal made no findings in respect of the issues in relation to the back door step and leak of sewerage at the back wall as these were not included in the application.
- 43. The Tribunal would urge parties to communicate in order that access can be arranged for investigation and repairs.

**Decision**

- 44. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 45. The decision of the Tribunal was unanimous.

**Right of Appeal**

- 46. **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 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



decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Legal Member and Chairperson

Date: 16<sup>th</sup> May 2022