

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24 (2)

**House at 1H Castle Keep Gardens, Stanecastle, Girdle Toll, Irvine, KA11 1AF
registered in the Land Register of Scotland under Title Number AYR59606
("the Property")**

Case Reference FTS/HPC/RP/21/0390

Mrs Fiona A-E Bevan, formerly residing at 1H Castle Keep Gardens, Stanecastle, Girdle Toll, Irvine, KA11 1AF ("The Tenant")

Mr Jaswinder Basra, 22 Macara Drive, Irvine, KA12 0LH ("The Landlord")

24 7 Property Letting, 28 John Finnie Street, Kilmarnock, KA1 1DD ("The Landlord's Representative.")

Tribunal Members – Martin McAllister, Solicitor (Legal Member) and Donald Wooley, Chartered Surveyor (Ordinary Member)

Background

1. This is an application by the Tenant of the Property. It is under Section 22 (1) of the Housing (Scotland) Act 2006 ("the Act."). The application is dated 4th December 2020 and was accepted for determination by the Tribunal on 1st March 2021.
2. The tribunal received confirmation from the Tenant on 23rd March 2021 that the tenancy of the house had been terminated. The email from the tenant indicated that the departure was as a result of the condition of the house.
3. The tribunal continued to determine the case and issued a Minute of Continuation in terms of Schedule 2 Paragraph 7(3) (b) (i) of the Act on 26th March 2021.
4. Progress to determine the application was delayed as a consequence of the coronavirus pandemic.

5. Case management discussions were held on 27th April and 7th June 2021 at which the Respondent was represented by Ms V. McClymont of 24 7 letting agents.

Inspection

6. Mr McAllister, legal member and Mr Wooley, chartered surveyor, ordinary member inspected the Property on 30th August 2021. A copy of the pre- hearing inspection summary and schedule of photographs is attached to this Decision. Mr A. Haldane, the current tenant was present at the inspection.

Observations at the Inspection

7. The property comprises a self-contained, second floor, purpose built flat within a three storey building of similar properties. With the exception of the ground floor main door flats, all are accessed via a shared common stairwell. It is estimated that the property is in the region of 20 years in age.

The building is of traditional brick and render construction under a pitched and tiled roof. The windows appear to be the original timber frame design, double glazed and mostly opened by top / bottom hinges with an optional casement facility. Within the living room there are timber double glazed “French doors” opening to a “Juliet balcony” and these appear to have been described within the “Application” as the “bay window”. Around the base of the French doors / bay window there are rubber seals installed with the dual purpose of creating a seal between the frame and door and preventing water ingress (Photographs 2-3). These have become loose, ill-fitting and damaged.

As viewed externally there is a noticeable gap immediately below the “bay window” between the frame and the external sill and the mastic pointing adjacent to the timber frame is cracked (Photographs 4-6). Internally, what appears to be a recently fitted timber facing has been erected adjacent to the door/bay window opening possibly in an attempt to reduce or prevent drafts and or water ingress. (Photograph 7). Localised and what appears to be old, damp staining was identified around the “bay window”. This was tested with a protimeter and, showing as “green” was considered to be relatively dry with a “low risk” of further deterioration to surrounding timber (Photographs 8-9).

The inspection was completed following a prolonged spell of dry weather. The remaining windows throughout the property were all inspected. Where possible, attempts were made to open and close the fittings. Almost without exception all were very difficult to operate, there were a number of loose and poorly secured handles and the hinges / opening mechanisms were stiff and in places incapable of operating without fear of causing additional damage.

Photographs 10 – 18 are of the windows as described in the accompanying schedule although the pictures do not capture the stiff and defective operating mechanisms. Within the bathroom there is evidence of “gouging” and some damage to the top of the window frame (Photograph 12).

The Hearing

8. A Hearing was held by audio conference on 13th September 2021. Ms McClymont was not present.

Preliminary Matters

9. The tribunal did not commence until after 10.10 to allow time for Ms McClymont to participate. The clerk telephoned the office of 24 7 and was told that Ms McClymont was on sick leave and, prior to that, had been on holiday. The clerk was told that, as a consequence of that, Ms McClymont would be unaware of the existence of the Hearing. The tribunal noted that, on 12th July 2021, Ms McClymont had been emailed with intimation of the dates of the inspection and the Hearing. It also noted that, following upon that intimation, Ms McClymont had contacted the Tribunal office to advise that she would be unable to attend the inspection. The tribunal saw no reason to adjourn the Hearing and considered that the Landlord's Representative had been made aware of the Hearing and could have arranged representation if Ms McClymont had been unavailable.

10. The Tribunal went through the matters detailed in the application:

10.1 The "bay" window

The application states that the bay window lets in water and that there is a draught.

10.2 Other windows in the Property

The application states that all the windows are draughty.

11. The Issues

Sections 13(1) (a) and (b) of the Act provide that the house has to be wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the house (including drains, gutters and external pipes) are to be in a reasonable state of repair and in proper working order.

The specific issues which the tribunal required to address were those detailed in the application and referred to in this Decision.

12. Findings

The Tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the House fails to meet it.

13. Reasons

The tribunal had regard to what had been observed at the inspection.

14. Determination

The tribunal determined to make a repairing standard enforcement order in the following terms:

The Landlord is to repair or replace the windows in the Property, including the patio doors, to ensure that they are in efficient working order and free from draughts.

The Landlord requires to comply with the repairing standard order by 30th November 2021.

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.

M McAllister

Martin J. McAllister,
Solicitor, legal member of the First-Tier Tribunal for Scotland
Tribunal.
13th September 2021