

Housing and Property Chamber

First-tier Tribunal for Scotland



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/23/0270

Sasines Description: Subjects in the County of Ross and Cromarty being the subjects more particularly described in Disposition to Ian Ross and Elizabeth Tolmie Ross recorded in the Division of the General Register of Sasines for the County of Ross and Cromarty on 29th April 1996

The Parties

Mr Mark Rodgers, Rowan Cottage, Drumsittal, North Kessock, Inverness, IV1 3XF (“The Tenant”)

Mrs Elizabeth Ross, Rosscroft Properties, Culbin, Drumsittal, North Kessock, Inverness, IV1 3XF (“The Landlord”)

Subjects: Rowan Cottage, Drumsittal, North Kessock, Inverness, IV1 3XF (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr R Buchan (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 27th January 2023 made under section 22 of the Act, the Tenant 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 Tenant stated in the application form that the Landlord has failed to comply with their duty to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order; and the Property fails to meet the tolerable standard.
3. The Tenant listed the issues as follows:
 - 3.1. *Surface water drainage*
 - 3.2. *Safety of electrical system*
 - 3.3. *Safety of portable appliances*
 - 3.4. *Insufficient means of escape in the event of fire*
4. The Tenant notified the Landlord of the defects by letter on 24th October 2022. The Tenant enclosed a copy private residential tenancy agreement that commenced on 7th February 2020, and photographs pertaining to the issue mentioned at 3.1 above.
5. A large number of emails with attached documents were lodged by both parties prior to the inspection and hearing. Much of the information provided was irrelevant to the application before the Tribunal, and some of the information related to other applications between the parties.

The Inspection

6. An inspection of the Property took place on 20th April 2023. Both Tribunal members were in attendance. Both parties were in attendance.
7. The Property is a bungalow. The main part of the Property was built around 130 years ago, with an extension added in 1987.
8. A photograph showing the Property, the windows and the paved area was taken during the inspection and is attached as a schedule to this report.

The Hearing

9. A hearing took place by telephone conference on 20th April 2023. Both parties were in attendance.

Surface water drainage

10. The weather during the inspection was dry and bright, and Tribunal Members noted that the area complained of – a paved patio immediately beside the front door – was dry. The paving stones were intact and appeared to slop towards the grass to the side of the Property.
11. The Tenant said water ponds in the paved area to the front and side of the Property during heavy rain, on approximately six occasions each year. The water takes three to four days to dissipate. There is a sandbag at the door, and

the water has come close to entering the Property on occasion. He said it was unreasonable to expect him to wade through it. It was his position that there is inadequate or defective drainage, and this may be caused by a membrane below the stones stopping drainage. He referred to the photographs lodged, which show a significant amount of water. He said he had notified the Landlord at least eight times, and asked that a specialist be instructed to assess the situation, but nothing had been done.

12. The Landlord said she was first emailed by the Tenant in respect of this matter on 1st May 2021. The email had been lodged with the Tribunal. The Tenant had informed her that he had rodded the drains, and she had asked him not to interfere with the drains. She believed his actions in rodding the drains had contributed to the ponding. It was also her position that the Tenant and his visitors were parking on the paved area and this had also contributed to the problem. She had not seen the flooding other than in photographs. She said she had been letting the Property for 28 years and the problem had never arisen before. During heavy rain, she can have water gather at her own door, but it goes away. Responding to questions from the Tribunal, the Landlord said there is a drain at the east gable of the Property. The Landlord referred to three photographs she had submitted to the Tribunal which showed the Tenant's vehicle and a van parked on the paved area.
13. The Tenant responded that the drain he had rodded was not connected to the issue. He said no one parks on the paved area, except perhaps on a couple of occasions to unload something heavy. Responding to questions from the Tribunal, the Tenant said he did not recall it being a significant problem from the start of the tenancy until he notified the Landlord in May 2021.

Safety of electrical system

14. The parties agreed that an Electrical Installation Condition Report ("EICR") is currently in place, dated November 2022. The Tenant said he was concerned that there was no EICR in place from April to November 2022.
15. The Landlord said there were issues in relation to access, and she had to get assisted access to the Property.

Safety of portable appliances

16. The Tenant said the freezer had failed a PAT test. He does not use it and had asked for it to be removed, but this had not happened. He rented the Property unfurnished.
17. The Landlord said she issued a failure notice to the Tenant in respect of the freezer. Attempts to uplift the freezer had been unsuccessful, and the Tenant was refusing to give a date to uplift the item.

Insufficient means of escape in the event of fire

18. The Tribunal observed the windows during the inspection. They are upper-opening casement windows of the same size throughout the Property.
19. The Tenant said the windows are too small as a means of escape, and there is only one door to the Property. He claimed this matter was raised by the Landlord. He cited a previous Tribunal decision, FTS/HPC/RP/22/1119, which stated that the windows must be capable of being opened and closed safely for ventilation, cleaning, and possible fire escape.
20. The Landlord pointed out that she had stated within an inspection report that there was no acceptable route to the window in an emergency due to the Tenant's use of the Property. This did not relate to the size of the windows.

Tribunal discussion

21. The Tribunal determined that:

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

The Tribunal considered it likely that the drain serving the paved area is blocked. The Tribunal was not persuaded the issue had been caused by the actions of the Tenant or his visitors in parking occasionally on the paved area. While parking on a paved area may lead to collapse of a drain, there was an insufficiency of evidence to substantiate this claim.

The Tribunal did not find that any works were required in respect of the windows or door to allow escape. Building regulations do not require more than one exit for a bungalow of this size, nor do they require the windows to provide a means of escape.

(b) The Property meets the tolerable standard.

The Tribunal found that the Property meets the tolerable standard. The issue with surface drainage is not of sufficient severity to indicate a breach of the tolerable standard.

Observations

22. The Tribunal made no findings or order in respect of the electrical system. Parties were agreed that a current EICR is in place. The Tribunal cannot make any order in respect of an alleged past failure to meet the repairing standard.
23. The Tribunal made no findings or order in respect of portable appliance testing. The Property was let unfurnished. By his own admission, the Tenant does not require or wish to retain the freezer, although it was not clear to the

Tribunal why he would not arrange collection of the freezer in these circumstances.

Decision

24. 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).

25. The decision of the Tribunal was unanimous.

Right of Appeal

26. 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.

Legal Member and Chairperson
Date: 24th April 2023