

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/22/3561

**22 Main Street, Kelty KY4 0AA
("The Property")**

The Parties:-

Mr Ryan Deacon, 22 Main Street, Kelty KY4 0AA ("the Applicant")

**Mr Mohammed Irshad, 5 Camdean Crescent, Rosyth KY11 2TJ and Mrs
Nasim Ather, 68 Barclay Street, Cowdenbeath, KY4 9LD ("the
Respondents")**

Tribunal Members:

**G Harding (Legal Member)
D Godfrey (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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Applicant and the Respondents at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application dated 30 October 2022 the Applicant applied to the Housing and Property Chamber for a determination of whether the Landlord had 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 the Applicant considered that the Respondents had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-**

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- (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.
- (d) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (e) The house meets the tolerable standard.

Specifically the Tenant's representative complained that:-

The ceiling in bedroom 2 was down as a result of water ingress.

Bedroom 1, the lounge, hall and stairs have cracks in the ceiling and plaster.

Bedroom 5 has no working electric light or switch.

The bathroom has no extractor fan.

The WC has no light.

There is no handrail on stairs.

The window sills are rotten.

The rhones and gutters are broken.

There are no CO detectors.

There is no Electric Installation Condition Report.

There is no Gas Safety Report.

The front door is insecure.

The living room window lets rain and wind in.

3. By Notice of Acceptance dated 4 November 2022 a legal member of the Tribunal with delegated powers accepted the application.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Second Respondent on 15 December 2022.
5. The Tribunal attempted to carry out an inspection of the property on 3 February 2023 but was unable to gain access. The Tribunal conducted a Case Management Discussion ("CMD") following the hearing which was attended by the Applicant and the Second Respondent who was represented by her niece Ms Saleem. As a result of information obtained at the CMD consideration of the application was adjourned to allow intimation of the proceedings on the First Respondent. The Tribunal also determined to issue Directions to the parties and to arrange another inspection and hearing.
6. The Tribunal inspected the Property on the morning of 22 March 2023 and the Applicant was present during the inspection. The Ordinary Member of

the Tribunal took photographs of the property which are attached as a schedule to this decision.

7. Following the inspection of the Property the Tribunal held a hearing by teleconference and heard from both the Applicant and the Respondents.

The Hearing

8. For the Respondents Mr Irshad said that a contractor sent by him to the property had reported that he had been told by the Applicant that the property had been condemned and that the Applicant was going to be rehoused. The Applicant disputed this and said that it was the Respondents' contractor who had attended at the property and condemned it. He said he had offered to provide the Applicant with a letter that the Applicant could submit to Fife council but had not done so. The Applicant went on to say that following the contractor's visit an electrician had contacted him to carry out an inspection but this had not gone ahead because of the property being condemned.
9. The Applicant confirmed that a gas safety inspection had taken place and that there was now a current gas safety certificate. The Tribunal noted that it had seen this at the inspection.
10. The Tribunal noted that the property had an old-style fuse box fitted. It was not able to properly comment on the condition of the electrical installations until a report was obtained.
11. The Applicant confirmed that he had purchased two carbon monoxide detectors for the property. The Tribunal noted that these were not located in the correct places in the property at the time of the inspection and pointed out that it was the Respondents' duty to provide these.
12. With regards to the windows at the rear of the property the Applicant confirmed that the representative from Fife Council who had attended at the property had said that they were rotten. Mr Irshad said that he had never looked at the windows and was therefore unable to comment.
13. With regards to the door at the property, the Applicant explained that there was a gap at the top which he had tried to fix. He said it had not been in that condition when he first moved in. Mr Irshad again said that he had not been to the property and therefore was unable to comment on the condition of the door. He said he had sent a joiner to look at it.
14. With regards to the damage to the ceilings the Applicant said that this had been caused by defective roof coverings. He said that the lead flashings had failed and that he had arranged to get them repaired and also had some slates replaced and water was no longer coming in. He said that there was still a water leak in the kitchen ceiling. He said that the Respondents had thought this had come from the flat roof and had replaced the felt but he had been told a few weeks earlier that the problem

was coming from the chimney. He said that the chimney on the other side of the building needed re-harled but that there was no water ingress from it. For the Respondents Mrs Ather said she had not known about the leak in the kitchen and if she was not told about it she could not fix it.

15. With regards to the Applicant's concerns about the structure of the property, the Applicant said that on his return from holiday last July he discovered that the takeaway below the property was all boarded up. He said in his living room a massive crack had appeared and there was dust everywhere. He said the upstairs wall had dropped and the staircase had come away from the wall. And the window in the living room had dropped. For the Respondents Mr Irshad said that some works had been carried out at the takeaway and a structural engineer had told them to put in a beam. He said that there should be a structural engineers report to say that everything is safe. Mr Irshad confirmed that the Respondents owned the takeaway property. The Respondents could not recall the name of the structural engineer. The Applicant did not know if the engineer had inspected his property when preparing his report.
16. The Applicant confirmed that a fan had now been installed in the bathroom and that the light was working. He also confirmed that the rhones and gutters had been attended to.

Summary of the issues

17. The issues to be determined are whether:-
18. (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- (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.
- (d) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (e) The house meets the tolerable standard.

Findings in fact

19. The Tribunal finds the following facts to be established:-
- The tenancy is a Private Residential tenancy.
 - The Respondents have provided a satisfactory Gas Safety Certificate
 - The Applicant has purchased two carbon monoxide detectors but these were not fixed in accordance with statutory requirements.
 - The Respondents have failed to provide an Electrical Installation Condition Report ("EICR") despite being issued with a direction from the Tribunal.

- The windows to the rear of the property show signs of rot and are in need of attention.
- The door to the property is in poor condition and in need of repair.
- The ceilings in the property have been damaged as a result of water ingress.
- The applicant has replaced flashings and slates on the roof to prevent further water ingress.
- There is still water ingress in the kitchen
- The chimney on the east gable is in need of repair.
- There has been movement at the front of the property resulting in cracks in the walls and staircase and the living room window dropping.
- The bathroom now has an extractor fan and light.

Reasons for the decision

20. The Tribunal noted at the inspection that there was an old-style fuse box at the property and it was considered to be important by the Tribunal that an EICR was provided by the Respondents in accordance with its direction issued in February 2023. The Respondents were reminded of the importance of complying with the direction at the hearing. Despite this no EICR has been provided nor any explanation for such failure
21. Although the Applicant has taken steps to remedy some of the issues affecting the water ingress at the property himself by replacing flashings and slates there is still evidence of water ingress particularly above the kitchen at the property. It is therefore necessary for the Tribunal to have sight of a report from a roofing contractor in order to determine what further work is required to be undertaken by the Respondents to make the property wind and watertight.
22. Although the Respondents indicated they had obtained a report from a structural engineer regarding the property following alterations carried out to the ground floor property the Tribunal has not seen the report and the Respondents appeared vague as to whether the Applicant's property had been inspected by the structural engineer during the course of preparation of the report. The Tribunal has noted the movement to the front of the property that has resulted in cracks appearing in the walls and staircase and in the living room window dropping and considers that a new structural engineer's report is necessary in order that the Tribunal can be satisfied as regards the condition of the property.
23. The Tribunal noted the condition of the windows at the rear of the property and also the entrance door and was satisfied that they were in need of repair. It was also apparent that the ceilings in the property had previously been damaged as a result of water ingress and required repair.
24. The Tribunal did not consider the Respondents explanation that they had not been aware of the issues affecting the property to be tenable given the involvement of Fife Council in October 2022 and it appeared relatively few

of the issues had been addressed in the months that had followed with the Applicant dealing with some major issues himself and even purchasing his own carbon monoxide detectors.

Decision

25. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
26. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
27. The decision of the tribunal was unanimous.

Right of Appeal

28. **A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

29. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed: G Harding

Date: 20 April 2023

Chairperson