

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act

Chamber Ref: FTS/HPC/RP/22/4474

Re: Property at 41, Woodcroft Avenue, Largs, North Ayrshire, KA30 9EW registered in the Land Register for Scotland under Title Number AYR15648 ("the Property")

Parties:

Ms. Susan Thomson residing at the Property ("the Tenant") per her agent, Mr. Alister Meek, CHAP, Michael Lynch Centre, 71, Princes Street, Ardrossan, North Ayrshire, KA22 8DG ("the Tenant's Agent")

Mr. Bob otherwise Robert James Whitney residing at 63 Ritchie Street, West Kilbride, North Ayrshire, KA23 9HF ("the Landlord") per his agents Ayrshire Letting and Sales Ltd., 26 Ritchie Street, West Kilbride, North Ayrshire, KA23 9AL ("the Landlord's Agents")

Tribunal Members:

Karen Moore (Chairman) and Carol Jones (Ordinary Member)

Decision

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 Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (a) of the Act and that for the reasons set out below.

Background

1. By application received between 22 December 2022 and 3 February 2023 ("the Application"), the Tenant's Agent on behalf of the Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord has failed to comply with the duty imposed on it by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (a) of the Act.

2. The Application complained of the following:-
- i) The windows in the bedrooms and bathroom are not windtight;
 - ii) The floorboards in both bedrooms and bathroom are suffering from dry rot;
 - iii) The internal doors throughout are warped and do not open or close correctly.
3. The letter of intimation to the Landlord repeated these complaints and added that the rear of the Property floods frequently and that the cause requires to be investigated.
4. The Application was referred to the Tribunal and an Inspection and Hearing were arranged for 24 April 2023 at 10.00 and 14.00 respectively.
5. Prior to the Inspection and Hearing that, the Tribunal issued the following Direction and Notice:-

Direction: *"With regard to the Notice of Referral and Intimation of Inspection and Hearing issued on or around 14 March 2023 to the Landlord care of the said **Ayrshire Letting and Sales Ltd.**, the said **Ayrshire Letting and Sales Ltd** are required:*

- (i) *to confirm to the Tribunal that the Notice of Referral and Intimation of Inspection and Hearing have been made known to the Landlord and*
- (ii) *to confirm to the Tribunal the date and the method by which the Notice of Referral and Intimation of Inspection and Hearing were made known to the Landlord or*
- (iii) *if the Notice of Referral and Intimation of Inspection and Hearing have not been made known to the Landlord, deliver the Notice of Referral and Intimation of Inspection and Hearing to the Landlord immediately and*
- (iv) *confirm to the Tribunal the date and the method by which the Notice of Referral and Intimation of Inspection and Hearing are delivered to the Landlord."*

Notice: *"In terms of Rule 21(1)(b) of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the Tribunal requires the said **Ayrshire Letting and Sales Ltd.**, to provide a current home address for the Landlord no later than 30 March 2023"*

6. Also, prior to the Inspection and Hearing, the Landlord's Agents submitted Productions being eight sets of email correspondence relating to the Tenant's tenancy of the Property

Inspection

7. The Inspection took place on 24 April 2023 at 10.00 at the Property. The Tenant was present. The Tenant's Agent was not present. The Landlord was not present and was not represented.
8. The property comprises a two storey, end terrace house constructed by Wimpey Homes Holdings Ltd in the 1980's and located in an elevated position around 0.5 miles east of Largs town centre. The accommodation comprises a small entrance

vestibule, living room and kitchen on the ground floor and 2 bedrooms and a bathroom on the upper floor. It has UPVC double glazed windows and gas fired central heating. There are gardens to the front, side and rear of the house and access is via steps to the front leading from a parking area. The back garden has a level paved patio with a steep grassed area above.

9. The Tribunal inspected the parts of the Property referred to in the Application namely:-
- i) The windows in the bedrooms and bathroom;
 - ii) The floorboards in both bedrooms and bathroom;
 - iii) The internal doors throughout and
 - iv) The back garden of the Property.
10. At the Inspection, the Tribunal took digital photographs which photographs form the Schedule annexed to this decision.

Hearing

11. A Hearing was held on 24 April 2023 at 14.00 by telephone conference call. Mr. Meek of the Tenant's Agents took part. Ms. McCallum of the Landlord's Agent took part. Neither the Tenant nor the Landlord took part.
12. The Tribunal asked Ms. McCallum for the Landlord and the Landlord's Agents response to the Direction and the Notice. Ms. McCallum stated that she thought that the Landlord's Productions covered the information requested. She confirmed that the Landlord had received the Application and the Notice of Intimation and confirmed that the Landlord's address is the same as on the title sheet. She understood that he had received correspondence to this address.
13. The Tribunal asked Ms. McCallum to explain the relevance of the Productions. Ms. McCallum stated that the Productions are the record of the tenancy and show that, when repairs are notified, they are attended to straight away and within three days. She explained that the Landlord's Agents have a procedure to use their own contractors who have "carte blanche" to carry out all works necessary to ensure that properties meet the Repairing Standard up to £100.00. For works over £100.00, authority from the relevant landlord is sought. She assured the Tribunal that all of the properties managed by the Landlord's Agents are managed to the correct standards.
14. With regard to the Property, Ms. McCallum stated that on receipt of the Application, contractors had been sent to the Property to carry out the works needed and that further works required but not notified had been carried out. She stated that there had been issues with the Tenant's attitude to contractors which had led to one contractor refusing to attend further. Ms. McCallum stated that there had been a large insurance claim in respect of a slow leak in the bathroom which had been exacerbated by the Tenant not reporting the repair until significant damage had been caused and that this had caused difficulties for the Landlord. The bathroom suite and the flooring had been replaced in August 2021

and the bath had since been re-sealed. It was Ms. McCallum's understanding that the floorboard issue had been caused by the leak and that the floorboards were now drying out.

15. With regard to the windows and doors, it was Ms. McCallum's understanding that these had been fixed. The Tribunal advised that at the Inspection the rear bedroom window did not close properly as the handle is not operating correctly due to a missing part and the door to the internal porch or vestibule does not close properly as the handle is defective. Ms. McCallum stated that she would attend to these matters.
16. With regard to the flooding in the back garden, Ms. McCallum advised that the Landlord's Agents' gardener had looked at this and was of the opinion that the Tenant had blocked the drain with a large bucket of weeds and other items and if these items were removed the water would drain freely. Ms. McCallum stated that problems with water draining from the Property should be referred by the Tenant to Scottish Water. The Tribunal advised that, at the Inspection, the Tenant had shown a video of flooding and that the Tribunal had noticed that there appears to be one land drainage pipe which is partially exposed and appears not to be blocked by any of the Tenant's possessions or to be capable of being so blocked. The only other drain is the drain at the rear of the building for the gutter and downpipe.
17. The Tribunal advised that, at the Inspection, the Tenant had confirmed that the leak at the bath had been fixed, the internal doors with the exception of the internal porch/vestibule door had been fixed and the window handles, with the exception of the rear bedroom window had been replaced. The tenant also pointed out some movement in the bedroom floors. The Tribunal noted that, although smoke detectors were not mentioned in the Application, on testing these, the detectors did not appear to be interlinked or operating as interlinked. Ms. McCallum stated that she understood that the smoke detectors are interlinked and in working order and would attend to this.
18. Mr. Meek had nothing to add and stated that the Tenant's concerns were now the rear bedroom window, the floorboards and the flooding to the rear garden.

Summary of the Issues

19. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (a) of the Act at the date of the Inspection and Hearing.

Findings of Fact

20. From the Inspection, the Tribunal found the following in respect of matters specifically complained of in the Application:
 - i) The bathroom sanitary ware, ceiling and flooring have been replaced;
 - ii) The bath has been resealed;

- iii) The bathroom window and the front bedroom window are fully operable and in good order;
- iv) The bathroom, the two bedroom doors and the kitchen door are fully operable and in good order;
- v) The bedroom floorboards have some minor movement but are not unsound;
- vi) The rear bedroom window has a defective handle which prevents the window from closing properly;
- vii) The internal porch vestibule door has a defective handle which prevents it from opening and closing properly;
- viii) There appears to be flooding of the rear back garden from a steeply sloped woodland area immediately to the rear of the Property.

Decision of the Tribunal and reasons for the decision.

21. The Tribunal's decision is based on the Application with supporting documents, the Landlord's Productions, the Inspection, and the Hearing.

22. In respect of the complaint in terms of Section 13 (1) (a) of the Act that the Landlord has failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, the Tribunal found that the poor condition of the rear bedroom window handle and the internal porch vestibule door handle are such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

23. The decision is unanimous.

Repairing Standard Enforcement Order (RSEO)

24. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make an RSEO as required by Section 24 (1) of the Act.

25. Being satisfied that the Landlord has been given notice of a complaint of flooding to the rear garden and having made a finding in respect of this, the Tribunal include a requirement to attend to the flooding in the RSEO.

26. The Landlord's attention is drawn to the Tribunal's comments in respect of the smoke detectors.

Appeal

27. 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.

Signed

K Moore

Karen Moore, Chairperson

25 April 2023

Housing and Property Chamber

First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 41 Woodcroft Avenue, Largs KA30 9EW by the First-tier Tribunal for Scotland (Housing and Property Chamber) on Monday 24 April 2023

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Front Elevation



Back Bedroom window handle - does not fully close



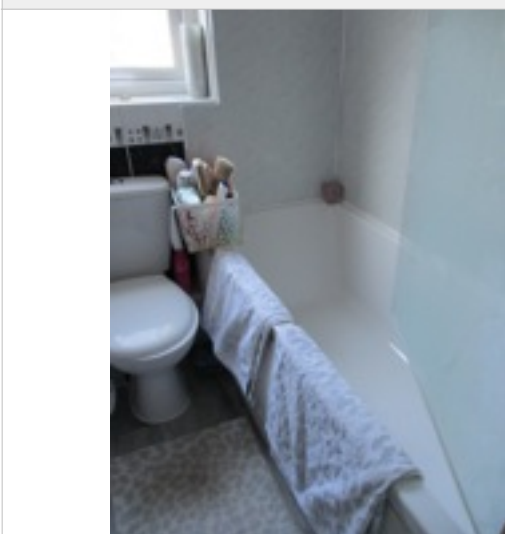
Back Bedroom window handle - showing defective/missing part to lock on lever



Bathroom window - new handle









Front Bedroom window - new handle

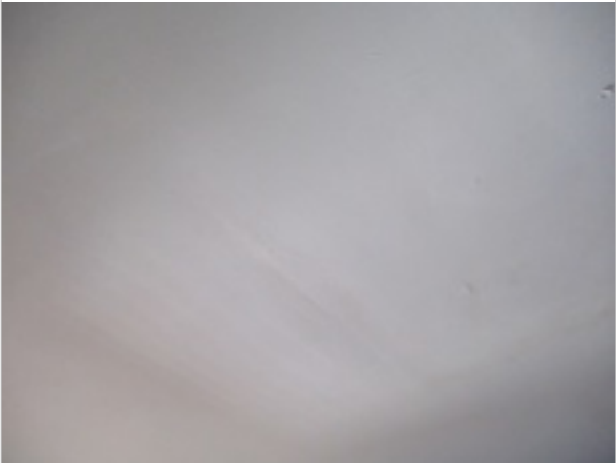

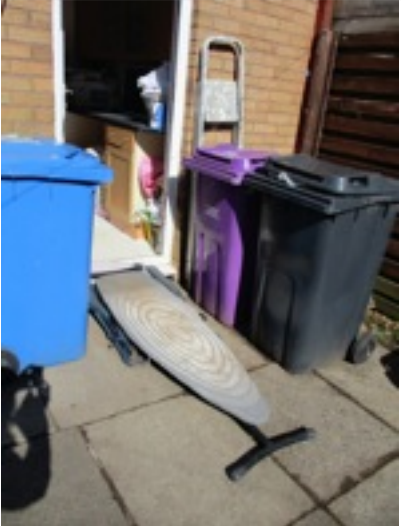





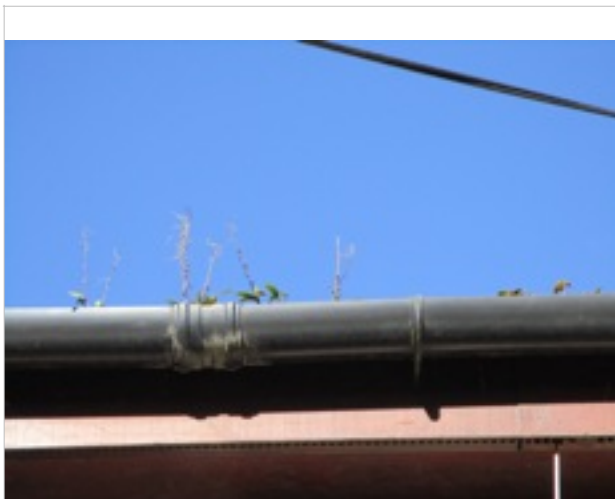
Bathroom - new 3 piece suite



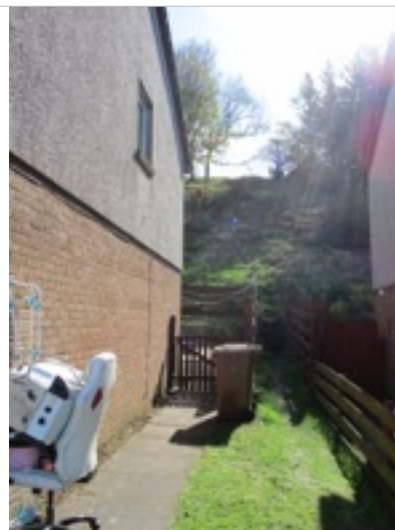
Bathroom - new 3 piece suite

	
<p>Bath resealed</p>	<p>Bathroom ceiling and lighting replaced</p>
	
<p>Back Bedroom door - opens and closes properly</p>	<p>Bathroom door - opens and closes properly</p>
	
<p>Internal timber/glazed panel door to front porch</p>	<p>Internal timber/glazed panel door to front porch showing door handle defective/loose</p>

	
<p>Living room ceiling - slight water marks - former leak from bathroom</p>	<p>Back Garden- grassed slope below adjoining very steep sloping land to east</p>
	
<p>Back garden, ironing board being used as a ramp to avoid water logged patio area after rain</p>	<p>Back Garden sloping grassed area above level paved patio.</p>
	
<p>Back garden - exposed section of land drainage pipe at base of grassed slope on southern boundary</p>	<p>Rear elevation - base of downpipe - drain appears clear</p>



Rear elevation - gutter choked with vegetation



Side garden

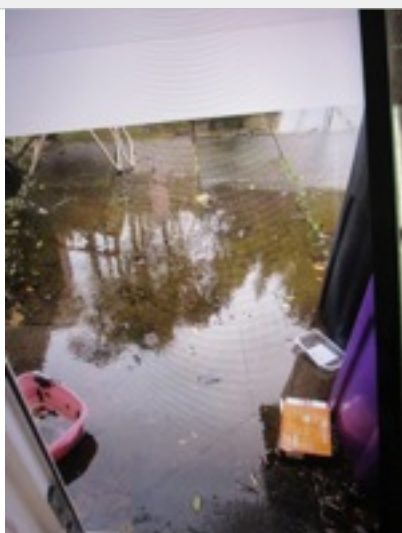


Image of tenant's video on phone - showing the extent of flooding in back garden after heavy rain



Ceiling mounted smoke detector - landing (Observation)



Ceiling mounted smoke detector - living room (Observation)



Ceiling mounted heat detector - kitchen (Observation)