

# 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 of the Act**

**Chamber Ref: FTS/HPC/RP/21/0065**

**Re: Property at 95 Maree Drive, Condorrat, Cumbernauld, G67 4LW registered in the (“the Property”)**

**The Parties:**

**Miss Jessica Merchant (“the Tenant”) residing at the Property represented by Mr J. Melvin, Advice Worker, Coatbridge CAB, Ellis Street, Coatbridge M15 3AA (“the Tenant’s Representative”)**

**Salah Alkirwi and Linda Alkirwi trading as Earls Homes, 47 Main Street, Cumbernauld, G67 2RT (“the Landlord”) represented by Mr Salah Alkirwi, one of the registered proprietors of the Property**

**Tribunal Members:**

**Karen Moore (Chairman) and Kingsley Bruce (Ordinary Member)**

### **Decision of the Tribunal**

The Tribunal determined 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 Sections 13(1)(a), 13(1) (b), 13(1) (c), 13(1) (d) and 13(1) (h) of the Act and has not failed to comply with that duty in respect of Sections 13(1) (f) and 13(1) (g) of the Act.

### **Background**

1. By application received on 8 January 2021 (“the Application”), 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 Sections 13(1)(a), 13(1) (b), 13(1) (c), 13(1) (d), 13(1) (f), 13(1) (g) and 13(1) (h) of the Act. The Application was referred to the Tribunal.
2. A Case Management Discussion (“CMD”) took place on 26 March 2021 at 10.00 by telephone conference call at which the Tenant, the Tenant’s Representative

and Mr Alkirwi of the Landlord were all present. The Tribunal adjourned the CMD to Friday 23 April 2021 at 10.00 am and issued the following Direction:

*“The Tenant is Directed to allow access to the Landlord and its contractors and employees for the purposes of the Landlord complying with this Direction.*

*The Landlord is Directed to:*

*Instruct a suitably qualified gas heating engineer (i) to carry out an inspection and to provide the Landlord Gas Safety Certificate/report and to provide a report on the operation of the gas fired heating and hot water supply and (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards to ensure that the entire system is fully functioning, safe and in proper working order;*

*Instruct a SELECT or NECEIC electrician (i) to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property, (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) to ensure that the carbon monoxide detector, heat detector and provision for detecting fires and for giving warning in the event of fire or suspected fire in the Property are positioned to comply with current regulatory standards;*

*Instruct suitably qualified contractors to investigate, report and undertake such repairs as may be necessary to address issues of damp or water ingress, including, as required, plumbing contractor, roofing contractor and, if necessary, damp specialist contractor to investigate and report on the dampness in the Property (“the Dampness Report”) and to instruct any works recommended by the contractor(s);*

*Repair or replace the damaged flooring in the Property and Submit the Gas Safety Report, the EICR and the Dampness Report to the Tribunal and the Tenant or the Tenant’s Representative.”*

3. Prior to the adjourned CMD, the Landlord submitted a Report on the progress made in respect of repair to the Property which advised as follows:
  - i. All electrical installation was checked and repairs were carried out; smoke and heat detectors were all checked and replaced where needed.; an additional smoke detector and a radio/wireless unit to link with existing alarm loop are required to comply with current legislation; these will be fitted in week commencing 26 April; a carbon monoxide detector was installed; the electrical installation of the Property has been carried out and the EICR will be issued in week commencing 26 April 2021.
  - ii. The boiler is to be replaced after which gas testing will be carried out
  - iii. Damaged floor and floor boards were repaired.
  - iv. The source of dampness needs to be investigated further when surface moisture is dried out.
  
4. The adjourned CMD took place on 23 April 2021 at 10.00 by telephone conference call at which the Tenant, the Tenant’s Representative and Mr Alkirwi

of the Landlord were all present. Mr Alkirwi confirmed that actions taken by the Landlord as outlined in the Report and explained in detail and from his own professional expertise that identifying the source and cause of the dampness in the Property was proving difficult. He explained that there are both dampness, possibly caused by condensation but apparently not caused by rising damp or water ingress, and liquid in the Property. He explained that, in an effort to identify the source and cause, measures are being taken which include removing the flooring and providing, at the Landlord's expense, additional heating to attempt to dry out the Property. Tenant's Representative agreed that works were being carried out and advised the Tribunal that the Tenant was content at and encouraged by the progress made

5. The issue to be determined by the Tribunal at that time was whether or not the Landlord has failed to comply with the duty imposed on it by Section 14(1)(b) of the Act. As the information before the Tribunal was still not sufficient to make this determination, the Tribunal adjourned the CMD to an Inspection and Hearing.

#### **Inspection and Hearing**

6. An Inspection was fixed for 18 June 2021 and a Hearing by telephone conference call was fixed for 25 June 2021.
7. Prior to the Inspection, the Landlord lodged the following documents, as required by the Direction, with the Tribunal which were forwarded to the Tenant and the Tenant's Representative:
  - i) An updated report on further work carried out at the Property;
  - ii) A current and compliant EICR;
  - iii) A current and compliant Gas Safety Certificate and
  - iv) A Dampness Specialist Report prepared by Curol Ltd., of Larkhall.
8. The Dampness Specialist Report stated that a survey was carried out on 27 May 2021 at which rising and penetrating damp and lifestyle condensation were noted. Water penetration was noted at the roof and leaks were noted in the bathroom due to defective plumbing. Dry rot was also noted in the main bedroom. The Report recommended a roof inspection for the penetrating damp, further investigation of the plumbing and treatments for the rising damp and rot.
9. The updated report advised that the electrical installation at the Property had been checked and all necessary repairs were carried out, that smoke and heat detectors had been upgraded to comply with current regulations and a new electrical shower and new boiler had been installed. The report further advised that damaged flooring and floor boards had been repaired and the roof had been inspected and gutters were cleaned.
10. The Inspection took place at the Property on 18 June 2021 and the Hearing took place by telephone conference call on 25 June 2021. The Inspection was carried out under the Chamber's Covid-19 protocol by the Tribunal members. The Tenant and Mr Alkirwi of the Landlord and his property manager, Ms Louise

Craig, were present outwith the Property. Following the Tribunal's inspection of the Property, Mr Alkirwi of the Landlord and Ms. Craig entered the Property to carry out their own inspection.

11. Following the Inspection, the Inspection Report was issued to the Parties. The Inspection Report was broadly consistent with the Dampness Specialist Report, with the exception of the finding of dry rot. The Inspection Report noted the following:

**"Bathroom:**

- *Fitted floor coverings were not disturbed for the purposes of the inspection. Below floor coverings it was evident that floor boards were defective, unsupported and likely affected by decay. The issues identified were consistent with plumbing defect having caused damage.*
- *Heavy condensation affecting the ceiling, with black spot mould present.*

**Hallway:**

- *Decorative paper finish stripped, plaster painted. Evidence of condensation, with black spot mould apparent to ceiling/wall surfaces.*

**Bedroom 3:**

- *High levels of moisture apparent when tested with an electronic moisture meter to lower wall along the party or gable wall, which appears to be earth retaining.*
- *Evidence of condensation and black spot mould.*

**Mid-bedroom:**

- *Heavy condensation and black spot mould along exterior wall behind bed.*

**Bedroom 1:**

- *Visible dampness to lower wall (party or gable wall) and also along internal return wall. Damp readings were taken which confirmed ongoing damp penetration.*
- *Flooring showing signs of decay and defective beneath floor coverings.*
- *Timber skirtings decayed.*

**Lower hallway:**

- *High damp readings along earth retaining wall.*
- *Evidence of condensation and black spot mould."*

12. The Hearing took place on 25 June 2021 at 10.00 by telephone conference call at which the Tenant, the Tenant's Representative and Mr Alkirwi of the Landlord were all present. The Tribunal's Inspection Report was discussed and the Parties agreed that it was accurate and that work was required to remedy the dampness in the Property.

13. Mr. Alkirwi advised the Tribunal that he proposed a scheme of works to include the specialist dampness works as recommended by the Dampness Specialist Report, removing the sanitary fittings in the bathroom to identify and repair the water defective plumbing and repair or replace the damaged flooring, install a more effective extractor fan to alleviate condensation, remove and repair the damaged floor, flooring and skirting in the main bedroom and thereafter make good the décor. Mr. Alkirwi advised that as this work will be intrusive and will take some time to complete, it will be necessary for the Landlord's contractors to be

given access as required by them and it will be necessary for the Tenant to be rehoused temporarily. The Tenant accepted this

14. The Tenant's Representative noted that the Application complained of draughts at the windows. The Tribunal had been unable to inspect these due to the Chamber's Covid-19 protocol restrictions. However, Mr. Alkirwi undertook to include this in the scheme of works.
15. The Tribunal noted that certification for the newly installed boiler would require to be submitted by the Landlord. Mr. Alkirwi undertook to do so. The Tenant's Representative expressed his thanks to Mr. Alkirwi for his positive and helpful approach to dealing with the Application.

### **Findings of Fact**

16. The Tribunal's findings in fact were made from the Application, the CMDs and the Inspection and Hearing.
17. The Tribunal found the following matters established:-
  - a. There is a short assured tenancy between the Parties;
  - b. There is a current EICR and a Gas Safety Certificate for the Property;
  - c. There are smoke detectors and a carbon monoxide detector all of which comply with the current regulations in the Property;
  - d. A new boiler and a new electric shower have recently been installed in the Property;
  - e. There is evidence of penetrating damp at the roof of the Property;
  - f. There is evidence of rising damp at various points in the Property;
  - g. There is evidence of condensation dampness at various points in the Property;
  - h. The floors in the bathroom and the main bedroom of the Property appear to be affected by decay or water damage and the flooring in those rooms is defective;
  - i. The timber skirtings in the main bedroom of the Property are decayed.

### **Summary of the Issues**

18. The Tribunal acknowledged the work carried out by Landlord and the Landlord's undertakings, however, in these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, 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), 13 (1) (b), 13(1) (c), 13(1) (d), 13(1) (f), 13(1) (g) and 13(1) (h) of the Act at the date of the Inspection.

### **Decision of the Tribunal and reasons for the decision.**

19. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the dampness within the Property is such that the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
20. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed 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, the Tribunal found that the dampness within the Property is such the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
21. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations 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 found that the poor condition of the bathroom is such that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
22. In respect of the complaint in terms of Section 13 (1) (d) that the Landlord has failed to ensure that the fixtures, fittings and appliances provided by him under the tenancy are in a reasonable state of repair and in proper working order, the Tribunal found no evidence that this duty had not been complied of and so found that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
23. In respect of the complaint in terms of Section 13 (1) (f) that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the Tribunal being satisfied that there are sufficient heat and smoke detectors in the Property, the Tribunal found that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
24. In respect of the complaint in terms of Section 13 (1) (g) that the Landlord has failed to ensure that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration which is hazardous to health, the Tribunal being satisfied that there is a carbon monoxide detector in the Property the Tribunal found that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
25. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the tolerable standard, the Tribunal found that the poor condition of the Property in respect of dampness is such that it does not meet the basic standard of repair to make it fit for a person to live in and so found that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

26. The decision is unanimous.

**Repairing Standard Enforcement Order**

27. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

**Appeal**

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.

# K Moore

Signed

Karen Moore, Chairperson

6 July 2021

