

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION OF THE TRIBUNAL
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

7 Glenacre Drive, Airdrie ML6 8BS ("the House")

The Parties:

Jennifer Anderson, 7 Glenacre Drive, Airdrie ML6 8BS ("the Tenant")

**Lee Robert McFarlane Johnston, 10 Strone Place, Airdrie and LRJ Properties
Ltd 30 Oakbank Street, Airdrie ML6 8LE ("the Landlord")**

Reference number: FTS/HPC/RP/22/3733

DECISION

The Tribunal, having made such enquiries as are 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 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the inspection and hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 11 October 2022 (hereinafter referred to as "the Application") the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight 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;...
...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...
...(h) the house meets the tolerable standard.” (in particular as set out in Section 86 (1) of the Housing (Scotland) Act 1987:
“...(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire:
(k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration hazardous to health”)*

The Tenant complained about: water ingress presenting itself in the rear first floor bedroom at the rear wall and ceiling and in the attic bedroom at the chimney breast; water leaking into the kitchen from the bathroom above and inadequate fire and carbon monoxide detectors.

By letter of 28 October 2022, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson
Andrew McFarlane, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

A hearing and inspection were fixed for 30 January 2023.

The Tribunal inspected the House on 30 January 2023. The Tenant was present.

Following the inspection, the Tribunal held a telephone hearing on the same day. The tenant and Mr Johnston were present. The Tribunal considered the written evidence submitted by the parties and their submissions.

Submissions at the Hearing

The Tenant confirmed that water had been leaking into the kitchen when the bath was used. The Landlord advised that his plumber had checked but could find no leaking pipes. He suggested that water may be overspilling onto the floor when the bath was used. While that might provide an explanation for some water leaking into the kitchen, it seems more likely to us that the cause of the water ingress is connected with the seal between the bath and the bathroom wall or connected to the tiling and grouting in the bathroom. The Landlord indicated that he would instruct further investigations.

The Tenant reported that there had been water ingress in the rear first floor bedroom at the rear wall. The parties agreed that the Landlord had cleared the gutter but the Tenant indicated that the problem has continued. The cause of the water ingress may relate to water entering via the roof. There is also evidence of water ingress at the chimney breast in the attic bedroom. The Landlord's position was that he would instruct investigations.

As regards fire and carbon monoxide detection, the Tenant is concerned that the smoke alarms are not in working order. The Landlord advised that all his properties had been fitted with interlinked alarms and he believed that was the case in the House. He would have his electrician check and confirm.

The Landlord estimated that the above matters could be addressed within 28 days.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a two storey end terrace house with an attic conversion.
- 2 The Tenant is the tenant under a private residential tenancy agreement.
- 3 Lee Robert McFarlane Johnston is the registered owner of the House.

- 4 The Tenant took possession of the House from 15 July 2021. The tenancy is continuing.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Tenant notified the Landlord's representative of defects in the House which are now the subject of the Application by text messages including on 19 October 2021 and 19 September 2022.
- 7 The inspection on 30 January 2023 revealed:
 - a. There was evidence of staining and decorative damage consistent with water ingress at the rear wall and ceiling of the first floor rear bedroom and at the chimney breast of the attic bedroom.
 - b. There was water staining to the kitchen ceiling and the side internal wall consistent with water leaking from the bathroom above.
 - c. A carbon monoxide alarm was present and functioned on testing.
 - d. Battery operated smoke and heat detectors were fitted and sounded on testing but they did not sound together. They do not appear to be interlinked.

A schedule of photographs taken at the inspection has been provided to the parties.

Reasons for the Decision

Water Ingress

We observed evidence of water ingress in the back bedroom and the attic bedroom.

Kitchen Ceiling

We identified evidence of water leaking from the bathroom above and staining on the kitchen ceiling.

Fire and Carbon Monoxide Detection

Smoke detectors were observed throughout the House. They were within their use by dates. Each functioned on testing. However, the alarms did not sound in all of the detectors simultaneously, suggesting that they are not interlinked. A carbon monoxide detector was in place.

The Repairing Standard

The Tribunal considers that the presence of water ingress; the leaking of water from the bath to the kitchen and the smoke alarms not being interlinked represent breaches of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made. Having regard to the nature of the works required at the House and the Landlord's representations, the Tribunal have allowed 31 days for the repairs to be carried out.

Observations

The garden decking is in very poor condition. It is likely to pose a danger to children. It needs significant repair or replacement. The door is detached from the garden shed. These issues are not included in the Application so we make no formal finding in respect of them but the Landlord should be aware that these could feature in any future application.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

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 of the 2006 Act

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.

John M McHugh
Chairperson

Date: 3 February 2023