

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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber Ref: FTS/HPC/RP/23/1544

Miss Sarah Marie Smith, residing at the House (“the Tenant”)

Mr Daniel Joseph Falls, 27 Kingsley Court, Uddingston, G71 6QH (“the Landlord”)

Tribunal Members:

Nicola Weir (Legal Member) and Andrew Taylor (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 Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 16 May 2023, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House. The Tenant claimed that there were plumbing issues in the bathroom of the property above the House and in her own bathroom, that the entire bathroom needed replaced due to water damage, that there was damp and mould, that there was a leak in the kitchen that needed fixed, that she had concerns about the electrics following floodings and had experienced issues with the replacement gas boiler. Supporting documentation was lodged with the application. The Tenant was asked to provide a copy of the tenancy agreement and proof that she had notified the Landlord in writing of the repairs required to the House, which she subsequently lodged.

2. On 13 July 2023, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 19 December 2022, requesting that any written representations should be lodged with the Tribunal by 30 August 2023. At the request of the Tenant, the Legal Member subsequently extended the time for written representations to be lodged by both parties until 12 September 2023.
3. Written representations were lodged by the Landlord’s agents, Ian C McCarthy, Solicitors dated 29 August 2023 and from the Landlord himself dated 11 September 2023. The Landlord submitted with his representations a Gas Safety Record dated 28 August 2023 and an Electrical Installation Condition Report (EICR) dated 29 August and 1 September 2023. The Tenant also submitted further representations in response by emails dated 27 August and 4 September 2023. The Tenant lodged some photographs of the interior of the House and copies of screenshots of text messages which appeared to be between herself and “Liam” on various dates between July 2021 and April 2023.
4. The Tribunal Members inspected the House on the morning of 26 September 2023 at 10am. The Tenant was present as was her mother, in a supportive capacity.

Findings on Inspection

5. A Pre-Hearing Inspection Summary and Schedule of Photographs taken during the Inspection by the Ordinary Member and dated 26 September 2026 is attached to this Statement of Decision.
6. At the time of the Inspection, the weather was overcast and dry. The Tribunal noted that the House is a ground floor flat within a block of four. The Ordinary Member took photographs and used a dampness meter to take readings of various areas within the House. The Tribunal noted that there was evidence of water damage on the hall wall/ceiling adjacent to the bathroom door, that there was a small damp reading at skirting level on the hall wall adjacent to the bathroom door, that there was evidence of water damage on the kitchen wall/ceiling (mutual wall with the bathroom), that there was evidence of historic water damage in the kitchen at the cornice (opposite the other water-damaged wall) and that there were smoke and heat detectors installed in the House.
7. The Tenant also advised the Tribunal at the Inspection that there was a suspected woodlouse infestation in the bathroom at the site of the bathroom cabinet unit. No woodlice were seen. It was also noted that this matter had not formed part of the Tenant’s application to the Tribunal.

Evidential Hearing

1. Following the Inspection of the House, the Tribunal held an in-person Hearing at Glasgow Tribunals Centre at 11.45am on 26 September 2023. The Tenant was present and accompanied by a supporter, Ms Danielle King. The Landlord was also present and represented by Ms Jackie White, Solicitor from Ian C McCarthy, Solicitors.
2. The Tenant had brought it to the attention of the Tribunal in advance that she suffers from a medical condition and may need support during the Hearing. The Tribunal had indicated to the Tenant that if she requires a break or breaks during the Hearing, to let the Tribunal know and this would be accommodated.
3. After introductions and introductory comments from the Legal Member, the Ordinary Member provided a brief summary of what had been noted by the Tribunal at the Inspection of the House earlier, given that the Landlord and his representative had not been present. Ms White indicated that they had not been aware from the paperwork that they were able to attend the Inspection. The Ordinary Member indicated that there was evidence of water damage on the hall wall, both at the top near the ceiling and at skirting level, and also on the kitchen wall which was mutual to the bathroom. The damp meter showed a small amount of moisture present which was indicative that the walls were drying out following the previous water damage. There was a small amount of cracking evident at the cornice on the opposite kitchen wall which may have been caused by historical water damage. The Ordinary Member stated that the bathroom was all panelled so the walls behind could not be seen. It was noted that there was a problem with the shower head riser rail which was coming off the wall and it appeared that it was damaged and the screws corroded. The Tenant had advised the Tribunal at the Inspection that water was leaking out from below the bathroom unit situated beside the toilet and that she suspected that there was a woodlouse infestation there. The Ordinary Member stated that no woodlice had been seen by the Tribunal, nor any water leaking out and suggested that any water forming there may be due to condensation. As to the electrics within the House, the Ordinary Member referred to the terms of the EICR and indicated that the electrician would have tested the light switches, etc in connection with doing this report. He mentioned that the EICR was "unsatisfactory" and cites nine C1 and C2 faults having been found, some of which the terms of the EICR indicate were rectified at the time. However, it is unclear which issues were rectified and which remain outstanding. It would appear that the landlord is aware that the EICR was unsatisfactory as he provided this EICR to the Tribunal. The EICR had also indicated that the smoke detection system in the House, although interlinked, is not compliant with current Scottish Government guidance due to the batteries being removable. The Legal Member also advised in respect of the Gas Safety Record produced by the Landlord, that, although it was recent and in satisfactory terms as far

as the gas installation, the engineer who had prepared the report did not appear to have a current Gas Safe registration.

4. The Tenant was asked to provide the background to her application to the Tribunal. It was explained to the Tenant that the Tribunal Members had seen all the background paperwork that she had submitted and that, although the background repairs history is relevant to an extent, the Tribunal was only able to consider matters raised in her application and would be focusing on the condition of the property as it is today and whether the Repairing Standard is currently met. The Tenant expressed disappointment at this, given the amount she says she has required to pay out on the property herself and the inconvenience and stress caused to her by the Landlord's delays and failure to address the repairs issues. She had hoped that the Tribunal would be able to make an order that would reduce her rent. The Legal Member explained that in this type of application, it is only if the Tribunal finds that there has been a breach in the repairing standard and issues a repairing Standard Enforcement Notice which is then not complied with by the Landlord that the Tribunal can consider making such an order in respect of the rent. It was explained to the parties that any financial claims that they may have against the other would have to form the subject of a different type of application to the Tribunal, seeking a payment order.
5. The Tenant advised that there has been a lot of water damage to the property which has been flooded several times from the property above, which is also owned by the Landlord. Her understanding is that the water came through from the bathroom above, particularly when the tenants upstairs were using their shower. The Tenant's lining paper came off and, after a few floodings, black mould started to form and eventually the plaster started falling off. She had been instructed by the Landlord to report any repair issues to his maintenance man, "Liam" whose mobile telephone number she was given. She reported the leaks and water damage and, although Liam said her property would be fixed, after 10 months waiting, no-one had been out to see the damage. Liam kept making arrangements and promises to come out but then failed to do so. She referred to the text messages between herself and Liam which are lodged with the Tribunal. Accordingly, around the start of 2023, she had had enough as the mould was by then black and green and she took steps to fix the property herself. She sanded and smoothed the walls and put up thick wallpaper to try and cover the mess underneath. However, there was then a further flood in April 2023. She described the water as soapy and that it came through into her bathroom and round the doorframe between the hall and bathroom. Apart from water damage to the bathroom and hall, the water also came through into the kitchen with the wall between the bathroom and kitchen affected. This was separate from water that had previously come through the kitchen ceiling/wall opposite which she thinks had leaked down from the boiler in the property above. The most worrying thing for the Tenant was that the water came through the light sockets and switches, her lights flickered on and off and she could hear sizzling noises. This occurred on

a Saturday and her only contact Liam did not respond to her calls and messages. She only has her Landlord's office number (DJ Falls, solicitors) and it is not open on a Saturday. She also tried to get an emergency plumber without success. The Tenant advised that she had to wait until the Monday until she could get hold of someone at her Landlord's office. She eventually spoke to her Landlord himself and he claimed not to have known about all the floodings and the problem with the electrics. He said the tenants upstairs had been told not to use their shower for the time being. The Tenant said the Landlord failed to deal with the matter properly and this is why she decided to submit the Tribunal application in May. There was then a delay as she required to notify the Landlord in writing of the repairs required. She said that nothing really happened until August when the Landlord knew that the Tribunal application was proceeding. The Tenant confirmed that she had been on two holidays since April 2023, one in May and another for 4 weeks from the end of July. When she got back from holiday towards the end of August, the Landlord had started taking steps to get things done. Liam had been out at the property upstairs and the Landlord and his assistant, Elaine, had come out to see her at her property, as did an agency from Larkhall who the Landlord said he was thinking of arranging to take over the property. People came out about the gas and electricity but as far as she is concerned, this was too little too late. The Tenant confirmed that there has been no more water through from above since April 2023. The issue with the new boiler had been resolved and the electrics seem to be working fine, although she had continued to worry about using the electrics after the water damage. As to the issue the Tenant had raised at the Inspection about the water gathering at the bathroom unit and the woodlice, she advised that she is aware this was not in her application. She stated that it was a long-standing issue and that the water still gathers there and comes out under the bathroom unit into the bathroom. She does not know where it comes from but advised that the floor is black with mould under the flooring and thinks there is now a woodlouse infestation as she sees lots of them, of all different sizes, sometimes as many as seven in a day.

6. Ms White was then asked to explain the Landlord's position in relation to matters. She referred to the 2006 Act and the fact that, although the landlord has a duty to repair and maintain, it is a requirement that the tenant notifies the landlord of repairs required and that the landlord is then given a reasonable timeframe to rectify issues. Reference was made to the Tenant having a good relationship with Liam, whom she was able to contact about repairs issues and who, as can be seen, communicated with her by text message. The Tenant also had the Landlord's office number as a contact. When the Tenant contacted the Landlord directly about the water coming through the electrics, he did take steps to sort matters out. A temporary repair was carried out to the property above as the cause of the water had been found to be a blocked shower drain and the tenant above had been advised not to use the shower until the repair was done. There has been no water ingress into the Tenant's flat since the April. Although this application was lodged

with the Tribunal in May 2023, the Landlord did not receive notification of it then. He was taking steps to get matters dealt with in May. However, the Tenant went on holiday in the May and again in July/August for four weeks and had also changed her mobile telephone number at some point (this was conceded by the Tenant) which meant that the Landlord and his contractors were not able to make contact with her or get access to the property. The Landlord wrote out to the Tenant on 25 August 2023 about not getting granted access. The Landlord's position is that he has been trying to resolve matters within a reasonable timeframe. He visited the property himself recently with his assistant Elaine and spoke to the Tenant there. He arranged for a painter and plasterer to visit the property last week. BROMAC previously carried out work in the property and have been trying to get in again to inspect as there may be a possibility that any further works required may be covered by their warranty. The Landlord is also intending to have an agency take on the management of this property for him. An agency will do all the checks and balances and be able to deal effectively with future repair issues as they have a bank of tradesmen available to them. An agency, 1-2 Let, already manage some of his other properties and are willing to take this one on. However, they would prefer to take this property on once this Tribunal application is resolved. The Landlord has also arranged to have the EICR and Gas Safety checks done and will make additional enquiries about the gas engineer's status and arrange to have any additional electrical work which is required carried out, together with having the smoke alarms attended to.

7. Mr Falls, the Landlord, reiterated many of the submissions made by Ms White on his behalf. In summary, he stressed that there was communication with the Tenant regarding repairs issues but that communication broke down, at least partly due to the Tenant changing her contact number and not informing anyone. Otherwise, he stated that tradesmen would have been out earlier. He is, however, trying to resolve things and work is ongoing to get the necessary tradespeople appointed to deal with the outstanding matters. He considers that the timing of the application to the Tribunal and these proceedings coming to this stage are premature and have come at a time when he was already trying to resolve things. This has also complicated things with him arranging to appoint the letting agency to manage the property for him, which is still his intention. He mentioned that there have been costs incurred by him too, made worse by the Tenant stopping paying her rent. When asked about the likely timescale for the outstanding issues being resolved, Mr Falls responded that it was first necessary to identify what exactly needs done.
8. The Tenant summed up by stating that she required to put in the application as the first water damage had occurred a year and 8 months ago and then repeatedly happened. She has been living with this situation all this time and, although she had had contact with Liam, the matter just dragged on and on. She said that everything was a constant fight and it has all had a bad effect on her. She feels she has been made

out to be a bad tenant who just complains all the time. She stated directly to the Landlord that she had no choice but to stop paying her rent but that she has put some money aside until matters are sorted out. The Tenant confirmed that she has given everyone concerned her new contact number and will cooperate with tradesmen coming in and with a letting agency if the Landlord appoints one.

9. Ms White summed up by stating that she and the Landlord have listened carefully to all that has been said today and will ensure that matters are attended to as quickly as possible.
10. The Legal Member drew the Hearing to a close and confirmed that parties will be advised of the Tribunal's decision in writing and the likely timescale for that.
11. Subsequent to the Hearing, by email on 28 September 2023, the Landlord submitted a copy of the Gas Safe Registration card for the gas engineer who had provided the Gas Safety Record certificate in respect of the House dated 28 August 2023. The Tribunal noted that the name of the engineer, his business name and his Gas Safe registration number as shown on the registration card match the details contained in the Gas Safety Record. It was also noted that the validity dates on the card are 9 September 2022 until 8 September 2023. The Tribunal noted that it appears from this that the engineer was a Gas Safe registered engineer when he attended at the House and provided the Gas Safety Record but that his registration may since have expired.

Findings in Fact

1. The tenancy in respect of the House between the parties commenced on 1 July 2019.
2. The monthly rental is £400.
3. The Tenant had notified the Landlord of repair issues outstanding prior to submitting this application to the Tribunal.
4. The Landlord had advised the Tenant to contact his 'handy-man' "Liam" regarding repair issues in the first instance, rather than contacting the Landlord direct.
5. The Tenant had communicated with Liam regarding repairs issues arising throughout the tenancy and, in particular, between around July 2021 and April 2023, primarily via text message.
6. The Tenant had also spoken to the Landlord directly regarding outstanding repairs issues in or around April 2023.

7. This application was lodged with the Tribunal on 16 May 2023 and, following further procedure, was accepted by the Tribunal on 13 July 2023.
8. Reference is made to the Tribunal's Findings on Inspection, which took place on 26 September 2023.
9. Some of the repair issues included in the Tenant's application had been attended to before the Inspection and Hearing but some issues were still outstanding.
10. The House does not meet the Repairing Standard in some respects.

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the written representations and documents lodged by the parties prior to the Hearing and the oral evidence heard from both parties at the Hearing.
2. The Tribunal was satisfied from the evidence heard that the Tenant had notified the Landlord of the works required or that the Landlord had otherwise become aware of this, in terms of Section 14(3) of the 2006 Act. It was clear from the Tenant's evidence that she had reported matters timeously and repeatedly to the Landlord's handy-man, as she had been instructed to do, over a considerable period of time. Although the Landlord's position appeared to be that the Tenant had not directly contacted him until after the further leak and water damage in April 2023, the Tribunal was of the view that the Tenant had been entitled to believe that the information she had been providing to the handy-man was being passed on to the Landlord and also that the Landlord was aware of the position and failing, or at least delaying, to do anything about it. The Tribunal was also satisfied from the evidence heard that the Landlord had not carried out the works required within a reasonable period of time, in terms of Section 14(4) of the 2006 Act, albeit that the Tenant had been on holiday and therefore unavailable to give access to the House twice since April 2023 (on the second occasion for a period of 4 weeks) and had failed to provide the Landlord/his contractors with her new telephone number.
3. Given the present condition of the hall/kitchen ceilings/walls and the fact that there are still low moisture readings in the walls, the Tribunal was satisfied that remedial works are required to ensure that any remaining damp or mould is eradicated and the plaster and decoration thereafter made good to ensure that the House is in a reasonable state of repair, wind and watertight and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act. The Landlord did not take issue with this and, indeed, had stated his intention to have BROMAC or an alternative specialist contractor out to inspect the areas

in question and thereafter to have remedial and re-decoration works instructed.

4. As to the Tenant's complaint regarding the plumbing issues in the bathroom, the Tribunal did not agree with what the Tenant had stated in her application that the entire bathroom needed replaced. However, the Tribunal did consider that repair work was required to refix the shower head riser to the bathroom wall to ensure that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act.
5. The Tribunal only noted slight cracking to the cornice in the kitchen and did not see any evidence of an ongoing leak into the kitchen at that location and accordingly, although the cracking may well be from historical water damage from above, did not consider that there was any ongoing breach of the Repairing Standard in this regard.
6. The Tribunal was not satisfied from the EICR produced that all electrical works required had been carried out to ensure that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order in terms of Section 13(1)(c) of the 2006 Act. A fresh EICR or supplementary information from the electrician who provided the EICR is accordingly required in order to satisfy the Tribunal that this part of the Repairing Standard is met. Again, the Landlord took no issue with this and confirmed that further enquiries in this regard would be made and any further necessary electrical works carried out.
7. In accordance with the terms of the EICR, the Tribunal was not satisfied that the smoke detection system in the House complies with current Scottish Government guidance to ensure that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of section 13(1)(f) of the 2006 Act. Although the detectors appeared to be inter-linked and operational, it is understood that the detectors are not compliant as they have removable batteries. Again, the Landlord had no issue with this and indicated that the necessary remedial work would be carried out.
8. Given the issue discussed at the Hearing as regards the accreditation of the gas engineer who had provided the Gas Safety Record, the Tribunal had originally decided to include this issue in any RSEO to be issued. However, the Tribunal, having considered the supplementary information provided by the Landlord after the Hearing regarding the gas engineer's accreditation, the Tribunal is now satisfied that the engineer was properly accredited at the time of providing the Gas Safety Record and accordingly, that no order need be made in this respect.
9. The Tribunal is of the view that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters

specified in paragraphs 3,4,6 and 7 above. Given the nature of the required works, the Tribunal is of the view that a period of 6 weeks is an adequate and reasonable timescale for these works to be completed.

10. Although there was no water pooling or leakage from under the bathroom unit, nor woodlice, detected by the Tribunal at the Inspection and although this issue had not been included in the Tenant's application, the Tribunal wished to raise this matter as an observation and hoped that the Landlord would investigate (and if required, rectify) the issue, given that it has already been conceded that there has been water damage to the bathroom from previous leaks and also that it is anticipated that other repair works will be carried out in the bathroom in connection with other matters raised in this application.

Decision

11. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act to ensure that the House meets the Repairing Standard.
12. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
13. 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 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.

In terms of Section 63 of the Act, 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.

N Weir

Signed.....
Nicola Weir, Legal Member of the Tribunal

Date: 5 October 2023



Pre-hearing Inspection Summary and Schedule of Photographs



Property – 24 Hatton Terrace, Carfin, Motherwell, ML1 4DL

Reference- FTS/HPC/RP/23/1554

Tribunal Members – Nicola Weir (Legal Member) & Andrew Taylor (Ordinary Member)

Purpose of Inspection – To prepare a record of the position at the property specifically as it relates to the items raised in the application and any issues arising therefrom.

Access – 10.00am, 26th September 2023

Weather – Overcast and dry

In Attendance – The above Tribunal Members attended the property. Also in attendance was Miss Sarah Marie Smith – Tenant.

Appendix 1

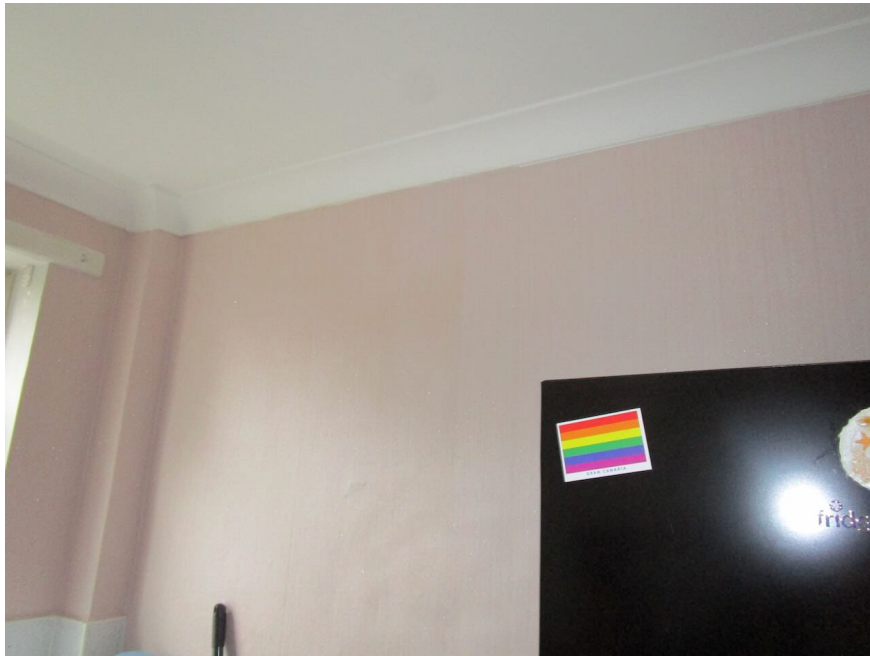
Schedule of Photographs taken during the Inspection on 26th September 2023



1. Water damage on hall wall/ceiling adjacent bathroom door



2. Dampness meter reading skirting level hall wall adjacent bathroom door



3. Water damage at kitchen wall/ceiling (mutual wall with bathroom)



4. Historic water damage in kitchen at cornice



5. Bathroom wall and ceiling



6 Bathroom cabinet unit.



7. Bathroom cabinet unit



8. Smoke detector in hall



9. Heat detector in kitchen



10. Electrical consumer unit

Andrew Taylor MRICS,

Surveyor Member, Housing and Property Chamber, First-tier Tribunal for Scotland

26th September 2023