

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RP/21/1443

Re: 98 Main Street, East Kilbride G74 4JY (“the house”)

Land Register Title No: LAN189570

The Parties:-

Ms Yvonne Paterson, residing at the house (“the tenant”)

Mr Peter More, Rockcliffe, Castle Road, Wemyss Bay PA18 6AN (“the landlord”)

Maitlands Solicitors, 6A Brougham Street, Greenock PA16 8AA (“the landlord’s solicitor”)

Tribunal Members:

Sarah O’Neill (Chairperson) and Mike Links (Ordinary (Surveyor) 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 on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has failed to comply with the said duty. The tribunal therefore issues a Repairing Standard Enforcement Order. The tribunal’s decision is unanimous.

Background

1. By application received on 15 June 2021, the tenant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.
2. In her application, the tenant stated that she believed the landlord had failed to comply with the duty to ensure that the house met the repairing standard as set out in section 13(1) (a), (c), (f) and (h) of the Act. The application stated that the landlord had failed to ensure that:
 - the house is wind and watertight and in all other respects reasonably fit for human habitation.
 - 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.
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - the house meets the tolerable standard.
3. The tenant made numerous complaints in her application, with reference to her notification emails to the landlord of 10 May 2021 and to the landlord's solicitor of 7 June 2021, and a survey report dated 8 November 2017 which had been carried out for the landlord by Mr George Paton of Contemplor Chartered Building Engineers/Surveyors ("the Contemplor Report"). It was not immediately apparent exactly which issues formed part of the application, particularly as the Contemplor report covered a wide range of issues. The complaints which the tribunal considered to be included in the application are summarised below:
 - 1) The property is not wind and watertight.
 - 2) There is an ongoing leak from the toilet.
 - 3) Access for vermin has not been addressed.
 - 4) There are inadequate heat detectors and smoke alarms.
 - 5) The front steps do not conform to building regulations and are dangerous.
 - 6) The dishwasher door is broken.
 - 7) Cosmetic trim between window units in the kitchen.
 - 8) Broken toilet seat in bathroom.
 - 9) Plaster cracking at window and blinds track.
 - 10) Window ledge and wall seal separating.
 - 11) Mould in window frame.
 - 12) Broken floor tiles in bathroom.

- 13) The bath panel is not secured.
 - 14) The kitchen tap rubber is disintegrating and particles of the seal are present in drinking water.
 - 15) Sealant behind sink requires removal and replacement.
 - 16) The front door double glazed panel is broken.
 - 17) The boiler is old and does not work very well.
 - 18) The en-suite has a cracked ceiling.
 - 19) There is not adequate insulation.
 - 20) No Electrical Installation Condition Report (EICR) has been provided.
 - 21) No Energy Performance Certificate (EPC) has been provided.
 - 22) The wooden fencing requires attention.
4. On 22 June 2021, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. A case management discussion was arranged for 13 August 2021. The parties were invited to submit written representations by 27 July 2021. Written representations were received from the tenant on 22 July 2021. Following a request from the landlord's solicitor for an extension of the time allowed for written representations the tribunal issued a direction on 3 August 2021, extending the deadline until 9 August 2021. Written representations were received from the landlord's solicitor on 9 August 2021. Further written representations received from the tenant on 10, 13 and 16 August 2021.

The case management discussion

5. A case management discussion (CMD) was held by teleconference on 13 August 2021 by the previous tribunal (comprising of Ms Simone Sweeney and Mr Mike Links). The applicant was present and represented herself. The landlord was represented by his solicitor, Mr James Lamb, of Maitlands solicitors.
6. Mr Lamb confirmed that his client admitted that he was the landlord of the property and accepted all duties on him to ensure the house meets the repairing standard as set out in section 13 of the Act. The landlord was eager to access the house and have it fully inspected by a suitably qualified surveyor to be able to respond to the application and also to identify the extent of any repairs required to ensure the house meets the repairing standard. Mr Lamb submitted that he had written to the tenant on six occasions since November 2020 requesting access. To date, the tenant had refused to co-operate. The landlord therefore found himself in a very difficult situation.
7. The tenant admitted that access had not been provided to the landlord. She was concerned that the landlord would use the opportunity to have

a home report carried out or have an estate agent view the property with the intention of marketing it for sale. The tenant accepted that it is for the landlord to sell the property should he choose. She admitted that the landlord was entitled to know the specific allegations being made against him and to have access to the property to investigate these allegations. She agreed to permit access to the landlord's surveyor provided that she was given advance notice of the identity of the surveyor and the specific they would attend. Mr Lamb provided an undertaking that the tenant would receive details of the identity of who would be instructed to undertake the survey and said that a mutually convenient date and time would be agreed.

8. Mr Lamb emphasised his client's commitment to ensuring that the house meets the repairing standard. He said that the tenant would like additional renovations to be undertaken, but the landlord offered no commitment to doing anything other than that which was required to meet the repairing standard.
9. Mr Lamb noted that there was no EICR or Energy Performance Certificate (EPC) in relation to the house. He provided an undertaking to address these matters.
10. The tenant requested that her application be amended to include the exterior steps leading to the entrance of the house. There was no opposition to this from Mr Lamb and the amendment was allowed by the tribunal. (Note: the present tribunal considers, however, that this issue was in fact included as part of the tenant's original application, as it was referred to in her notification email of 7 June 2021).

Further procedure following the CMD

11. The tribunal issued a direction on 13 August 2021, requiring the landlord to provide a copy of a valid gas safety certificate for the house by 30 August 2021. A satisfactory gas safety certificate dated 4 May 2021 was provided to the tribunal on 25 August 2021.
12. Following several delays due to access issues and a considerable amount of correspondence from the tenant, the surveyor instructed by the landlord, Mr Gordon Scott, MRICS of Argyll and Clyde Chartered Surveyors, carried out an inspection of the house on 11 November 2021. The condition report and EPC produced by Mr Scott was provided to the tribunal on 17 December 2021 by the landlord's solicitor.
13. An inspection of the house was arranged for 31 January 2022 and a hearing was fixed for 7 February 2022. A lengthy email was received from the tenant on 14 January 2022, setting out her concerns about the

survey report. The tribunal cancelled the inspection and hearing a few days before it was due to take place.

14. An email was received from the tenant on 26 January 2022, attaching a report dated 21 January 2022 from Mary Harkness, an Environmental Health Officer from South Lanarkshire Council, regarding a visit made to the house in connection with the leaking toilet and dampness in the bathroom.
15. On 27 January 2022, a further email was received from the tenant, attaching a thermographic inspection report which she had instructed in relation to the house. The report (“the Eco Surveys report”) was dated 24 January 2022 and had been produced by Mr Kal Murray, a surveyor with Eco Surveys, Edinburgh.
16. A further tribunal inspection was arranged for 4 March 2022 and a hearing for 11 March 2022. These dates had to be cancelled as they were not suitable for the tenant.
17. On 3 March 2022, the current legal member was assigned to the tribunal in place of Ms Sweeney. A new inspection date was arranged for 12 May 2022 and a hearing date for 19 May 2022.

The inspection

18. The tribunal inspected the house on the morning of 12 May 2022. The weather conditions at the time of the tribunal’s inspection were dry and sunny, and there was little wind. The tenant was present at the inspection. Mr Lamb was also present for most of the duration of the inspection on behalf of the landlord.
19. Photographs were taken during the inspection. A pre-hearing inspection summary and schedule of photographs, a copy of which is attached to this decision, was sent to the parties prior to the hearing.

The house

20. The house is a main door ground floor flat within a two-storey sandstone building. The building, which is approximately 110 years old and was formerly the parish council chambers, is a category C listed building. The house comprises three bedrooms (one with ensuite bathroom), lounge, kitchen/dining room, bathroom and hallway.

The hearing

21. On 19 May 2022, the tribunal held a hearing by telephone conference call. The tenant was present on the call and represented herself. Mr Lamb was present on the call and represented the landlord.

The evidence

22. The evidence before the tribunal consisted of:

- The application submitted by the tenant, comprising completed application form; information regarding her tenancy; landlord registration search information for the house (showing that the house was not on the register); notification email to her landlord dated 10 May 2021 regarding her complaints; response from her landlord's solicitors dated 18 May 2021; notification letter to landlord's solicitor dated 7 June 2021 with attachments; and the Contemplor report.
- Registers Direct copy of Land Register title LAN189570.
- Information about the history of the tenancy provided by the tenant, together with copy tenancy agreement between the tenant and the previous landlord in respect of the house for the period from 15 November 2011 to 15 May 2012.
- Email to the tribunal administration dated 24 June 2021 from the landlord registration team at South Lanarkshire Council, confirming that the registration for the house was renewed on 14 March 2021, but that the registration was currently on hold as they were awaiting a legionella risk assessment.
- Written representations received from the tenant on 22 July and 10, 13 and 16 August 2021.
- Written representations received from the landlord's solicitor on 9 August 2021.
- The oral representations of the parties at the CMD.
- The gas safety certificate dated 4 May 2021 in respect of the house
- Report dated 21 January 2022 from Mary Harkness, an Environmental Health Officer from South Lanarkshire Council, regarding the house.
- Thermographic inspection report dated 24 January 2022 produced by Mr Kal Murray, a surveyor with Eco Surveys, Edinburgh.
- Condition report and EPC produced by Mr Gordon Scott, MRICS of Argyll and Clyde Chartered Surveyors on 11 November 2021.
- Numerous further emails received from the tenant dated between 13 September 2021 and 11 May 2022.

- The tribunal's inspection of the house.
- The oral representations of the parties at the hearing.

Summary of the issues

23. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed by section 14 (1) (b).

Findings of fact

24. The tribunal made the following findings in fact:

- The house is owned by the landlord, who is the registered landlord for the house.
- The tenant has lived in the house since 2011.
- The landlord, who is the tenant's former fiancé, bought the house from the previous landlord in 2018.
- There is a tenancy in place between the parties.
- At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - i. The smoke alarm in the hallway was broken (photograph 4 of the photograph schedule). There was no smoke alarm installed in the lounge (photograph 7) and no heat alarm was installed in the kitchen (photograph 15).
 - ii. The glazing unit on the front door was broken (photograph 5). The door did not open and close properly and became caught and stuck on the frame. Polythene had been taped over the back of the door and the letterbox to exclude draughts.
 - iii. Staining was observed at the lintels on some of the windows, including those in the master bedroom and the lounge (photographs 27 and 28).
 - iv. There were open joints at some of the window lintels, including those in the lounge, kitchen and ensuite (photographs 8, 18 and 32). The plaster was also cracking around some of the windows (as illustrated in photograph 32).
 - v. No draughts were observed at the locations mentioned by the tenant in her complaint, but the weather was still, with little wind, at the time of the inspection.
 - vi. The window sills were slightly separating from the wall in some rooms, such as the lounge (photograph 26)

- vii. No extensive mould was observed in the frames of the windows.
- viii. When the toilet was flushed, water leaked from the feed pipe (photograph 12).
- ix. High damp readings were obtained on the bathroom floor next to the toilet (photograph 10).
- x. There were a number of broken and missing bathroom floor tiles adjacent to the toilet (photograph 11).
- xi. The top step at the entrance door had a very narrow tread (photograph 6).
- xii. The steps at the front of the house were quite worn and uneven and had a number of gaps (photograph 36).
- xiii. The bath panel had been secured, but there was a small chip in the top corner (photograph 13).
- xiv. The panel between two window units in the kitchen had become detached (photograph 17).
- xv. The toilet seat in the bathroom was cracked (photograph 14).
- xvi. The rubber/plastic outlet on the kitchen tap was coming away (photograph 21).
- xvii. The silicone seal behind the kitchen sink was defective (photograph 20).
- xviii. The integrated dishwasher door was missing (photograph 22).
- xix. There was a long crack in the ceiling of the en-suite bathroom (photograph 31).
- xx. There was no obvious evidence of mice in the house. The tenant indicated to the tribunal a number of possible entry points in the living room and the kitchen (photograph 9).

Reasons for decision

Access for repairs

25. Mr Lamb told the tribunal that there had been difficulties in obtaining access to the house to carry out repairs. As outlined in the note of the CMD, this was accepted by the tenant. The tenant has significant health issues and suffers from a serious lung condition. As a result, she had major concerns during the coronavirus pandemic about allowing anyone into the house. The tenant did appear to accept, however, that any works required to remedy the repairs issues she had raised would require her to provide access to contractors.

Other issues raised by the tenant

26. As at the date of the inspection and hearing, the case papers were very extensive, comprising two very thick files. The tenant had submitted a considerable amount of correspondence after making her application, some of which raised new issues. The tribunal

decided that these could not be considered as they were not part of the tenant's original application. These were:

- Torn linoleum in the kitchen (photograph 24)
- Sliding wardrobe door in the master bedroom (photograph 25)
- Broken door lock in the ensuite (photograph 30)
- Shower tray in the ensuite (photograph 37)
- Loose coping stone (photograph 33)
- Boundary wall (photograph 34/35)
- Missing roof tiles (reported following storms last winter)
- Downpipe (which had been fixed) needs painting

27. The tenant accepted at the hearing that the issues listed above were not part of her application and could not therefore be considered by the tribunal. She was aware that it was open to her to make a further application regarding these issues.

The complaints raised in the tenant's application

28. The tribunal considered each of the complaints made in the tenant's application in turn, as set out below. The tenant confirmed at the end of the hearing that she believed the tribunal had addressed all of the issues raised in her application.

1. The property is not wind and watertight

29. The tenant's complaint as set out in her application form stated: "property is not wind and watertight per attached report", referring to the Contemplor report. When asked at the CMD to provide greater specification as to this complaint, she stated that the windows were ineffective and were not properly sealed, and that the front door was not wind and watertight.

30. The tenant told the tribunal at the hearing that the concerns raised about the majority of the windows had always been the biggest issue with the house. She said that the Contemplor report had found in 2017 that the windows were not sealed or insulated properly. She had instructed the thermographic inspection report from Eco Surveys, which had shown that there was cold air coming in from the windows and at floor level. She said that she had to keep the curtains closed in the winter and she also had to use another source of heating in addition to the central heating to keep the house warm. The issues with the windows also led to water ingress and allowed street noise in from outside.

31. During its inspection, the tribunal observed staining at the lintels on some of the windows, including those in the master bedroom and the lounge. This suggests that the windows may not be watertight. The tribunal also observed that there were open joints at some of the window lintels, including those in the lounge, kitchen and the ensuite. The plaster was also cracking around some of the windows.
32. While it was difficult to test this at the inspection due to the lack of wind at the time, the tribunal considers that these issues may lead to draughts, and that it is likely that the windows are not wind tight. The tribunal noted that the Eco Surveys report concluded that there were a number of areas of uncontrolled airflow penetrating the house, including around some of the UPVC windows.
33. While he said that there were certain issues which the landlord agreed required to be addressed, Mr Lamb referred to the windows as a 'grey area'. He did, however, appear to accept that there may be issues with the windows which required to be addressed.
34. The ordinary (surveyor) member of the tribunal noted that it was likely that listed building consent would be required to replace the windows. The tenant noted that the Eco Surveys report said that the issue could be resolved without replacing the windows and had made a number of recommendations about this. When asked by the tribunal whether the landlord accepted the findings of the Eco Surveys report, Mr Lamb said that neither he nor the landlord had the technical knowledge to dispute these.
35. Mr Lamb pointed out that the building was old and said that it was not possible to ensure that it was completely free of cold and dampness. While the tribunal accepts this, it appears on the basis of all the evidence before it that at least some of the windows are not wind and watertight. It was also clear that the front door was not wind and watertight as discussed at paragraphs 72-75 of this decision. With regard to the other areas mentioned in the Eco Surveys report, including the skirtings, the tribunal takes the view that these did not form part of the tenant's application. It observes, however, that the landlord may wish to consider addressing some of the other issues raised in that report.
36. The tribunal therefore determined that on the balance of probabilities the house was not wind and watertight and in all other respects reasonably fit for human habitation, for the reasons set out above.

2. There is an ongoing leak from the toilet

37. The tribunal observed during its inspection that when the toilet was flushed, water leaked from the feed pipe. High damp readings were obtained on the bathroom floor next to the toilet. This dampness appeared to be a direct result of the leak from the toilet, and the tribunal considers it is possible that the bathroom sub-floor timbers will have been damaged by this.

38. Mr Lamb told the tribunal that the landlord did not dispute that the toilet was leaking, nor that the floor was damp as a result. He said that the landlord would attend to this matter immediately if it were possible to gain access to the house to carry out the works.

39. The tribunal determined that the toilet was not in a reasonable state of repair and in proper working order. It also determined that the bathroom floor was not wind and watertight.

3. Access for vermin has not been addressed

40. At its inspection, the tribunal did not observe any obvious evidence of mice in the property. The tenant told the tribunal that the issues with mice usually occurred in the winter. She had found droppings in a kitchen cupboard. She used traps and had caught a mouse over the previous winter.

41. She said that there were two large holes in the kitchen cupboard next to the dishwasher (shown in photograph 23). The tenant said that she had seen a mouse running into that cupboard and behind it.

42. The Contemplor report suggested that the kitchen was the likely point of entry for mice. That report concluded that the most likely means of entry appeared to be via the gas service boxes situated at ground level immediately outside the kitchen walls (photograph 1). The report also identified several gaps in the front steps as a possible entry point (photograph 36).

43. Mr Lamb told the tribunal that if there was a problem with vermin, the landlord would deal with this.

44. The tribunal accepted the tenant's evidence regarding mice in the house over the winter, and noted the observations made in the Contemplor report. The tribunal determined on the basis of the evidence before it that on the balance of probabilities there was

access for vermin into the house, which should be investigated further.

4. Inadequate heat detectors and smoke alarms

45. The tribunal observed at its inspection that the smoke alarm in the hallway was broken. There was no smoke alarm installed in the living room and no heat alarm was installed in the kitchen. Mr Lamb told the tribunal that the landlord did not dispute that there were not adequate smoke and heat alarms in the house. He said that the landlord would attend to this matter immediately if it were possible to gain access to the house to carry out the works.

46. The tribunal noted that in determining whether a house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers. [The current Scottish Government statutory guidance](#) states that there should be at least:

- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes
- one functioning smoke alarm in every circulation space, such as hallways and landings.
- one heat alarm in every kitchen
- and all alarms should be interlinked.

47. Having regard to the above guidance, the tribunal determined that the house did not at the time of its inspection have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

5. The front steps are dangerous

48. The tribunal observed at its inspection that the top step at the entrance door had a very narrow tread, and that the steps at the front of the house were quite worn and uneven and had a number of gaps. The tenant told the tribunal that she had tripped on the top step and suffered falls on two occasions. She said that at the time he carried out the survey, the surveyor who prepared the Contemplor report had told her that the steps were dangerous.

49. The tribunal noted that the Contemplor report suggested that the steps were not compliant with building regulations, and

recommended remedial works, including inserting an entrance platt one metre wide below the threshold.

50. Mr Lamb said that the landlord was not obliged to convert the house to the tenant's specifications.
51. The ordinary (surveyor) member noted that listed building consent would be required for any works.
52. Having considered all of the evidence before it, the tribunal considered that the steps in general did meet the repairing standard, having regard to the age, character and prospective life of the house, in terms of section 13 (3) of the Act. The tribunal did consider, however, that the narrowness of the top step- and absence of an entrance platt - was a health and safety issue. Not only was this of concern so far as the tenant was concerned, as noted in the Contemplor report, but also raised health and safety issues for any visitors to the house. The ordinary (surveyor) member of the tribunal noted that the lack of an entrance platt probably stems back to the time when the building was converted from a parish council chambers into flats.
53. Given the health and safety issues discussed above, the tribunal determined that the top step was not in a reasonable state of repair and in proper working order.

6. The dishwasher door is broken

54. The tribunal observed during its inspection that the integrated dishwasher door was missing. The tenant told the tribunal that the door had been in place when she first moved into the house, but it had fallen off one day. She said that one of the clips had snapped and that she still had the door. Mr Lamb suggested that this was a cosmetic issue, rather than a repairing standard matter. The tenant said, however, that while the dishwasher could still be used, it was difficult to open it without the door, as this housed the dishwasher handle.
55. The tribunal determined that the dishwasher was an appliance provided by the landlord under the tenancy which was not in a reasonable state of repair and in proper working order.

7. Cosmetic trim between window units in the kitchen

56. The tribunal observed at its inspection that the panel between two window units in the kitchen had become detached. The tenant said that the trim had fallen off some time ago, and that there was a draught resulting from this. Mr Lamb did not dispute that the panel has become detached and said that this could be attended to alongside any other repairs to be carried out in the house.

57. The tribunal determined that the panel between the window units was not in a reasonable state of repair and in proper working order.

8. Broken toilet seat

58. The tribunal observed at its inspection that the toilet seat in the bathroom was cracked. Mr Lamb agreed that it was cracked as a matter of fact, but he said that he did not know whether this matter was the responsibility of the tenant or the landlord. The tenant told the tribunal that the crack had occurred around 2-3 years ago, which she believed was the result of wear and tear.

59. The tribunal considered that the toilet seat was a fixture or fitting provided by the landlord under the tenancy. It should therefore be in a reasonable state of repair and in proper working order. As there was no evidence that the seat had been damaged by the tenant, the tribunal determined that it did not meet the repairing standard.

9. Plaster cracking at window and blinds track

60. During its inspection, the tribunal observed that the plaster was cracking around some of the windows. The tribunal noted that this could be a possible source of draughts. It determined that the plaster around some of the windows was not in a reasonable state of repair and in proper working order.

10. Window ledge and wall seal separating

61. During its inspection, the tribunal observed that the window sills were slightly separating from the wall in some rooms, such as the lounge. The tribunal noted that this could also be a possible source of draughts. It determined that some of the window sills were not in a reasonable state of repair and in proper working order.

11. Mould in window frame

62. The tribunal did not observe extensive mould in the frames of the windows during its inspection. As noted elsewhere, it did observe staining on some of the window lintels, and it asked the tenant whether this was what her complaint referred to. The tenant told the tribunal that this was not the subject of her complaint. She said that there was mould where the silicone covers the joint between the window and the ledge.
63. The tribunal determined that there was no repairing standard issue to be addressed in relation to this complaint.

12. Broken /missing bathroom floor tiles

64. The tribunal observed at its inspection that there were a number of broken and missing bathroom floor tiles adjacent to the toilet. The tenant said that the floor tiles had been removed by the previous landlord.
65. Mr Lamb told the tribunal that the landlord did not dispute that there were broken and missing floor tiles in the bathroom. He said that the landlord would attend to this matter immediately if it were possible to gain access to the house to carry out the necessary works.
66. The tribunal determined that the bathroom floor tiles were not in a reasonable state of repair and in proper working order.

13. Bath panel is not secured

67. The tribunal observed during its inspection that the bath panel had now been secured, but there was a small chip in the top corner. The tenant confirmed that her original complaint had been that the bath panel was not secured. It had been put back and the damage to the corner had been caused when this was done. Mr Lamb said that he had no comment to make with regard to this issue.
68. The tribunal considered that the chip in the bath panel was a minor cosmetic issue and did not raise any health and safety issues. It therefore determined that the bath panel was safe and in a reasonable state of repair and in proper working order.

14. The kitchen tap rubber is disintegrating

69. At its inspection, the tribunal observed that the rubber/plastic outlet on the kitchen tap was coming away. The tenant told the tribunal that this was still disintegrating and that she needed to clear the debris before running the tap. Mr Lamb said that he had no comment to make about the tap.
70. The tribunal determined that the rubber/plastic outlet on the kitchen tap was not in a reasonable state of repair and in proper working order.

15. Sealant behind sink requires removal and replacement

71. The tribunal observed at its inspection that the silicone seal behind the kitchen sink was defective. The tribunal determined that the sealant was not in a reasonable state of repair or in proper working order.

16. Front door double glazed panel

72. The tribunal observed during its inspection that the glazing unit on the front door was broken and the door did not open and close properly. Polythene had been taped over the back of the door and the letterbox to exclude draughts.
73. The tenant said that the broken glass was not the only issue with the front door. It did not open and close properly, and the handle did not work properly. The letterbox was not sealed properly and water came through it in wet weather, soaking the carpet in the hallway. The tenant said that she had asked several double-glazing firms to look at the door. They had all told her that the door frame was twisted and that it was not worth replacing the glass panel only. She thought the door needed to be replaced entirely.
74. Mr Lamb told the tribunal that the landlord did not dispute that the glass panel was broken and acknowledged that it appeared that the door required to be replaced. He said that the landlord would carry out any necessary repairs to ensure that the door was wind and watertight.
75. The tribunal determined that the front door was not wind and watertight. It was also not in a reasonable state of repair and in proper working order.

17. The boiler

76. The tenant told the tribunal that the boiler was very old and that it rattled and hissed. It was not energy efficient, but it did work.
77. The tribunal noted that the gas safety certificate which it had previously received was dated 4 May 2021. While that certificate had found that the boiler was in satisfactory condition, the certificate was now out of date. The tenant said that the boiler had recently passed its gas safety check on 4 May 2022. Mr Lamb said that he would contact his client to obtain a copy of the new gas safety certificate. As at the date of this decision, however, this had not been received by the tribunal.
78. The tribunal determined that on the balance of probabilities the boiler was in a reasonable state of repair and in proper working order. The tribunal however issues a direction to the landlord alongside this decision requiring him to provide it with a copy of the up to date gas safety certificate for the house.

18. The en-suite has a cracked ceiling

79. The tribunal observed at its inspection that there was a long crack in the ceiling of the en-suite bathroom. When asked by the tribunal, the tenant confirmed that the crack had been there for some time and had been noted in the 2017 Contemplor report. She said that the crack had not worsened since that time. Mr Lamb said that he considered that the crack was a minor issue.
80. Having noted that the crack had not got worse in several years, the tribunal determined that the crack was cosmetic in nature and was not a repairing standard issue.

19. The house is not insulated well enough

81. The applicant had complained in her application that the house lacked insulation of any kind, stating that the insulation came from keeping all blinds and curtains closed, and placing towels and sheets on external walls to cut down on cold air entering rooms, other than during May to August. She pointed to the Eco Surveys report and the fact that she needs an additional source of heating in winter.
82. Mr Lamb pointed out that the property was old. He said that the landlord would instruct any necessary works to ensure that the

windows were sealed correctly, but that he would not insulate the property. The tenant acknowledged that the property was old and will never be of the same standard as a new build property.

83. The tribunal noted that the tolerable standard requires that a house has “satisfactory thermal insulation”, in terms of the Housing (Scotland) Act 1987 section 86 (1) (ca). The tribunal also observed that the Energy Performance Certificate (EPC) provided by the landlord stated that it is assumed that there is no insulation in the walls or under the floor and recommended that both should be insulated. This is, however, a recommendation rather than a requirement.
84. The tribunal notes, however, that the proposed Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019, which were due to come into force in April 2020 but have been delayed due to the Covid-19 pandemic, set out a minimum level of energy efficiency for private rented properties, namely an ‘E’ rating on their EPC. The house was given a ‘D’ rating in the EPC and therefore exceeds the minimum level of energy efficiency required by the 2019 regulations.
85. Having considered all of the evidence before it, the tribunal determined on the balance of probabilities that the house has satisfactory thermal insulation given its age and construction. The tribunal considers it to be likely that taking action to ensure that the windows and front door are made wind and watertight will address many of the issues experienced by the tenant. The tribunal observes, however, that the landlord may wish to consider the recommendations made in the Eco Surveys report.

20. No EICR has been provided

86. The tribunal noted that Mr Lamb had undertaken at the CMD in August 2021 to provide an EICR to the tribunal. No EICR had been received, however. The tribunal observed that it was a legal requirement that an EICR should be obtained by the landlord every five years. Mr Lamb undertook to look into this issue and come back to the tribunal.
87. No correspondence regarding the EICR had been received from Mr Lamb as at the date of this decision. In the absence of a valid EICR and having regard to the guidance issued by Scottish Ministers in relation to electrical safety standards as required in terms of section 13 (7) (b) of the Act, the tribunal determines that on the balance of

probabilities, the installations in the house for the supply of electricity are not in a reasonable state of repair and in proper working order.

21. No Energy Performance Certificate (EPC) has been provided

88. The tribunal noted that, while there is a legal requirement on a landlord to provide an EPC to the tenant, this is not a repairing standard issue. In any case, an EPC relating to the house dated 13 December 2021 had now been produced by the landlord's surveyor.

22. The wooden fencing requires attention

89. The tribunal did not observe any particular issues with the fencing at its inspection (photographs 2 and 3).
90. The tenant told the tribunal that there were issues with the wooden fencing between the sheds in the garden. The vertical posts would no longer accept nails and the slats were coming loose as a result. Mr Lamb told the tribunal that he did not consider that there were any issues with the fencing.
91. The tribunal determined on the basis of the evidence before it that on the balance of probabilities, the wooden fencing was in a reasonable state of repair and in proper working order.

Summary of decision

92. On the basis of all the evidence before it, the tribunal determined that the landlord had failed to comply with the duty imposed by section 14(1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:
- the house is not wind and watertight and in all other respects reasonably fit for human habitation
 - the structure and exterior of the house (including gutters, drains and external pipes) are not in a reasonable state of repair and in proper working order
 - the installations in the house for the supply of gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order
 - any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order

- the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

93. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

Rights of 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.

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... S. O'Neill.....Date: 13 June 2022
Chairperson