

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Reasons: Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RT/23/0847

Property: 21b Kirk Brae, Fraserburgh AB43 9BY('The House')

The Parties: -

Felipe Daniel Mendes Da Veiga and Tania Sofia Fernandes Costa residing at 21b Kirk Brae, Fraserburgh AB43 9BY ('the tenants')

Kenny Watt, Martylou Ltd, Kinbog Steading, Fraserburgh AB43 8UB ('the landlord')

Eilidh Mackay, Aberdeenshire Council, Gordon House, Blackall Road, Inverurie AB21 3WA ("the third party")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('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 (the "Act") in relation to the house concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of: -

M Kelly, Chairing and Legal Member

A Anderson, Ordinary Member (surveyor)

Background

1. By application received on 5th May 2023, the third party applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
 - *the house is wind and watertight and in all other aspects reasonably fit for human habitation*
 - *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*
 - *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 housing has satisfactory provision for warning if carbon monoxide is present in a concentration that is hazardous to health*
 - *The house does not meet the tolerable standard*
3. The application contained email correspondence between the third party and the landlord dated 11th November 2022 which specified that the said failure was established as the following work needed to be carried out
 - Windows of the property appear to be rotten and one pane has been boarded up
 - Vegetation growing from gutters at the front and rear of the property
 - Guttering at rear of property is broken and required to be repaired

- Some tiles appear to have slipped and will need to be repaired
 - EICR and PAT report required
 - Copy of gas certificate required
 - Confirmation of carbon monoxide detector required
 - Confirmation the fire, smoke and heat detection are at current standard required
4. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 19th June 2023.

Inspection

5. The tribunal inspected the house on the morning of 21st August 2023. It was dry and sunny with similar conditions over the preceding few days. The landlord and third party were both in attendance at the inspection. The second named tenant Tania Sofia Fernandes Costa was also in attendance.
6. Photographs were taken by the tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
7. The dwelling is the first floor flat within a two-storey and attic terraced building which was constructed around 1900. There are two retail premises at ground floor level and a further flat at attic floor level. We were unable to gain access to the rear courtyard and the rear of the building could only be inspected from Shore Street, adjacent to the rear. The building forms part of larger premises incorporating the adjacent corner building 23-29 Kirk Brae, which has separate entrances and was not inspected. The property is in a mixed residential and commercial area within Fraserburgh town centre.
8. The main outer walls are of solid stone construction and the roof is pitched and slated. There is a gas fired central heating system with the boiler located in the kitchen. The front windows appear to be the original timber sash and case fittings. The rear windows are PVC framed and are double glazed.
9. The accommodation comprises on the first floor: entrance hall, lounge to front, bedroom to front, bedroom to rear, kitchen to rear and bathroom. There is a ground floor entrance hall and staircase which is shared with the upper flat.

10. The Tribunal inspected each of the items specified in the application.
11. Windows: There was some decay and softening of timbers to both front windows. There was a broken sash cord to one of the sashes in the lounge. The putty was cracked and missing in places. Some of the sashes were painted shut and could not be opened. The front windows have relatively low internal sill heights. There was no way of restricting the opening of these windows to prevent accidental falls by children. The rear bedroom window had been replaced recently with a new, PVC framed, double glazed unit. The kitchen window was an older, PVC framed double glazed unit. Both upper and lower double glazed units panes had a degree of moisture between the panes of glass.
12. Gutters: The front cast iron gutter was choked with vegetation and heavily corroded. There was green staining to the right of the lounge window, indicative of previous or current leakage from the gutter. There was significant vegetation growth below the gutter at the left side of the building and around the head of the downpipe at the right side of the building. At the rear of the building, the middle section of the gutter was missing, with short lengths remaining at each end of the eaves. The sections that remained were choked with vegetation.
13. Tiles and roof: Due to the constraints of surrounding buildings and the height and design of the roof, only a limited inspection of the lower roof slopes was possible. At the rear, there are missing slates adjacent to the rear dormer window of the upper flat, with roofing timbers visible. The flashing at the change in roof pitch had been patched with “flashband” which was itself perished and cracked. The skylight over the staircase had slipped down slightly and had been patch repaired with “flashband” and “sterling” board. Whilst inspecting the roof, it was apparent that the rear window of the attic flat, above the kitchen of the subject flat, was in poor condition with decay to timbers and the lower panel was missing
14. Carbon monoxide monitor and smoke and heat alarms: The Tribunal noted that mains powered smoke and heat alarms had been installed and that a carbon monoxide monitor had been installed on the ceiling in the kitchen.

15. It was noted that there was some dampness caused by water ingress to the ceiling above the kitchen window with elevated damp meter readings around the window.
16. The landlord indicated at the conclusion of the inspection that he would not be in attendance at the hearing. He advised that he had instructed new windows to be fitted at the front of the property. He also provided an EICR to the third party.

Hearing

17. A hearing took place in Banff Sheriff Court at 11.45am on 21st August 2023. Ms Mackay, for the third party was in attendance. The Tribunal was satisfied that the other parties had received proper notice of the hearing and proceeding with the hearing in their absence.
18. Ms Mackay confirmed that she had examined the EICR and Gas Safety Certificate provided by the landlord at the inspection. She confirmed that she wished to withdraw the application in so far as it related to those items. The Tribunal agreed to do so.
19. Ms Mackay confirmed that she is a senior housing officer within the private sector team. She explained that she had first become aware of issues within the house on or round November 2022 when the previous tenant of the property had made an application for housing to Aberdeenshire Council. She had carried out a visual inspection of the exterior of the house and spoken to the landlord around that time regarding the condition of the house.
20. Ms Mackay advised that to her knowledge the current tenants moved into the property 31st March 2023 which was when they undertook liability for paying for council tax, according to the council's records.
21. At the hearing Ms Mackay confirmed that following the internal and external inspection of the property it was her view that repairs required to be carried out to the front windows, guttering and roof of the property.
22. Ms Mackay advised that in recent weeks the landlord had been engaging with her. He had confirmed that he intended to replace the front windows. The landlord had also advised Ms Mackay that there had been signs of water ingress into the property in the ceiling above the kitchen window.

23. Ms Mackay advised that the council may be able to assist the landlord with advice on how to carry out common repairs such as the repairs to the roof in the property. She explained that the council had a common repairs office who may be able to provide assistance or advice regarding other agencies who may be able to assist.

Summary of the issues

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

Findings in fact: -

25. The tribunal find the following facts to be established: -

- a. The tenants have resided in the house since March 2023.
- b. The house is the first floor flat within a two-storey and attic terraced building. There are two retail premises at ground floor level and a further flat at attic floor level.
- c. The two windows at the front of the house are in a state of disrepair and represent a risk to the tenants as the opening mechanism is not child safe and some windows have been painted shut.
- d. The gutter to the front of the house is in a state of disrepair. It is corroded, choked with vegetation and does not adequately drain away water from the roof of the house.
- e. The gutter to the rear of the house is missing the middle section. The remaining sections are choked with vegetation. It does not adequately drain rainwater from the house.
- f. A number of slates were missing from the roof of the house below the dormer window exposing the roof timbers.
- g. The flashing at the change in roof pitch and the skylight over the staircase were in a poor state of repair. The rear window of the attic flat, above the kitchen of the subject flat, was in poor condition with decay to timbers and the lower panel was missing.
- h. Water ingress has taken place in the ceiling above the kitchen window.

- i. A carbon monoxide alarm has been fitted to the ceiling of the kitchen, where the gas boiler is located.
- j. Heat and smoke detectors have been fitted in the house.

Reasons for the Decision

- 26. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.
- 27. The Tribunal was only able to consider those items which formed part of the intimated application.
- 28. The Tribunal accepted the third party's oral request at the hearing to withdraw those parts of the application relating to the provision of an EICR and gas safety certificate.
- 29. The Tribunal accepted that the landlord had instructed new windows to be fitted to the front of the property however at the date of the inspection and hearing the windows had not yet been repaired.
- 30. In relation to the roof of the property, notwithstanding that the Tribunal could not view the whole roof, it was evident from the inspection that the roof was in a poor state of repair. The Tribunal determined that there was a high likelihood that due to the condition of the roof and the dormer of the upstairs attic flat it was likely that the roof was not watertight.
- 31. In relation to the gutters to the front and rear of the property it was evidence from the inspection that they were in a poor state of repair and not functioning to remove rainwater from the house, with some parts of the gutter entirely missing. The Tribunal had noted staining to the external walls indicative of leakage from the gutter.
- 32. It was evident from the inspection that equipment for detecting fire and for giving warning of fire or suspected fire which complied with Scottish Government guidance had been fitted in the house.
- 33. It was evident from the inspection that equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health which complied with Scottish Government guidance had been fitted.

34. Observations: The Tribunal noted that as well as the items specified in the application there were a number of other repairs issues. In particular, it was apparent that the window and skylight to the communal staircase were in poor condition, with broken panes roughly boarded over and missing plasterwork due to damp ingress. During the external inspection, it was noted that the skylight over the staircase had slipped down slightly and it had been patch repaired with “flashband” and “sterling” board. It was apparent that the rear window of the attic flat, above the kitchen of the subject flat, was in poor condition with weathered and decayed timbers, and the lower panel was missing.

Decision

The Tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

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.

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.



Photograph 1 Front (Western elevation): Communal entrance, first floor lounge and Bathroom windows, vegetation in rainwater goods.



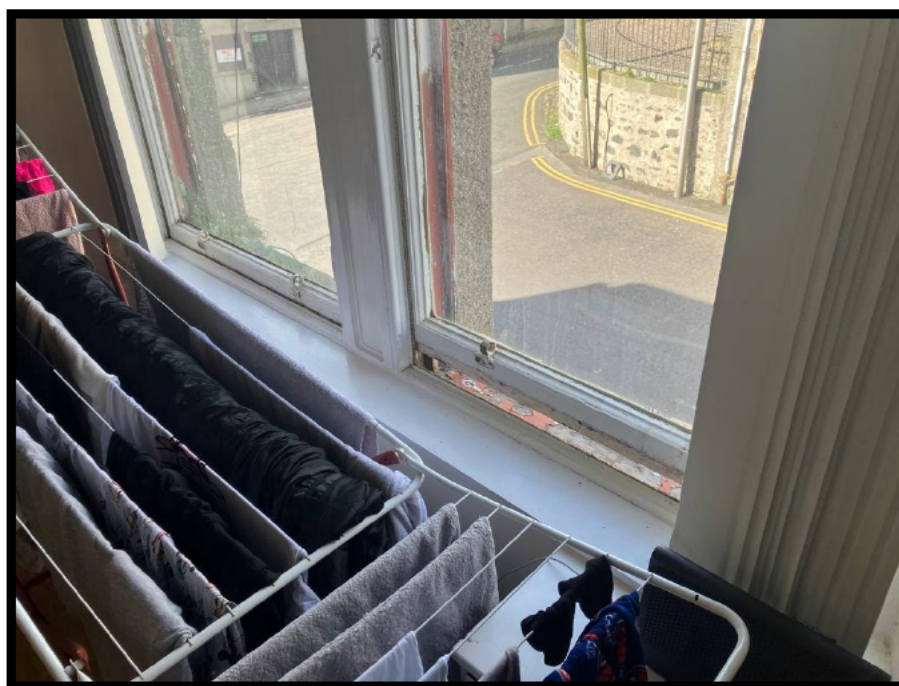
Photograph 2 Rear Elevation: First floor Kitchen and Bedroom windows, defective rainwater goods, missing slates.



Photograph 3 Front elevation: Vegetation to rainwater goods and masonry.



Photograph 4 Rear elevation: Damage to stairwell window, missing slates adjacent to top floor dormer.



Photograph 5 Lounge window: Overview.



Photograph 6 Lounge window: Decay to timbers, weathered décor, perished putty.



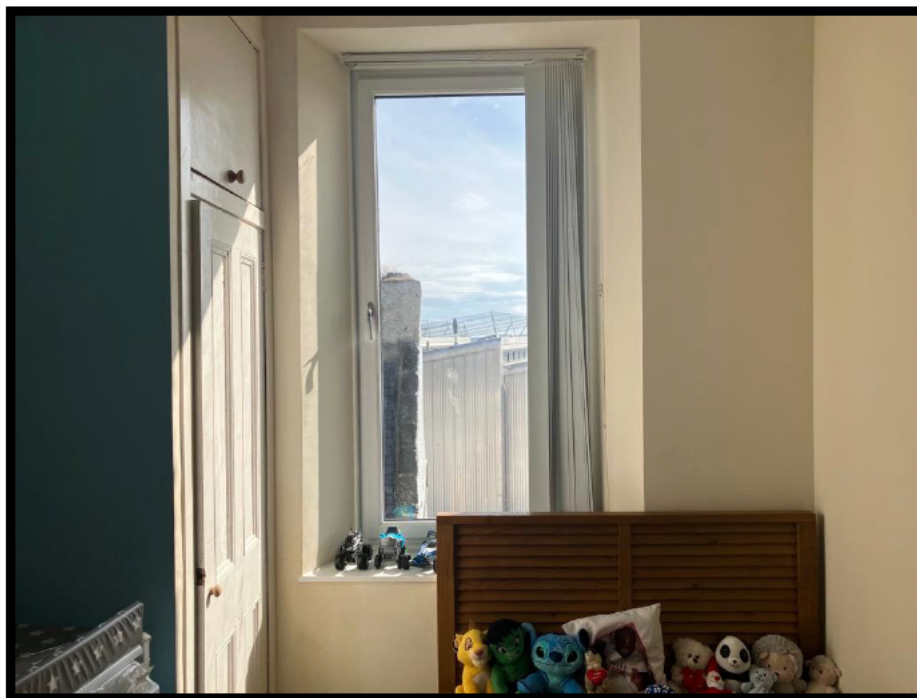
Photograph 7 Lounge window: Broken sash cord.



Photograph 8 Bedroom window: Overview, no method of restricting opening, low sill height



Photograph 9 Bedroom window: Rot to sill, weathered décor.



Photograph 10 Rear bedroom window.



Photograph 11 Kitchen: Window: misted panes.



Photograph 12 Kitchen: Staining above window from previous damp ingress.



Photograph 13 Kitchen window frame: Moisture reading 20%.



Photograph 14 Kitchen window ingo: Moisture reading 55%.