

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



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

**Chamber Ref: FTS/HPC/RP/0473**

**Re: Property at 2 Kirkton, Appin, PA38 4DL ("the Property")**

**Parties:**

**Ms Lorna Macdonald, Mr Robert Macdonald, Mossend, Appin, PA38 4BG ("the Landlord"); and**

**Ms Joanne McCaskell, 2 Kirkton, Appin, PA38 4DL ("the Tenant")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Robert Buchan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the Act.**

**Background**

- 1 By application to the Tribunal, the Tenant sought an order against the Landlord on the basis that they had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the Tenant considered the Landlords had failed to comply with their duty to ensure that the house meets the Repairing Standard and in particular that the Landlords had failed to ensure:-
  - (i) 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;

- (ii) 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; and
  - (iii) The house met the tolerable standard.
- 3 In summary the Tenant stated that the property suffered from damp and mould, flooring in the shower room had not been replaced, the gutters were blocked and broken and the property had an extremely inefficient heating system with an energy performance certificate ("EPC") rating of G. In support of the application the Tenant provided a copy of her tenancy agreement, letter notifying the Landlord of repairs, photographs and excerpt text messages between the Landlord, the Tenant and the Landlord's family members.
- 4 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the parties under Schedule 2, Paragraph 1 of the Act. An inspection was scheduled for the 17<sup>th</sup> August 2023 with a hearing set for later that day.
- 5 On 12<sup>th</sup> July 2023 the Tribunal received an email from the Tenant advising that she would not be able to attend the hearing and wished to submit written representations. She confirmed that the property suffered from damp and mould. The Landlord had taken some steps however the work was half finished which made living conditions difficult. The cupboard in the master bedroom still had black mould which had damaged clothes stored therein. The Tenant had asked the Landlord for a timeline for the work to be completed but had been told to find this out herself. The Tenant further advised that she had asked for the heating system to be made more energy efficient as it was expensive to run and did not adequately heat the house. The Tenant was spending £376 per month on electricity during the past winter. The Tenant had asked on many occasions for the fire to be reinstalled or a wood burner fitted. Whilst windows had been replaced, that was not sufficient. One of the Tenant's sons had to increase the use of his inhaler as a result of the condition of the property. Several messages from the Tenant to the Landlord had been ignored. The Tenant simply wanted the house to be in a good state of repair and energy efficient.

### **The Inspection**

- 6 The inspection of the house took place at 11.00am on 17<sup>th</sup> August 2023. The Tenant was in attendance and allowed access. The Landlord was not present. The weather was warm and sunny.
- 7 The house is a two-storey terraced building in the small rural village of Appin, around 16 miles north of Oban. The accommodation comprises on the ground floor an entrance hall, kitchen with access to the garden, lounge, bedroom and bathroom. Stairs lead up to the first floor which contains the landing, two bedrooms and a shower room.

- 8 A full inspection was undertaken, limited to the items within the application.
- 9 The Tribunal inspected the lounge. The heating system was noted to be wet electric heating with an electric boiler. The windows were double glazed.
- 10 The Tribunal inspected the bathroom. Plasterboard had been applied to the wall around the bath but had not been decorated. Damp meter readings showed some residual dampness and there was evidence of water staining. There was a small hole in the ceiling. The Tribunal found a similar hole in the ceiling of the downstairs hall.
- 11 In the downstairs bedroom new plasterboard had been applied to the front wall and part of the ceiling. Decoration remained outstanding. Damp meter readings in the cupboard showed some residual dampness.
- 12 In the shower room upstairs the wall had been plastered but decoration remained outstanding. The floor covering had been replaced.
- 13 The Tribunal inspected one of the upstairs bedrooms, currently occupied by the Tenant's teenage son. Plasterboard had been replaced on the walls but remained undecorated. The radiator had been taken off the wall but not re-fixed. There was a plug socket that had been left with no facing and exposed wiring.
- 14 The Tribunal inspected the second bedroom, currently occupied by the Tenant. Plasterboard had been applied to the wall but remained unfinished. The cupboard had dehumidifier pouches which were noted to be filled with water.
- 15 The Tribunal inspected the gutters and noted those to the rear of the property were full of vegetation. There was some rot to the facings at the front of the property and to the rear at the lower level.
- 16 The Tribunal were unable to determine within the confines of the inspection if insulation had been added behind the new plasterboard. The tenant advised that she did not think any insulation had been added.
- 17 The Tribunal concluded the inspection and travelled to Oban Sheriff Court for the hearing.

### **The Hearing**

- 18 The hearing took place on 17<sup>th</sup> August 2023 at 1pm in Oban Sheriff Court. Neither party was in attendance. At approximately 1.20pm the Tribunal were made aware of an email that had been sent to the Tribunal case worker at 12.50pm that day. The email was from Shaw's Law Limited on behalf of the

Landlord. It stated that the Landlord was unable to attend for health reasons but did not wish to seek a postponement. The Landlord's position was that the Tenant's complaints were without merit. The Landlord had acted reasonably and done her best to comply with the Repairing Standard. In her view none of the matters complained of breached the Repairing Standard and specifically with regard to the damp and mould the cause was the Tenant's failure to adequately heat and ventilate the property.

## **19 Findings in Fact**

The Tribunal found the following facts to be established:-

- 20 The Tenant took up occupation of the property in October 2018 in terms of a tenancy agreement between herself and the Landlord.
- 21 The property has suffered from damp and mould. There is evidence in the form of historic damp staining and sporadic high damp readings.
- 22 The property currently has wet electric heating serviced by an electric boiler.
- 23 The property's EPC rating is G which is the lowest rating on the scale. The EPC is dated April 2016.
- 24 There is no evidence of any thermal insulation in the walls of the property.
- 25 The Landlord has carried out works to the property which have not been completed.
- 26 The radiator in the upstairs bedroom is not fixed to the wall and an electricity socket in the room has no cap leaving bare wiring.
- 27 There are holes in the ceiling in the downstairs hall and the bathroom.
- 28 There is rot in the facings to the front of the property. The window sills and facing require painting.
- 29 There is vegetation in gutters to the rear of the property and moss in the gutters to the front of the property.

## **Reasons for decision**

- 30 The Tribunal determined the application having regard to the terms of the application, the written representations from the Tenant and the Landlord and the findings of the Tribunal's inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 31 The Tribunal did not agree with the Landlord's statement that the Tenant's application was without merit. It was clear from the Tribunal's own

independent inspection of the property that there were a number of areas in which the property did not meet the Repairing Standard.

- 32 The Tribunal noted a number of minor issues which require to be remedied by the Landlord. There are unfinished works to the property which required to be completed in several rooms, as well as holes in the ceiling that require to be repaired. The radiator which had been removed from the wall in the upstairs bedroom requires to be refixed to the wall, and the electric plug socket capped. Both currently pose a risk to occupants in the property, especially young children. Externally the facings were not in a reasonable condition, requiring repainting and repair in parts. The gutters are currently clogged and therefore not in proper working order.
- 33 However of more serious concern to the Tribunal were the allegations of damp and mould. The tolerable standard forms part of the Repairing Standard and is therefore a relevant consideration for the Tribunal. Section 86(b) and (ca) of the Housing (Scotland) Act 1987 provides that a property must have satisfactory thermal insulation and be free from damp. The findings of the inspection did not satisfy the Tribunal that the property meets this statutory test. This was supported by the EPC rating of G, the lowest end of the scale, despite the property being mid-terraced and having only two heat loss walls.
- 34 Whilst the Landlord had attempted to remedy these issues by carrying out partial works to the property, the Tribunal was not satisfied that simply replacing the mould affected plasterboard with new plasterboard would address the presence of damp and mould within the property. The Tribunal would highlight the risk to the health of occupants who have to live in such conditions, as evidenced by recent publicised cases. The importance of ensuring the property is free of damp and mould insofar as possible cannot be underestimated. The Tenant herself had made reference to a deterioration in the health of her child, who required increase use of an inhaler. The Tribunal did not agree these issues were solely attributable to the Tenant's failure to adequately heat and ventilate the home based on the findings of its inspection and the EPC.
- 35 The Tribunal considered that the Landlord should take preliminary steps in the form of instructing reports from a damp specialist and Home Energy Scotland to assess the issues. The Landlord should then produce said reports to the Tribunal in order for the Tribunal to determine what further action may be required to bring the property up to the Repairing Standard. If additional insulation was added at the time that the plasterboard was replaced then documentary evidence of this should be provided to Home Energy Scotland before their inspection.
- 36 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:

- (i) In respect of section 13(1)(b), the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;
- (ii) In respect of section 13(1)(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; and
- (iii) In respect of section 13(1)(g), the house does not meet the tolerable standard.

37 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal "must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard". The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is ten weeks.

38 The decision of the Tribunal was unanimous.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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 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 determined.

R O'Hare

✓ Legal Member/Chair

Date

20/9/23

Photographs taken during the inspection of 2 Kirkton, Appin, PA38 4DL  
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Front



Rear

Photographs taken during the inspection of 2 Kirkton, Appin, PA38 4DL  
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Replaced plasterboard

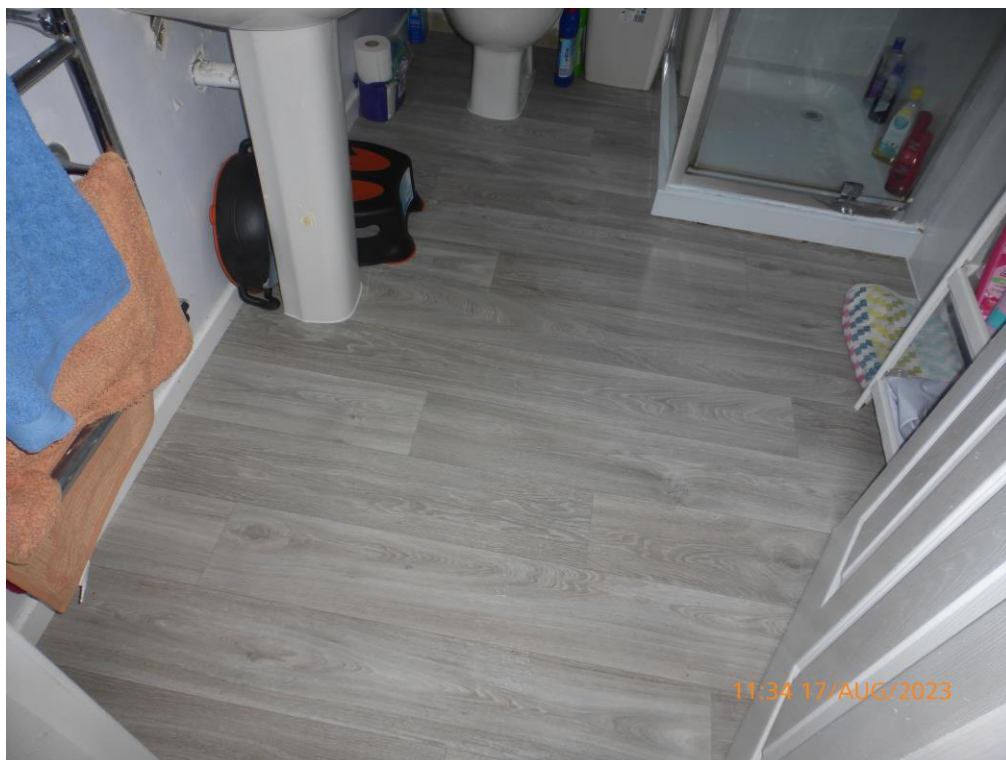


Bathroom

Photographs taken during the inspection of 2 Kirkton, Appin, PA38 4DL  
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Damp stain and hole in the ceiling



New floor covering in the shower-room

Photographs taken during the inspection of 2 Kirkton, Appin, PA38 4DL  
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New plasterboard in the shower-room



New plasterboard in the bedroom

Photographs taken during the inspection of 2 Kirkton, Appin, PA38 4DL  
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Exposed electrical wiring in the bedroom



Unsecured radiator

Photographs taken during the inspection of 2 Kirkton, Appin, PA38 4DL  
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Past staining in the wardrobe



Rotten woodwork below choked rainwater fitting

Photographs taken during the inspection of 2 Kirkton, Appin, PA38 4DL  
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Broken front guttering