



**STATEMENT OF DECISION: Section 24(1) Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/19/4005**

**Sasines Description: Allanaha Cottage, Cawdor Road, Nairn, which subjects form part and portion of ALL and WHOLE the subjects described in Disposition by Walter Lyle and Margaret Lyle to Walter Lyle and Margaret Lyle and Walter Gilmour Lyle recorded in the Division of the General Register of Sasines for the County of Nairn on 11<sup>th</sup> January 2005.**

**House address: Allanaha Cottage, Cawdor Road, Nairn, IV12 5QU (“the House”)**

**Parties:**

**Miss Violet Jane MacKay, Allanaha Cottage, Cawdor Road, Nairn, IV12 5QU (“the Tenant”)**

**Mrs Margaret Lyle, Wester Delnies Farmhouse, Ardersier Road, Nairn (“the Landlord”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Mr C Hepburn (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, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

**Background**

1. By application dated 26<sup>th</sup> December 2019, the Tenant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).

2. The Tenant considered that the Landlord had failed to comply with her duty to ensure that the House meets the repairing standard, in that 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; 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; 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; the House does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and the house does not meet the tolerable standard.
3. Notification was made to the Landlord by letter dated 27<sup>th</sup> November 2019, stating the following issues: -
  - Faulty power point in hall
  - Faulty extractor fan in kitchen
  - Temporary panel on bath
  - Faulty shower
  - Attic damp
  - Mould on windows – main bedroom and bathroom
  - Storage heater in hall not working
  - Faulty wiring to storage heater
  - No smoke or carbon monoxide alarms
  - Damp – has to store belongings elsewhere
  - No damp proofing or soakaway
  - Loose bathroom sink
  - No heating second bedroom or kitchen
  - Septic tank not working
  - No drainage from flat roof of extension
4. An inspection and hearing set down for 28<sup>th</sup> April 2020 was postponed due to measures taken in response to the Covid-19 pandemic.
5. A Case Management Discussion (“CMD”) took place by telephone conference on 12<sup>th</sup> January 2021. Following full discussion, it was agreed that the case should proceed to an inspection. The arrangements for inspection were delayed due to the Covid-19 pandemic.
6. Parties have lodged various written representations and productions, including invoices for works carried out and a EICR report.
7. An inspection took place on 11<sup>th</sup> August 2021. The Tenant was present. Mr Stokes was present and informed the Tribunal that he was the Tenant’s representative. The Landlord was present and accompanied by her son, Mr Walter Lyle.

8. The following issues were noted at the inspection:
- (i) Ponding water on flat roof elevation
  - (ii) Leaking gutters to rear wing
  - (iii) Damp to sarking in loft
  - (iv) Damp to lower walls in main bedroom
  - (v) Damp/staining to floor in main bedroom wardrobe
  - (vi) Damp to flooring behind WC in bathroom
  - (vii) Damp staining to ceiling in rear bedroom
  - (viii) Extractor fan in kitchen covered over and not operational
9. A schedule of photographs prepared by the Ordinary Member was emailed to parties and their representatives on 19<sup>th</sup> August 2021.
10. A hearing was scheduled for 19<sup>th</sup> August 2021.
11. On 19<sup>th</sup> August 2021, the hearing took place by telephone conference. The Landlord was in attendance accompanied by her representative, Mr Duncan Swarbrick, Solicitor Advocate. There was no attendance by the Tenant or her representative, and the hearing was adjourned.

### **The hearing**

12. A hearing took place by telephone conference on 14<sup>th</sup> September 2021. Both parties were present. The Tenant was represented by Mr Stokes. The Landlord was represented by Mr Swarbrick. There was full discussion and representations from both parties and their representatives. The following matters were discussed:

#### **11.1 Faulty power point in hall**

It was agreed this matter has been attended to.

#### **11.2 Faulty extractor fan in kitchen**

This matter requires to be attended to. The Landlord has instructed an electrician.

#### **11.3 Temporary panel on bath/Loose bathroom sink**

It was agreed these matters have been attended to.

#### **11.4 Faulty shower**

It was agreed this matter has been attended to.

### **11.5 Attic damp/No drainage from flat roof**

The Ordinary Member outlined his findings at the inspection, in particular the ponding on the flat roof and the damaged sarking within the loft. Mr Swarbrick asked whether the damp staining within the attic could be the result of historical water ingress. It was the opinion of the Ordinary Member that there may be a combination of current and historical water ingress. There was some discussion about the lack of incline on the flat roof, which allows ponding of water. It was agreed that further investigation is required by a roofing contractor to consider the flat roof issues, the source of any water ingress, and the condition of the concrete tiles.

### **11.6 Storage heater in hall not working/Wiring issues/No heating second bedroom or kitchen**

It was agreed that the hall heater is to be replaced and the Landlord confirmed that this is in hand. A panel heater has been installed in the second bedroom. There is no heating in the kitchen.

### **11.7 No smoke or carbon monoxide alarms**

The Tenant confirmed two smoke detectors have been fitted in the sitting room and kitchen. A carbon monoxide detector is not required as there is no gas or solid fuel appliance. The Landlord confirmed the smoke detectors will be attended to by the electrician to ensure that they comply with current regulations.

### **11.8 Damp/Mould on windows/No damp proofing**

The Ordinary Member outlined his findings from the inspection, as noted in the schedule of photographs, which included damp behind the cistern in the bathroom, and in the main bedroom. There was some discussion about the potential causes of damp, which may be due to ground conditions, as the ground level is high in relation to the floor level of the House. There was some discussion about condensation and the need to keep the House ventilated. The Tenant said she has not contributed to the problem with condensation. She runs two dehumidifiers continually and collects over a litre of water each day. It was agreed that thorough investigation of this problem was required

### **11.9 Septic tank not working**

The Tenant and Mr Stokes confirmed there had been issues with the septic tank for some time, with blockages and backing-up. The Landlord said a professional had looked at it and reported to her that the issues were not serious. It was agreed that the matter required further investigation.

13. There was discussion about the Landlord's concerns that access to the House is being denied by the Tenant and/or her representative, preventing the Landlord from having matters investigated. The concerns had been relayed to the Tribunal in recent emails. Mr Swarbrick raised concerns that the Landlord may be prevented from carrying out works to comply with any enforcement order made by the Tribunal, if access is denied. The Landlord said contractors have been provided with the telephone number for the Tenant but access has been denied. The Tenant denied that this was the case. She said it had been agreed during lockdown that there should be no access, but that was not the case recently. She has concerns about one of the contractors based on his previous behaviour when attending at the House. The Tenant said she will not deny access provided proper notice is given.

14. Mr Stokes submitted that the House is not in a condition to be rented, due to the significant concerns with damp and other issues. He mentioned compensation and a reduction in rent.

### **Tribunal discussion**

15. The Tribunal determined that:

**(a) The structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order.**

There is ponding on the flat roof that requires to be attended to.

**(b) 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.**

Works are required to the storage heater in the hallway. Investigations are required as to whether a source of heating in the kitchen would help to alleviate the problems with damp and condensation in the House. An updated EICR should be carried out and provided to the Tribunal when works have been attended to.

**(c) The 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 extractor fan in the kitchen is not in a reasonable state of repair and in proper working order.

There are concerns that the septic tank is not in a reasonable state of repair and in proper working order. This requires to be investigated.

**(d) The House may not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire**

This requires to be investigated further to ensure that the provision and coverage of smoke and heat detectors meets current regulations, and that the repairing standard is met.

**(e) The House does not require a system to give warning if carbon monoxide is present in a concentration that is hazardous to health**

There was no breach of this section of the Act as no carbon monoxide detection system is required in the House.

**(f) The House does not meet the tolerable standard.**

The considerable problems with water ingress, damp and condensation indicate that the House does not meet the tolerable standard in that it is not substantially free from rising or penetrating damp.

An Energy Performance Certificate should be provided to the Tribunal when all matters have been attended to.

**Observations**

16. The Tribunal considered it unfortunate that there are concerns about access for contractors to carry out works. Access will be required to ensure that the Repairing Standard Enforcement Order ("RSEO") can be complied with. It is hoped that parties can work together to ensure that proper notification is provided to the Tenant by contractors, and that, thereafter, full access is given by the Tenant to contractors.
17. The Tribunal would point out that it cannot consider compensation in repairing standard cases. A Rent Relief Order can only be considered by the Tribunal if the RSEO has not been complied with, within the timescales set by the Tribunal. In deciding whether an RSEO has been complied with, the Tribunal will take into account any refusal or delay in providing access to contractors for investigation and repairs.
18. The Tribunal observed that the Landlord may wish to discuss whether further insulation is required in the attic following any works that are to be carried out.

**Decision**

19. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
20. The decision of the Tribunal was unanimous.

## **Right of Appeal**

**21. 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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

**H Forbes  
Legal Member**

**18<sup>th</sup> September 2021  
Date**