

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION:** in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

**Chamber Ref:** FTS/HPC/RP/3599

**Re:** Property at 98, Main Street, East Kilbride, G74 4JY registered in the Registers of Scotland under Title Number LAN189570 (“the Property”)

**The Parties:**

**Ms. Yvonne Paterson** residing at the Property (“the Tenant”)

**And**

**Mr. Peter More** residing at Bayview Hotel, 21/22, Mount Stuart Road, Rothesay, PA20 9EB (“the Landlord”)

**Tribunal Members:**

K Moore (Chairman) and L Charles (Ordinary Member)

## **Decision of the Tribunal**

The Tribunal determined that the Landlord has failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), 13(d) 13( e) and 13(1) (h) of the Act.

## **Background**

1. By application received on 3 October 2022 (“the Application”), the Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), 13(d) 13( e) and 13(1) (h) of the Act. The Application comprised a copy of the tenancy agreement between the Tenant and the previous owner of the Property and copy correspondence from the Tenant to the Landlord and his solicitors Agents regarding repairs to the Property.

2. The Application noted the following heads of complaint and listed works required:-
  - i. Section 13(1) (a) Cold air is entering the Property at the skirtings;
  - ii. Section 13(1) (b) Loose coping stone at boundary wall, boundary wall bulging and disintegrating; downpipe not painted; roof tiles to be replaced; soffits require repair as they leak when raining;
  - iii. Section 13(d) wardrobe doors fallen off runners and difficult to operate; en suite lock broken; en- suite shower tray broken; oven thermostat broken and oven not usable; kick plates in kitchen have gaps which allow vermin to enter; birds breeding in ornamental gutter boxes;
  - iv. Section 13(1) (e) carpet at kitchen door is raised and linoleum in kitchen is torn.
3. The Application was referred to the Tribunal. An Inspection of the Property and a Hearing were fixed for 30 January 2023. Prior to the Inspection and Hearing, the Tenant lodged a survey report of the Property prepared by Aitken Associates in respect of the Application and other matters ("the Survey Report").
4. Also prior to the Inspection and Hearing, the Tribunal was made aware by a letter from solicitors acting for the Landlord in other matters that a Repairing Standard Enforcement Order ("RSEO") is in force against the Property.

### **Inspection and Hearing**

5. The Inspection of the matters complained of in the Application took place at the Property on 30 January 2023 at 10.00 am. The Landlord was not present or represented. A Schedule of photographs was taken at the Inspection and is annexed hereto. The Tribunal explained to the Tenant that it was dealing only with the complaints raised in the Application and not the RSEO already in place.
6. The Hearing took place on 30 January 2023 at 2.00 pm by telephone conference call. The Tenant took part and was not represented. The Landlord was not present or represented.
7. The Tribunal allowed the Survey Report to be accepted as a production in respect of its findings relating to the Application.
8. The Tribunal discussed the Inspection with the Tenant and advised that the complaints raised in the Application, with the exception of the painting of the downpipe, had been noted by the Tribunal who made a finding in regard to the effect of those complaints. The Tribunal advised that, in respect of the issues with the skirting, gaps between the skirting and the walls were noted, but, as there had been no wind outside, the Tribunal could not detect air ingress. The Tenant advised that there is air ingress when it is windy and that there are also draughts in the kitchen at the gaps in the kickplates. She explained that she had plugged the kickplate gaps to stop both the draughts and vermin. The Tenant also confirmed that, in nesting season, pigeons nest in the gutter boxes at the front of the Property and that the soffit boards are not watertight.

9. With regard to the underflooring in the kitchen, the Tenant advised that she thought that she had noted this as a complaint but accepted that she might not have done so. The Tribunal advised that movement in the floorboards was noted.

**Tribunal's assessment of the evidence.**

10. The Tribunal found the Tenant to be credible, straightforward and fair in her evidence and had no reason to doubt her evidence.

**Findings of Fact**

11. The Tribunal's findings in fact were made from the Application, the Inspection and the Hearing.
12. The Tribunal found the following matters established: -
- a. There is a private residential tenancy of the Property between the Parties;
  - b. There is evidence of gaps between the skirting boards and the walls which are likely to cause draughts into the Property;
  - c. The boundary walls at either side of the stone steps which form the entrance to the Property are in need of repair and there is movement in the stonework;
  - d. The boundary walls which surround the side and front garden at the Property are in need of repair and there is movement in the stonework;
  - e. A downpipe at the front of the Property has been replaced but has not been painted to match the other downpipes;
  - f. Roof tiles have been displaced and their movement is visible from street level;
  - g. The soffit boards around the common roof appear to be in poor condition and require to be repaired or replaced;
  - h. The doors on both fitted wardrobes are faulty and are not properly affixed to the runners;
  - i. The shower tray in the en-suite is cracked;
  - j. The lock on the en-suite door is broken and is not functional;
  - k. The oven control panel has no visible temperature settings to allow the heat to be controlled;
  - l. There are gaps in the kickplates in the kitchen;
  - m. The linoleum in the kitchen is torn and cracked in places;
  - n. The hall carpet at the kitchen door has risen and is a trip hazard;
  - o. The ornamental gutter boxes at roof level at the front of the Property may be unprotected allowing birds to nest.

**Issues for the Tribunal**

13. In these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d), 13(1) (e) and 13(1) (h) of the Act at the date of the Inspection.

### **Decision of the Tribunal and reasons for the decision.**

14. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the gaps at the skirting and at the kitchen kickplates are such that the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
15. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal found that condition of the soffits and the boundary walls and front steps of the Property are not in a reasonable condition and so the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act. With regard to the roof itself, the Tribunal cannot be satisfied from its Inspection that the roof is fully wind and watertight and so cannot be satisfied that the roof is in a is not in a reasonable condition and so finds that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
16. In respect of the complaint in terms of Section 13 (1) (d) that the Landlord has failed to ensure that any fixtures, fittings and appliances provided by him are in a reasonable state of repair and in proper working order, the condition of the oven is such that it is unusable and the poor condition of the wardrobes, the shower tray and the en-suite door are all such that they are not in a reasonable and not in proper working order and so the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
17. In respect of the complaint in terms of Section 13 (1) (e) that the Landlord has failed to ensure that any furnishings provided by him are capable of being used safely for the purpose of which they are designed, the poor condition of the kitchen linoleum and the hall carpet are such that they are not capable of being used safely for the purpose of which they are designed and so the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
18. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the Tolerable Standard, as the Tribunal cannot be satisfied from its Inspection that the roof is fully wind and watertight and so cannot be satisfied that the roof is in a is not in a reasonable condition, and as the Tribunal has found that the gaps at the skirting and at the kitchen kickplates are such that the Property is not wind and watertight and so is not reasonably fit for human habitation, the Tribunal finds that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
19. The decision is unanimous.

### **Repairing Standard Enforcement Order**

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

### **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 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

K Moore, Chairperson

10 February 2023.