

Housing and Property Chamber First-tier Tribunal for Scotland



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/21/2723

Re: Property at 5 Gigha Place, Broomlands, Irvine, Ayrshire, KA11 1DS registered in the Registers of Scotland under Title Number AYR79476 (“the Property”)

The Parties:

Ms. Susan Carruthers residing at the Property (“the Tenant”)

And

Mrs Kae McFetridge otherwise Margaret Kathleen McFetridge and Mr. Brian or Ben McFetridge otherwise Samuel Brian McFetridge care of Hovepark Lettings Ltd., 56, Hamilton Street, Saltcoats, KA21 5DS (“the Landlords”) per their agents, the said Hovepark Lettings Ltd. (“the Landlords’ Agents”)

Tribunal Members:

Karen Moore (Chairman) and Donald Wooley (Ordinary Member)

Decision of the Tribunal

The Tribunal determined that the Landlords have 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) and 13(1)(f) of the Act and have not failed to comply with that duty in respect of Section 13(1)(c) of the Act.

Background

1. By application received on 3 November 2021 (“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(1)(c), and 13(1)(f) of the Act. The Application comprised a copy of the tenancy

agreement between the Parties, copy email correspondence between the Tenant and the Landlords' Agents regarding repairs to the Property and photographs of the condition of the Property.

2. The Application noted the following heads of complaint and listed works required:-
 - i. Replace roof;
 - ii. Replace roughcasting at the front and front gable;
 - iii. Dampness and mould in the main bathroom, front bedroom and downstairs toilet and
 - iv. Leak in heating system needs sorted
3. The Application was referred to the Tribunal. An Inspection of the Property was fixed for 1 February 2022 with a Hearing fixed for 8 February 2022. The Inspection was cancelled due to the occupants of the Property testing positive for Covid-19 and so the Hearing was also cancelled. The Inspection was re-scheduled for 21 March 2022 at 10.30 am with the Hearing re-scheduled for 31 March 2022 at 10.00 am.
4. Prior to the Inspection, the Landlords' Agents notified the Tribunal that they would not attend the Inspection but would attend the Hearing.

Inspection and Hearing

5. The Inspection of the matters complained of in the Application took place at the Property on 21 March 2022 at 10.30 am in accordance with the tribunal chamber's Covid-19 protocol. The Tenant was present. Neither the Landlords, nor the Landlords' Agents were present or represented. At the Inspection, the Tenant advised that the complaint regarding the heating system had been resolved and so the Tribunal did not inspect the heating system.
6. Following the Inspection and before the date of the Hearing, the Inspection Report with a Schedule of Photographs ("the Inspection Report") was issued to the Parties. The Inspection Report is annexed hereto and referred to for its terms.
7. The Inspection Report notes the following in respect of each of the heads of complaint listed in the Application:
 - i) Replace roof: Photographs 18 and 19 show the pitch of the roof. Photographs 3 and 4 show the roof space and the rafters. Due to the shallow angle of pitch, when viewed externally from ground level it was difficult to determine the condition of the roof tiles. However, the rafter timbers appeared to be relatively dry. The insulation in the roof space is significant and is restricting ventilation within the roof void, specifically at the eaves and at the front of the Property where the angle of the roof is shallow.
 - ii) Replace roughcast on front and front gable: Photographs 20 to 23 inclusive show the condition of the roughcast rendering at front of the Property which is bossed, cracked and discoloured by weathering at various points.

- iii) Dampness and mould in the main bathroom, front bedroom and downstairs toilet: Photographs 5 to 10 inclusive and 12 to 15 inclusive show mould and dampness at the front of the Property. Photographs 8,9 10, 12, 13, 14 and 15 show mould on the ceiling and wall head, specifically towards the front elevation and below that area of the roof void where ventilation is limited as a result of the positioning of the insulation quilt. Photographs 11,16 and 17 show condensation on the windows although the trickle vents and windows are open. Photographs 5, 6, 7, illustrate damp and mould in the kitchen.
8. The Hearing took place on 31 March 2022 at 10.00 am by telephone conference call. The Tenant took part and was not represented. Neither the Landlords nor the Landlords' Agents took part nor were they represented by Ms. Swan, the Landlord's Representative.
9. The Inspection Report was discussed with the Tenant who advised that a roofing contractor who called out on behalf of the Landlords had noted that there was no ventilation in the loft. She explained that the contractor had advised that, although the roof required to be replaced, he been instructed by the Landlords or the Landlords' Agents to carry out patch repairs. She advised that the Landlords' Agents' handyman had also called out and had advised her not to use cleaning sprays but to clean the mould with a dry cloth, to keep the window vents open at all times and to open the windows when drying washing indoors and that she followed this advice to no avail.
10. The Tenant advised the Tribunal that her tenancy began on 20 October 2020 and that she and the eldest of her sons were absent from the Property for approximately two weeks immediately thereafter. Her other sons remained in the Property and her mother did their laundry at her own home and so no washing had been done or dried in the Property at that time. On returning to the Property, she explained that she noticed the first signs of mould in the front bedroom. The Property had been newly decorated when she moved in without evidence of mould. She advised that she reported this to the Landlords' Agents whose manager called out during the week before Christmas 2020 and tested areas with a dampness meter which registered dampness.
11. The Tenant advised the Tribunal that contractors have called out, but the dampness and mould has become worse and has not been eradicated. She explained that a timber specialist had investigated and reported that the issue was lifestyle condensation which the Tenant challenged as the mould had started before she had undertaken any washing or drying inside the Property. The timber specialist had recommended that extractor fans be fitted in the kitchen and bathroom but this had not been done. The Landlords' Agents' handyman had recommended that the roughcast at the front of the building be replaced.
12. In response to the Tribunal's questions on lifestyle, the Tenant stated that she resides in the Property with her two of her sons and that she dries washing outside

as often as she is able and indoors on a clothes horse. She stated fairly that she occasionally dries light-weight garments on the radiators for a short time.

13. In response to the Tribunal's questions on the roughcast at the front of the Property, the Tenant stated that she was not aware of rainwater running down the outside wall but that she noticed that the dark staining was less during dry weather and in the summer.
14. The Tenant advised that she had been given Notice to Leave the Property on the grounds that the Landlords are selling the Property and that her tenancy ends on 5 April 2022. The Tribunal explained that the Tenant cannot be a party to the proceedings after the tenancy ends. The Tribunal explained that if it makes a determination that the Property does not meet the Repairing Standard, then it was bound to impose a Repairing Standard Enforcement Order (RSEO), the effect of which was that the Property could not be re-let until the RSEO was complied with and discharged, but that the Tenant would not be notified of any outcomes after 5 April 2022.

Tribunal's assessment of the evidence.

15. 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

16. The Tribunal's findings in fact were made from the Application, the Inspection and the Hearing.
17. 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 condensation/dampness in the roof space;
 - c. There is mould and dampness in ceilings and the upper walls at the front of the Property which is commensurate with the lack of ventilation in the roof space immediately above the affected areas;
 - d. The Property is ventilated at the windows but has no mechanical ventilation systems;
 - e. The roughcast rendering at front of the Property is bossed, cracked, defective and discoloured by weathering at various points;
 - f. The roof is the original roof, is approximately 40 years old and the roof tiles are appropriate for the style and construction of the roof

Issues for the Tribunal

18. 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) (c), and 13(1) (h) of the Act at the date of the Inspection.

Decision of the Tribunal and reasons for the decision.

19. 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 dampness within the Property is such that the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
20. 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 roof space and the condition of the roughcast at the front of the Property is 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, as the Tribunal cannot be satisfied from its Inspection that the roof is fully wind and watertight , the Tribunal cannot be satisfied that the roof is in a reasonable condition and so finds that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
21. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations 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 Tenant having withdrawn this part of the complaint, Tribunal found that the Property is in a reasonable condition and so the Landlords have not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
22. 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, the Tribunal being satisfied that there is dampness in the Property, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
23. The decision is unanimous.

Repairing Standard Enforcement Order

24. 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

25. 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.

Karen Moore, Chairperson

31 March 2022

signed Karen Moore, Chairperson

Housing and Property Chamber First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Property **5 Gigha Place, Broomlands, Irvine, KA11 1DS**

Ref No: **FTS/HPC/RP/21/2723**

Tribunal members Karen Moore, Legal Member
Donald Wooley, chartered surveyor, Ordinary Member

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the repairing standard application to the First-tier Tribunal, Housing and Property Chamber and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 10.30 am on 21 March 2022 Access to the property was provided by the tenant, Ms Susan Carruthers. Neither the landlords nor a representative from their agents were present.

Weather conditions at the time of inspection were dry and sunny

Description

The property comprises a two storey mid terraced house forming part of a terrace of similar properties constructed in an echelon formation. Originally built on behalf of Irvine Development Corporation, the property is now in private ownership.

The outer walls are of brick and block cavity construction and the roof is mono-pitched, clad with concrete tiles. The accommodation, over two floors, comprises living room, three bedrooms, kitchen, bathroom and separate wc.

Photographic Schedule



1.



2.

The original application to the Tribunal included an alleged leak within the central heating system which is provided by a wall mounted "Vaillant" boiler. This has since been repaired to the satisfaction of the applicant and no longer forms part of the Repairing Standard application.



3.



4

Photographs 3 and 4 detail damp staining and mould growth on the plaster board panel sarking within the roof void. The significant (approx 300mm) insulation is restricting ventilation



5.



6.



7.

Photographs 5-7 identify damp staining and mould growth within the kitchen at a level likely to cause further deterioration to the property if left unchecked.



8.



9.



10.

Photographs 8 – 10 identify significant damp staining and mould growth within the bathroom at a level likely to cause further deterioration to the property if left unchecked.



11.

Open ventilator at the bathroom window.



12

Damp staining and mould growth affecting the ceiling and internal walls of the front bedroom.



13



14



15.

Photographs 13 – 15 illustrate damp staining and mould growth affecting the ceiling and internal walls of the front bedroom at a level likely to cause further deterioration to the property if left unchecked.



16.

Open ventilator at the front bedroom window.



17

Condensation on the internal face of the front bedroom window.



18



19

The roof is of a relatively shallow mono pitch design rather than a more traditional dual pitch with a central ridge. It slopes up from the front elevation to the rear wall head. The angle of pitch is shallower than in a more traditional dual pitched roof. The type of tiles used, as detailed in photograph 18, are of a design suited to a shallow roof pitch. Due to the shallow angle of pitch, when viewed externally from ground level it is very difficult to determine the condition of the roof tiles.



20.



21

Photographs 20 and 21 illustrate a large area of the wall between the eaves, passing the bathroom window and extending towards the ground floor where the dry dash rendering appears to have been worn or washed away. There are random areas of cracked and bossed rendering.



22.

At the area circled in red (photograph 22) the rough cast rendering is entirely “bossed” with little or no adhesion to the brickwork.



22.

Photograph 22 illustrates further cracked and bossed rendering on the front elevation towards the gable wall.



23.

Bossed and cracked rendering at the “gable wall”.

General Observations

Detailed observation on the condition of the roof tiles and the external rendering at the upper floor level was restricted due to the relative inaccessibility of these areas to the Tribunal. The photographic schedule of the external fabric was taken from ground level.

Donald Wooley MRICS

Ordinary (Surveyor) Member
First-Tier Tribunal for Scotland
21 March 2022

Schedule of photographs was taken during the inspection on 21 March 2022

