

Housing and Property Chamber First-tier Tribunal for Scotland



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

Statement of Decision under section 24(1) of the Housing (Scotland) Act 2006

Chamber Reference: FTS/HPC/RT/22/0851

Title Number: Subjects registered in the Land Register of Scotland under Title Number ABN56737

The Parties

Aberdeenshire Council, Infrastructure Services (Housing), Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA (“the Third Party Applicant”)

Miss Elizabeth Cowan, 23 Provost Davidson Drive, Ellon, Aberdeenshire, AB41 9BQ (“The Tenant”)

Mr Naeem Tariq, 3 Cullion Way, Motherwell, North Lanarkshire, ML1 5SF (“The Landlord”)

Subjects: 23 Provost Davidson Drive, Ellon, Aberdeenshire, AB41 9BQ (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr M Andrew (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) 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 Property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b).

Background

- 1. By application dated 23rd March 2022, made under section 22 of the Act, the Third Party Applicant 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 Act.

2. The Third Party Applicant considered that the Landlord has failed to comply with their duty to ensure that the House meets the repairing standard, in that the House is not wind and watertight and in all other respects reasonably fit for human habitation; 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; 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; 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; and the house does not meet the tolerable standard.
3. The Third Party Applicant listed the issues as follows:
 - 3.1. *No EICR*
 - 3.2. *Windows not wind and watertight – missing seals – missing handle – one window screwed shut*
 - 3.3. *External doors draughty and not wind and watertight – locks sticking – difficult to operate.*
 - 3.4. *Double patio doors missing handles and unable to be opened*
 - 3.5. *Gutters/downpipes require to be cleaned*
 - 3.6. *Soffits rotten – weathered paint – in poor condition*
 - 3.7. *External steps at back door – concrete topper stones missing making steps uneven and hazardous*
 - 3.8. *Kitchen drainage – disconnected sink waste pipe under kitchen floor – waste water accumulating under floor*
 - 3.9. *Kitchen units – in poor condition, especially shelf under kitchen sink and sink unit door*
 - 3.10. *Kitchen laminate flooring – in poor condition*
 - 3.11. *Bathroom cistern – ceramic lid replaced with unsatisfactory wooden lid*
 - 3.12. *Bathroom leak around base of toilet*
 - 3.13. *Bathroom floor wet and spongey*
 - 3.14. *Bathroom showerhead bracket broken*
 - 3.15. *Bathroom door does not catch*
 - 3.16. *Master bedroom – cable hanging out of wall; condensation behind wardrobe*
 - 3.17. *Sitting room ceiling – water damage from bathroom leak*
 - 3.18. *Sitting room inner front door handle not operating – handle hanging down*
 - 3.19. *Garage water supply not operational*
 - 3.20. *Garage door only opening halfway and does not lock.*
4. The Third Party Applicant notified the Landlord of the defects by letter dated 24th February 2022. As part of the Application, the Third Party Applicant enclosed photographs. The tenancy agreement was not available.

5. By email dated 19th May 2022, the Landlord's representative sought an extension to allow the lodging of written representations. An extension was granted.
6. By email dated 31st May 2022, the Landlord's representative lodged written representations and productions, stating that the Landlord had not visited the Property for many years and was unaware of the problems, and that Notice to Quit had been served upon the Tenant, expiring on 22nd August 2022, as the Landlord requires to sell the Property.

The Inspection

7. An inspection of the Property took place on 9th June 2022. Both Tribunal members were in attendance. Ms Emma Bain was in attendance on behalf of the Third Party Applicant. The Tenant was in attendance. The Landlord was not in attendance.
8. The Property is a three-bedroomed two story 1970's end terrace house with attached garage.
9. A schedule of photographs was prepared by the Ordinary Member and issued to parties prior to the hearing, and the findings of the Tribunal were discussed at the hearing, as set out below.

The Hearing

10. A hearing took place by telephone conference on 17th June 2022. The Landlord was not in attendance and was represented by Ms McWilliams, Solicitor. Ms Emma Bain was in attendance on behalf of the Third Party Applicant. The Tenant was in attendance. The Landlord was not in attendance.

Motion to adjourn

11. Ms McWilliams made a motion to adjourn the hearing. An arrangement had been made the previous day for the Landlord to attend at her office at 9am on the morning of the hearing to consider the schedule of photographs from the inspection, which had been circulated to his representative on 15th June 2022. The Landlord did not attend at the office and an attempt to contact him was unsuccessful. Consequently, the Landlord had not seen the schedule of photographs or given instructions on the schedule. The Landlord had been emailed by his representative on 31st May 2022, asking him to come in and deal with matters. He was aware of the hearing date. Responding to questions from the Tribunal as to why the Landlord did not attend the inspection, Ms McWilliams said the parties were not on particularly good terms, and he had not been in the Property for many years. Ms McWilliams confirmed that the application was served upon the Landlord prior to him instructing her in this matter on 19th May 2022.
12. Ms Bain opposed the motion on the basis that the Landlord had received a copy of the application which included photographs showing the position, which

photographs were replicated in the schedule of photographs, so, although the Landlord had not seen the schedule of photographs, he could not fail to be aware of the issues. The problems in the Property are severe and it would not be right to delay matters further.

- 13.** The Tenant opposed the motion, stating that she felt this was a stalling tactic by a Landlord who has served notice to quit and wants the Tenant out of the Property. The Tenant said she would have exited the Property on the day of the inspection to allow the Landlord to enter, had he so wished.
- 14.** The Tribunal adjourned to consider matters. The Tribunal considered Rule 28 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) which states that a party applying for adjournment or postponement must, if practicable, notify all other parties of the application, show good reason why an adjournment or postponement is necessary and produce evidence of any fact or matter relied on in support of the application for an adjournment or postponement. The Tribunal may only adjourn or postpone a hearing at the request of a party on cause shown. The Tribunal appreciated that, in the circumstances, Ms McWilliams was not able to notify other parties or the Tribunal in advance, nor was she able to produce evidence.
- 15.** The Tribunal considered the overriding objective set out in Rule 2, and the need to manage the proceedings in accordance with the overriding objective, as set out in Rule 3(2).
- 16.** The Tribunal took into account the position of both parties. There was no information before the Tribunal to indicate why the Landlord had not attended his appointment with his representative or attended the hearing. The Tribunal noted that the Landlord was notified of the repairing issues by the Third Party Applicant on 24th February 2022. He was notified of the application, including the date of the hearing by letter dated 4th May 2022. The application contained photographs illustrating the condition of the Property. He had, thereafter, instructed his representative on 19th May 2022, and written representations were lodged on his behalf on 31st May 2022. There was no question that the Landlord was not aware of the hearing, having also been reminded by his representative only the previous day.
- 17.** The Tribunal considered the position of the Tenant, living in a property with significant repairing issues, in particular the drainage issue under the kitchen floor. Water is discharging into the sub-floor of the Property every time kitchen appliances are used. The Tenant is unable to use the kitchen sink to discharge water. There was an unpleasant odor in the Property at the time of inspection. The situation is urgent, and the pooling of water below the sub-floor may constitute a risk to health and to the structure of the Property. In addition, a bedroom window is nailed shut and cannot be opened, which constitutes a considerable health and safety risk.
- 18.** The Tribunal was aware that a further hearing was unlikely to be scheduled for several weeks due to current staffing issues, and staff and Member availability

over the summer holiday period. It was within the knowledge of the Tribunal that cases are currently being set down for hearings in or around mid-August 2022.

19. The Tribunal considered whether proceeding in the absence of the Landlord would amount to a denial of justice. The Tribunal took into account that the Landlord was represented at the hearing, and his representative had taken his instructions on the application, which included a significant amount of information on the condition of the Property. The representative had not had an opportunity to take the Landlord's instructions on the schedule of photographs, however, the Tribunal considered the point made by Ms Bain to be pertinent, in that the schedule of photographs replicated the information already available to the Landlord, who had chosen not to attend at the inspection.
20. In all the circumstances, and bearing in mind the need to avoid delay, so far as compatible with the proper consideration of the issues, as set out in Rule 2, the Tribunal decided not to grant the motion for an adjournment, considering that the likely delay in scheduling a further hearing could have serious implications for the Tenant and her family's living conditions, health, safety, and the condition of the Property.

Windows

21. The Tribunal Members had noted at inspection that the windows throughout the Property, with the exception of the kitchen window, are in need of attention. The windows are draughty. The upper left bedroom window is nailed shut and has no handle. Externally, there is an apparent gap between the window and the frame. The main bedroom window is draughty, and, externally, the rubber seal is loose.
22. The Tenant said the bedroom window was nailed shut six or eight weeks ago by the Landlord. Her son has bronchitis and the only time there is fresh air in the room is when it is windy. Otherwise, the room is stuffy.

Doors

23. The Tribunal Members had noted at inspection that the front door is missing a drip sill and there is no rubber seal in the threshold. The top hinge is loose, and the latch fails to hold the door closed without the locks being engaged. The handle has been replaced at some time. The back door is draughty and poorly sealed, and does not latch properly. The patio doors from the kitchen have no handles or door furniture and cannot be opened.
24. The Tenant said the Landlord attended at the Property six or eight weeks earlier and said the front door would be fixed, commenting that its condition was normal.
25. The Tenant said the double patio doors from the kitchen were blown open around ten years ago, and the handles came off. The Landlord told her at the time to use silicone and duct tape. There is water ingress at the bottom of the doors when it rains.

Gutters/Downpipes

26. The Tribunal Members had noted growth in the gutters and a missing downpipe at the rear elevation of the Property. There is no system for the discharge of rainwater, and it spills over the edge of the gutter. At the front elevation, there are two different types of guttering which may not be working adequately.
27. The Tenant said she was not aware when the downpipe had been removed, and said rainwater spills over.

Soffits

28. The Tribunal Members had noted that the soffits are in poor condition on both elevations. The rear soffits are in worse condition than the front due to the lack of a downpipe.

Rear step

29. The Tribunal noted that the back door step is uneven, with a pitted surface. The topper stones are missing.
30. The Tenant said there had been flooding in the back garden and the topper stones had eventually broken up.

Kitchen drainage

31. The Tribunal Members had noted a water damaged section of flooring in the kitchen. The flooring was lifted to reveal a pool of dirty water under the floor caused by a broken waste pipe from the sink and washing machine.
32. The Third Party Applicant said the Landlord has been made aware of this issue and has said he is doing something about it, but nothing appears to have been followed through. Environmental Health have been consulted and have spoken to the Landlord.
33. The Tenant said the issue had been ongoing for years. The Landlord had been informed and he said he had called a few companies, but the Tenant said the companies said they had never heard from him. The Tenant had called Dynarod around eight years ago and they refused to do anything until the sludge was cleared from the sub-floor. The Landlord had visited twice in the last two months and he made a further hole in the kitchen floor.

Kitchen units

34. The Tribunal Members had noted that the shelf beneath the kitchen sink is rotten from water damage, as is the base of the cupboard. The kick plate beneath the sink and dishwasher has disintegrated. There is a broken pipe

beneath the kitchen sink which has been temporarily repaired with duct tape. The kitchen cupboards are dated and the worktop is pitted.

35. The Tenant said the pipe under the sink had leaked around six years ago, and the next door neighbour's landlord had fixed it with duct tape, which appeared to have been sufficient to stop the leak.

Kitchen flooring

36. The Tribunal Members had noted that the kitchen laminate is uneven, in addition to the water damage by the sink.
37. The Tenant said the flooring had been affected by external flooding around a year ago. She obtained two estimates for replacing the flooring. The Landlord contacted his insurance, but did not want to pay the excess and said he would see to the work himself, but nothing has been done.

Bathroom

38. The Tribunal Members had noted the ceramic lid on the cistern has been replaced with a piece of chipboard. The bathroom floor is uneven and the laminate is bubbling up due to water damage. The showerhead bracket to the riser is broken. The lock does not work. There is evidence of a leak from the bathroom into the living room.
39. The Tenant said the Landlord fitted the wooden lid six or eight weeks ago. A friend then fitted some sponge to allow proper flushing of the toilet. The showerhead bracket has been broken for years. The Tenant has had to fit a small lock to allow locking of the door.

Main bedroom

40. The Tribunal Members noted a cable is protruding from the wall. The Ordinary Member tested the wall behind the wardrobe and moisture levels were normal.
41. The Tenant said the cable had been there throughout the tenancy. She wipes down the condensation and paints from time to time.

Sitting room ceiling

42. The Tribunal Members noted damage to décor on the sitting room ceiling.
43. The Tenant said the damage had been caused by leakage around the bath sealant. A friend of the Landlord had replaced the sealant and there had been no further leakage.

Sitting room inner door handle

44. The Tribunal Members noted that the door leading from the front porch into the living room has a faulty latch and cannot close properly.
45. The Tenant said the door constantly flies open.

Garage

46. The Tribunal Members had noted that the garage door is not operating correctly and cannot be opened fully. The garage tap has been removed.
47. The Tenant said the garage door had always been problematic but had deteriorated. There had been a burst pipe years ago and the tap was closed off then.

The Landlord's position

48. Ms McWilliams said she was unable to make any representations on behalf of the Landlord as she did not have his instructions on the schedule of photographs.

Tribunal discussion

49. The Tribunal determined that:

(a) The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006)

The Property is not wind and watertight due to the condition of the windows and doors. The windows and external doors, including the patio doors, require to be repaired or replaced to ensure they are in proper working order. The door latch and furniture to the internal door from the front porch to the sitting room requires to be repaired or replaced to ensure it is in proper working order.

The sitting room ceiling requires to be redecorated following water damage.

The kitchen floor requires to be repaired.

The bathroom floor requires investigation and repair, if necessary.

(b) 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.

The gutters require to be cleaned. The guttering on the front elevation requires investigation to ensure proper functioning. A downpipe requires to be installed at the rear elevation.

The soffits require to be repaired or replaced, and painted.

The back steps require to be repaired.

The garage door requires to be replaced.

The garage tap requires to be reinstated.

(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.

The drainage system in the kitchen is not operational and requires to be repaired or replaced.

A current Electrical Condition Installation Report (“EICR”) is required to ensure the electricity supply is in a reasonable state of repair and in proper working order.

The bathroom cistern lid requires to be replaced.

The bathroom leak requires to be investigated and repaired.

The cold water tap on the bath requires to be repaired or replaced.

(d) 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 kitchen units require to be repaired or replaced to ensure they are in a reasonable state of repair and in proper working order, including the shelf under the kitchen sink and the kick plate below the sink and dishwasher.

The kitchen flooring requires to be replaced.

The bathroom flooring requires to be replaced.

The bathroom lock requires to be repaired or replaced.

The showerhead bracket requires to be repaired or replaced.

(e) The Property does not meet the tolerable standard.

The Property does not meet the tolerable standard in respect of the drainage issues within the kitchen.

The Tribunal made no findings in respect of the condensation in the main bedroom, as damp meter readings were in normal range and any appearance of dampness would be caused by condensation settling out in the coldest spots in the bedroom.

The Tribunal made no findings in respect of the cable in the bedroom wall as this had been present since the start of the tenancy and did not cause the Tenant any issues. It is not a live cable and does not appear to fall within the repairing standard.

Observations

50. The Tribunal observed that work is required to the door from the kitchen to the living room, and the upper front bedroom door, to ensure they open and close properly. The Tribunal made no formal findings in respect of these doors as they were not included in the application.

Decision

51. 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).

52. The decision of the Tribunal was unanimous.

Right of Appeal

53. 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 and Chairperson
Date: 22nd June 2022