

Housing and Property Chamber
First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION OF THE TRIBUNAL
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

46a North Street, Bo'ness EH51 0AG ("the House")

The Parties:

Falkirk Council, Suite 2, Callendar Business Park, Falkirk FK1 1 XR ("the Third Party")

LHP Solutions Limited (Co No SC556001), 51 Clydesdale Street, Hamilton ML3 0DD ("the Landlord")

Reference number: FTS/HPC/RT/22/4292

DECISION

The Tribunal, having made such enquiries as are 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 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the inspection and hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 3 November 2022 (hereinafter referred to as "the Application") the Third Party applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;...
...(c) 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;
(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...
...(h) the house meets the tolerable standard." (in particular as set out in Section 86 (1) of the Housing (Scotland) Act 1987):
"...(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire:
(k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration hazardous to health")

The Third Party complained about: windows which were not draughtproof and which do not open and close properly; a broken window pane; lack of draughtproofing of the front door; a broken door handle; water damage presenting itself in the bedroom and the hall cupboard; lack of draughtproofing at the gas and electricity meter cupboards; an ill-fitting internal door; the bath requiring re-sealed; inadequate fire and carbon monoxide detectors; and the absence of electrical and gas related certificates.

By letter of 2 December 2022, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson
Greig Adams, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Third Party.

A hearing and inspection were fixed for 10 March 2023.

The Tribunal inspected the House on 10 March 2023. Mr Beatt and Ms Ferrie of the Third Party and the tenants were present.

Following the inspection, the Tribunal held a telephone hearing on the same day. Mr Beatt and Ms Ferrie were again present. The Landlord was represented by Kate and Rafiq Jalil. The tenants attended as observers. The Tribunal considered the written evidence submitted by the parties and their submissions.

Submissions at the Hearing

The Landlord expressed the view that it considered that the House was to the repairing standard generally. It regarded many of the items such as the ill-fitting door; the door handle and bath seal as being the sort of repairs that it would have dealt with under routine maintenance had it not been for difficult working conditions which it claimed were caused by the tenants.

The Landlord was already in contact with the upstairs flat owner as regards the leak.

The Landlord expressed uncertainty as to whether the absence of draughtproofing to the front door was a repairing standard issue and the Tribunal advised that it considered that it was.

The Landlord advised that a repair had been carried out to the bay window pane by adding safety glass.

It was confirmed that the Landlord had supplied to the Tribunal an up to date Gas Safety Certificate and an EICR. The Landlord advised that these had previously been provided to the tenants.

Mr Beatt advised that on his original inspection the two fire alarms had not appeared to be interlinked although they now seemed to be. There was also some discussion about whether current Scottish Government guidance suggested that a smoke detector or a heat detector was required in a room which is both a kitchen and a living room.

Mr Jalil commented that he considered that the problem relationship with the tenants was the result of the actions of the Third Party. He thought that they had behaved unreasonably and should be excluded from future involvement in this application. The Tribunal advised that the local authority had the right to make this application or other applications in future and there was no basis to exclude its involvement. The Tribunal expressed the view that it had seen no evidence of any conduct on the part of the Third Party's officers which had been unreasonable.

The Tribunal indicated that if the Landlord was unable to access the House to carry out repairs it had the option to make a separate application to the Tribunal to be allowed access. The Tribunal also observed that it would be in all parties' best interests for access to be made available without any friction.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a first floor flat.
- 2 The tenants occupy the House under a private residential tenancy agreement.
- 3 LHP Solutions Limited is the registered owner of the House.
- 4 The tenants took possession of the House from 18 September 2021. The tenancy is continuing.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Third Party notified the Landlord's representative of defects in the House which are now the subject of the Application by letter of 3 November 2022.
- 7 The inspection on 10 March 2023 revealed:
 - a. There was a broken pane of glass in the kitchen/livingroom window which had been covered by a sheet of opaque safety glass.
 - b. The windows in the living room, the utility room and the bedroom were not capable of being opened and closed as designed. They would slam shut. They were not draughtproof.
 - c. The door handle in the door between the kitchen/livingroom is broken.
 - d. The door between the kitchen/livingroom is ill-fitting and difficult to open and close.
 - e. There is no draughtproofing around the front door.
 - f. The bath seal is split.

- g. There was water staining in the hall cupboard and on the bedroom ceiling, where mould was also present.
- h. Two low level cupboards set into the bedroom wall house the utility meters. There are holes present to accommodate pipes/wires. No significant draughts were noted.
- i. A carbon monoxide alarm was present and functioned on testing.
- j. An Interlinked smoke detector in the hall and a heat detector in the kitchen/livingroom were present and functioned on testing.

A schedule of photographs taken at the inspection has been provided to the parties.

Reasons for the Decision

Windows

The windows are at or near the end of their useful life and require repair or replacement. The glass pane in the central window in the bay window is broken and has been repaired with an opaque sheet. All windows in the House do not open and close as intended. The windows slam shut and are difficult to close completely. They are not reasonably draughtproof.

Door handle on Kitchen/livingroom – Hall Door

The handle is broken and falls apart on use.

Door between Kitchen/livingroom and Utility Room

This door does not fit its frame well and is stiff to open and close.

Front Door

This admits draughts as there is no draught proofing around any part of it.

Bath Seal

This is split and needs replaced.

Bedroom Ceiling/Hall Cupboard

We identified staining on the cupboard walls and on the bedroom ceiling consistent with water leaking from the flat above. Mould was present on the bedroom ceiling.

Bedroom Utility Meter Cupboards

We did not observe unacceptable draughts in these areas.

Fire and Carbon Monoxide Detection

A heat detector was present in the kitchen/livingroom and a smoke detector in the hall. Each functioned and were interlinked. A carbon monoxide detector was in place in the utility room.

The Repairing Standard

The Tribunal considers that the condition of the windows; the broken door handle; the ill-fitting door between the kitchen/livingroom; the absence of draughtproofing on the front door; the condition of the bath seal; and the damage caused to the bedroom ceiling and hall cupboard by water ingress to represent breaches of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made. Having regard to the nature of the works required at the House and the Landlord's representations, the Tribunal have allowed 42 days for the repairs to be carried out.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of Section 63 of the 2006 Act

Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

John M McHugh
Chairperson

Date: 24 March 2023