

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/RP/21/0473

The Parties

Ms Melodie Nobes, Cairnbarra, Kingcausie Estate, Maryculter, Aberdeenshire, AB12 5FR (“The Former Tenant”)

Mr Henry Irvine-Fortescue, Kingcausie House, Kingcausie Estate, Maryculter, Aberdeenshire, AB12 5FR (“The Landlord”)

Subjects: Cairnbarra, Kingcausie Estate, Maryculter, Aberdeenshire, AB12 5FR (“the House”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr A Anderson (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) in relation to the House, determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’).

Background

1. By application dated 28th February 2021, made under section 22 of the Act, the Former 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 Act.
2. The Former Tenant considered that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard, in that the House was not wind and water tight and in all other respects reasonably fit for human

habitation; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were not in a reasonable state of repair and in proper working order; and the House did not meet the tolerable standard

3. The Former Tenant listed the issues as follows:

Damp and mould throughout the house

Raw sewage seepage

Five rotting windows

4. As part of the Application, the Former Tenant enclosed copy correspondence between the parties, copy lease and inventory, and photographs of the condition of the House. The Former Tenant provided formal notification to the Landlord on 2nd March 2021.
5. A decision to refer was made by a legal member with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber) on 9th April 2021.
6. By email dated 13th April 2021, the Former Tenant provided notification that the tenancy had ended. The Tribunal considered whether or not to continue with consideration of the application, in terms of Schedule 2 Paragraph 7(3) of the Act. The Tribunal decided to continue with consideration of the application due to health and safety issues. The Tribunal issued a Minute of Continuation dated 19th April 2021.
7. By emails dated 14th and 21st April and 18th May 2021, the Landlord made written representations and lodged productions.
8. A Case Management Discussion (“CMD”) took place by telephone conference on 26th May 2021. The Landlord was in attendance. The Landlord referred the Tribunal to his representations. He said that, although the Former Tenant had referred to numerous notifications to him of the issues in the past, this was not the case. He had been aware of issues with the windows and had inspected those, but he was not aware of the issues with mould and damp, or sewage spillage. He was concerned and upset when he saw the list of issues in the application form. He had a good personal relationship with the Former Tenant, and considered himself to be a responsible landlord, responding to concerns of his tenants.

Damp and mould

9. The Landlord said he had been in the House on a few occasions during the tenancy, perhaps once or twice a year, when issues were brought to his attention. He had noticed that a cupboard was crammed with boxes and bags, and there were belongings piled high throughout the House. He felt this might impede the free flow of air. There was plastic sheeting on a bedroom window

and he had told the Former Tenant that the windows should be opened. The Former Tenant was not hanging washing out to dry and there was no tumble dryer. The Former Tenant had cleaned the mould before leaving the House. The Landlord had then ventilated the House and used the wood burning stove, and there was no evidence of damp.

Sewage spillage

10. The Landlord said he was unaware of any issues with sewage spillage during the tenancy. Had he been aware, he would have dealt with this as a matter of urgency. He had offered to deal with this immediately upon notification, and the Former Tenant had declined the offer, stating that it could wait until after she had vacated the House. The bathroom has now been renovated, as shown in photographs submitted to the Tribunal. Responding to questions from the Tribunal, the Landlord said the bathroom has a concrete floor. During renovation, there was no evidence of a broken or rotten seal on the outlet pipe. He suggested condensation may have arisen and dripped onto the floor. He was unaware of any rodent or insect infestation, as mentioned by the Former Tenant.

Windows

11. The Landlord said he had inspected the windows in or around 2018. There was a bit of rot on the sills of the upstairs bedrooms, and they were unsightly, but they were wind and water tight. Two new windows have been installed in the upstairs bedrooms. Two new kitchen windows have been installed, and one new bedroom window on the ground floor.

Further discussion

12. The House is heated by oil-fired central heating and the wood-burning stove. The House is currently undergoing renovation to bring it up to letting standards in respect of energy efficiency. Insulation has been installed, and new plasterboard in places. A living room wall that had shown evidence of mould during the tenancy had been removed, and there was no evidence of damp. The wall was dry.

13. It was the Landlord's position that the problems indicated in the photographs lodged by the Former Tenant had not arisen over a short period of time. The previous tenant had been in the House for 4 years with no issues. The House now meets the repairing standard. He has put a new regime in place for annual inspections. He has a new tenant in mind for the House.

14. The Tribunal decided to proceed to an inspection of the House.

The Inspection

15. An inspection of the House took place on 9th August 2021. The Landlord was in attendance.

16. The House is a one storey and attic detached cottage, constructed upwards of 100 years ago, set in a rural setting, around 7 miles west of Aberdeen city centre. The main outer walls are solid stone and the main roof is pitched and slated. There is a single storey extension housing the dining area, it has blockwork walls and a shallow pitch, metal clad roof. There is oil fired central heating serving the entire House and a wood burner in the lounge. The windows are double glazed throughout.
17. It was clear from the evidence submitted and from the Tribunal's inspection that significant repairs had been undertaken to the House since the Former Tenant had vacated, including replacement of five old windows, renewal of the roof over the lounge and dining area, replacement of the bathroom fittings, renewal and re-plastering of various apartments throughout the House, and redecoration.
18. Damp meter readings were taken throughout the House. With the exception of an area adjacent to the entrance door, the meter readings were normal. There was no sign of mould growth in the House.
19. Damp meter readings in an area adjacent to the entrance door showed a moisture content of 76%. The moisture content decreased when the meter was moved up the wall linings and away from the entrance door.
20. The toilet seals were intact, and a flush test showed no visible leakage. The mechanical ventilation fan was operational.
21. The timber facings on the upper front windows were unfinished. Guttering and fascia was incomplete on the flat metal roof above the lounge. There was cracked cement work on the western skew, and plant growth in the chimneys.
22. Following the inspection, the Ordinary Member compiled a schedule of photographs, a copy of which is attached as an appendix to this decision.

The Hearing

23. A hearing took place by telephone conference on 16th August 2021. The Landlord was in attendance. Before the hearing commenced, it was brought to the attention of the Tribunal that the Landlord had not received the schedule of photographs. This was provided to the Landlord prior to the commencement of the hearing.
24. There was some discussion about the moisture readings adjacent to the entrance door. The Landlord said the plaster had been renewed in July. He also undertook to have the roof covering and rainwater goods checked in case any defects could be a contributory factor.
25. The Landlord said there were minor snagging issues to be addressed. The facings on the upper windows were to be painted, the guttering affixed and the plant growth and skews attended to.

Tribunal discussion

26. The Tribunal determined that:

(a) The House is wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006); and

(b) The House meets the tolerable standard.

The Tribunal found no evidence of water or wind ingress. With the exception of the area adjacent to the entrance door, the Tribunal found no evidence of damp within the House. There was no evidence of mould growth. With regard to the area adjacent to the entrance door, the Tribunal appreciated that it was not raining during or preceding the inspection, therefore it was impossible to rule out the roof covering and rainwater goods as contributory factors, however, the Tribunal accepted the Landlord's position, and the possibility that this is residual moisture from the recent plastering work.

(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

The Tribunal found no evidence of raw sewage seepage or unsealed toilet pipes. The toilet was in a reasonable state of repair and in proper working order.

Decision

27. The Tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

28. The decision of the Tribunal was unanimous.

Right of Appeal

29. 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: 16th August 2021