

# 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 under section 24(1) of the Housing (Scotland) Act 2006  
("the 2006 Act")**

**Chamber Reference: FTS/HPC/RP/20/2645**

**Title Number: Subjects registered in the Land Register for Scotland under Title  
Number DMB56924**

**House address: 10A Glenacre Road, Cumbernauld, G67 2NY ('the House')**

## **The Parties**

**Miss Christina Ingceby, Mr Anthony Crumlish, 10A Glenacre Road,  
Cumbernauld, G67 2NY ('the Tenants')**

**Mrs Anne Wilson, 4Hyndshaw Road, Bogside, Wishaw, ML2 9PN ('the Landlord')**

## **Tribunal Members**

**Ms H Forbes (Legal Member)**

**Mr R Buchan (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) of the 2006 Act in relation to the House, determined that the  
Landlord has complied with the said duty.**

## **Background**

1. By application dated 18<sup>th</sup> December 2020, made under section 22 of the Housing (Scotland) Act 2006 ('the Act'), the 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 2006 Act.

2. The Tenant 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 water tight and in all other respects reasonably fit for human habitation; 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 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 Tenant reported issues in relation to:
  - (i) Bathroom light fitting – safety concerns following a flood from the upstairs flat;
  - (ii) Shower – safety concerns following a flood from the upstairs flat;
  - (iii) Bathroom tiling – resealing of grouting required;
  - (iv) Bathroom and boiler cupboard ceilings showing cracks that require structural investigation and repair;
  - (v) Mould within the house causing health problems and damage to property;
  - (vi) Draughts from vents and rear door;
  - (vii) Inadequate heating;
  - (viii) Overheating cooker.
4. The Tenant notified the Landlord of the defects by letter dated 11<sup>th</sup> January 2021.
5. By email dated 10<sup>th</sup> February 2021, the Landlord lodged written representations.
6. A Case Management Discussion (“CMD”) took place by telephone conference on 5<sup>th</sup> March 2021. All parties were in attendance. The tenants were represented by Mr J Melvin of Coatbridge CAB.

## **Bathroom light fitting & shower**

### **Representations for the Tenants**

7. On behalf of the Tenants, it was explained that there was a flood from the upstairs property towards the end of November 2020, causing water ingress to the bathroom of the House, including the area around the light switch.

The Tenants are concerned that the electric circuit breakers did not operate at the time of the water ingress.

8. Mr Crumlish said the Tenants were still up at the time of the incident, and the lights and television were on. This has raised concerns about the safety of the electric switch and the electric shower. The sealed shower unit has not been opened and checked. The Tenants have not been placing excessive demand on the shower system.

#### **Representations by the Landlord**

9. The Landlord said she had the electrical system checked on 1<sup>st</sup> December 2020. The electricity was disconnected and all fittings in the bathroom left to dry. It was the opinion of the electrician that the reason the circuit breakers did not operate was that it was after midnight and the lights and shower were not in operation. The electrical system has been checked a few times since and has been deemed to be safe. A new light fitting was installed. The wiring to the shower was changed. A new switch had been installed in October 2020 due to overheating. The Landlord thought this was due to excessive demand on the system. The last Electrical Installation Condition Report ("EICR") was carried out in July 2019. The Landlord said she would consider obtaining an updated EICR.

#### **Tribunal comments**

10. The Tribunal considered that it would be helpful to have a further EICR carried out by a different electrician.

#### **Bathroom tiling**

##### **Representations for the Tenants**

11. Mr Melvin said there has been some damage to the grouting following the water ingress from upstairs. Mr Crumlish said the joiner had not examined the ceilings closely. There is a concrete floor between the properties. He is concerned that concrete could fall on the Tenants when they are showering.

##### **Representations by the Landlord**

12. The Landlord said she would have this work carried out but it would not be possible in the current Covid-19 pandemic as only essential repairs are permitted.

#### **Tribunal comments**

13. The Tribunal considered that this matter could be dealt with after lockdown restrictions have been eased.

## **Ceilings**

### **Representations for the Tenants**

14. Mr Melvin said that there had been minor cracks in the ceilings prior to the flood from the property above. It was now considerably worse. There is a crack in the ceiling of the boiler cupboard that is wide enough to insert a finger. The Tenants are concerned that this is indicative of a structural problem.

### **Representations by the Landlord**

15. The Landlord said this had been assessed by a joiner who said that there was no structural issue and that the cracks had probably been there for a considerable time. Again, it is impossible to have cosmetic work carried out at this time. She confirmed that she had not involved insurance at the time of the flood from upstairs.

### **Tribunal comments**

16. The Tribunal considered that this was a matter that would be best assessed during an inspection by the Ordinary Member when lockdown restrictions have eased and inspections have recommenced.

## **Damp, vents & back door**

### **Representations for the Tenants**

17. Mr Melvin said there had been an ongoing problem with damp in the House. Three experts had assessed the situation. The first expert said it was a problem with rising damp; the second and third said it was a problem with condensation, exacerbated by the actions of the Tenants in using a tumble drier. However, the tenants acquired a condensing tumble drier in August 2020. Despite the installation of vents, the problem continues. The vents are further cooling the temperature within the House.
18. The Tenant, Mr Crumlish, said that the vents were not fitted properly. This was reported numerous times to the Landlord. The temperature in the House is 7 to 9 degrees without heating, and never more than 15 degrees in the bedroom, with heating. The contractor that installed the vents said the situation with condensation would only be alleviated by the installation of central heating. The heating was due to be changed in December 2020 but that did not happen. The Tenants do not dispute that the storage heaters are working, but they believe they are not capable of heating the House to an adequate standard without insulation.
19. Mr Crumlish said there is a piece missing from the back door, where a trickle ventilator ought to be fitted.

## **Representations by the Landlord**

20. The Landlord confirmed that three experts had assessed the situation. Initially, it had been thought there was a break in the damp course. The bedrooms back onto a car parking area. In order to reach the damp course, around 18 feet in depth of the car parking area would have to be removed. This was expected to cost thousands of pounds and it would require the permission of the local authority. The other two experts assessed that the damp course was operational and that the problem was caused by condensation and it was not just coming from the tumble drier. Extractor fans were fitted in the kitchen and shower. Passyfier vents were fitted. It was her understanding that they should not let cold air in. The wall outside both bedrooms was replastered. The damp expert demonstrated that there was moisture in the air and it was landing on surfaces. The expert dug holes in the wall to indicate that the walls were dry. The walls require to be wiped regularly with hot soapy water and bleach. Responding to questions from the Tribunal, the Landlord said that dehumidifiers had not been used, and that the issue with condensation began in May 2020, which was some months before the flooding from upstairs.
21. The Landlord said she had been told that gas central heating was no longer encouraged or sustainable for environmental reasons. She provided two oil filled heaters to the Tenants as an interim measure. The storage heaters in the House are the original storage heaters. They have been fully checked and have had replacement parts installed. Although she was going to install central heating, she was informed by the contractor that the heaters are in working order, and that the wattage and specification should be adequate for the size of the rooms. She was told that new central heating would not make a difference to the temperature of the House. There were concerns that the Tenants were not using the heaters correctly. They have now been told how to operate the heaters properly. The Landlord said she went along with the advice of specialists in respect of the heating and the vents. The vents could be blocked up, but that would not assist the condensation problem.
22. The Landlord was unaware of the issue with the back door and considered that it had been in a good state at the start of the tenancy.

## **Tribunal comments**

23. The Tribunal considered that this was a matter that would be best assessed during an inspection by the Ordinary Member when lockdown restrictions have eased and inspections have recommenced. In the meantime, it would be helpful to have sight of the reports prepared by the three specialists that attended at the House.
24. The Tribunal considered that it might be sensible for the Landlord to assess what work is required to the back door, as this is an issue that may be easily attended to.

## **Cooker**

### **Representations for the Tenants**

25. Mr Melvin said the cooker is cooking at a higher temperature than it should. The Tenants said that food cooked in the oven is burnt on the top and uncooked inside. When it is set at 180 degrees, it heats up to 230 degrees. They have stopped using the oven as they are very concerned that it is unsafe.

### **Representations by the Landlord**

26. The Landlord said that the cooker was PAT tested at the start of the tenancy and it has been checked by the electrician on three occasions, including work to renew the wiring. The electrician has said it is safe. The Landlord is aware that the Tenants are looking for alternative accommodation, therefore, she would not wish to have to replace the cooker at this time.

### **Tribunal comments**

27. The Tribunal noted that an argument had been made that the cooker did not form part of the tenancy as it was provided to the Tenants by the Landlord as a goodwill gesture, and could be removed if the Tenants wished. The Tribunal pointed out that the cooker forms part of the fixtures and fittings provided by the Landlord, and, therefore, falls within the repairing standard. This was accepted by the Landlord. The Tribunal considered that a further PAT test should be carried out on the cooker. Subject to the outcome of the PAT test, the Landlord may be advised to consider replacement of the cooker.
28. The Tribunal considered matters and decided that an inspection of the House would be required to investigate the aforementioned matters when government restrictions were relaxed. The Tribunal issued a Direction to the Landlord in the following terms:

The Landlord is required to lodge the following information within five weeks of the date of issue of this Direction:

1. A further Electrical Installation Condition Report ("EICR") to be carried out by a suitably qualified electrician that has not already provided services at the House, to include comment on the condition of the shower unit;
2. A further PAT test certificate for the cooker;
3. Copies of reports previously received from the three damp specialists that have attended at the House and provided advice and/or services;
4. A report from the heating specialist that provided input on the heating system, to indicate whether or not the heating system has

the capacity to heat the House to an adequate temperature, and whether any improvement in the overall temperature in the House would be gained by installing an alternative form of heating or heaters.

29. By email dated 9th April 2021, the Landlord responded to the Direction by providing a current EICR carried out on 1<sup>st</sup> April 2021, which indicated that no remedial action was required, including to the cooker. The Landlord stated that the damp specialists had only provided verbal reports. The Landlord provided an invoice from specialists that had carried out work to address condensation-related problems. The Landlord provided a report from an electrician stating that the heating system is fit for purpose, indicating that the tenants may not have grasped an understanding of domestic and off peak tariffs relating to the heating system.
30. On 19<sup>th</sup> April 2021, the Tribunal was informed that the Tenants had left the House on 13<sup>th</sup> April 2021. The Tribunal considered whether the application should be determined or abandoned. The Tribunal decided, in terms of Schedule 2 Paragraph 7(3) of the Act, that the application should be determined, given the health and safety issues raised. A Minute of Continuation dated 22<sup>nd</sup> April 2021 was issued.
31. By email dated 5<sup>th</sup> May 2021, the Landlord indicated that she intended to sell the House.
32. By email dated 14<sup>th</sup> July 2021, the Landlord said she wished to install central heating in the House before selling, and arrangements to have this carried out were in hand, after which, a home report would be commissioned.
33. By email dated 10<sup>th</sup> November 2021, the Landlord provided a single survey and energy report for the House, which indicated that the issues of concern to the Tribunal had been satisfactorily addressed and an inspection was not required.

### **Reasons for Decision**

34. The Tribunal determined the application having regard to all the evidence before it. The Tribunal was satisfied that there was sufficient information and material upon which to reach a fair determination of the application.
35. The Tribunal was satisfied, on the information provided, that all issues had been addressed and that the House now meets the Repairing Standard. The Tribunal requires no further action to be taken.

## **Decision**

36. The Tribunal was satisfied that the Repairing Standard was met and that no orders were necessary. The Tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the 2006 Act.

# H Forbes

Legal Member and Chairperson  
Date: 20<sup>th</sup> December 2021