



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 24(1) of the Housing
(Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/22/3981

**Re: Property at 293 Broomhill Road, Aberdeen, AB10 7LN (“the Property”)
under Title No: ABN93375**

Parties:

**Dr James de Kauwe and Mrs Alice De Kauwe, 293 Broomhill Road, Aberdeen,
AB10 7LN (“the Tenant”)**

**Mr Grant Campbell and Mrs Lynne Campbell, 114 Wittenburgerweg,
Wassenaar, Netherlands, 2244CE (“the Landlord”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Tribunal accordingly made a Repairing Standard Enforcement Order (“RSEO”) as required by Section 24(2) of the Act.

Background

- 1 By application to the Tribunal, the Third Party Applicant applied to the Tribunal for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the Tenant considered the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard in that they had failed to ensure that:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation;
- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (iii) 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;
- (iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and
- (v) The house does not meet the tolerable standard.

The areas in respect of which the Tenant claimed the Landlord had failed to comply for the above reasons are more particularly described in paragraphs 4 to 20 of this decision.

- 3 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the parties under Schedule 2, Paragraph 1 of the Act. An inspection and hearing were scheduled for 16 February 2023 and a hearing scheduled for 23 February 2023.

The Inspection

- 4 The inspection took place on 16 February 2023. The Tenants were both present. The Landlords were not present nor were they represented. The Tribunal noted that the date and time of the inspection had been intimated upon them and duly determined to proceed in their absence.
- 5 The house is a two-storey and attic mid-terraced building, constructed upwards of 90 years ago. There is a two storey rear projection with a conservatory off. The property is in a mainly residential setting around 2 miles south-west of Aberdeen city centre.
- 6 The main outer walls are of solid granite construction and the roofs are pitched and slated. There is a gas-fired central heating system with the boiler located in the cupboard in the conservatory. There are water filled radiators throughout the house. The windows mainly pvc framed and double glazed.
- 7 The accommodation comprises on the ground floor an entrance vestibule, hall, two public rooms, cloakroom with WC, kitchen and conservatory. On the first floor there is a landing, bathroom with WC, and three further bedrooms.

On the attic floor, there is a landing, fitness room and one bedroom with ensuite shower room with WC.

- 8 The Tribunal proceeded to inspect the items listed within the application.
- 9 The Aga was reported to have been inspected by an engineer the day prior to the inspection. It was found to be hot to touch. The spark ignition to the gas hob in the kitchen was found to operate normally when tested. The Tribunal could not identify an electrical isolator or gas valve to isolate the appliance. The Tribunal was shown various switches and timer controls in the vestibule cupboard, including one timer each for the two immersion heaters and a switch marked "hob and oven". Within the kitchen there was a fairly standard "LP722" heating and hot water programmer adjacent to the conservatory door. The Tribunal did not conduct any testing of these. A number of taps were opened and water pressure appeared moderate. Flow rate from the main bathroom shower was moderate. The tenant demonstrated that water did not spray upwards significantly, when the shower head was inverted. It was not possible to carry out any meaningful inspection of the water main to assess for leaks.
- 10 The Alpha SY-N central heating boiler was inspected. It was operating at the time of the inspection and the house was reasonably warm. The pressure gauge was in the green range. The Tribunal was shown the non-standard plumbing arrangement for re-pressurising the heating system.
- 11 The exterior of the roof was inspected from ground level, with the use of binoculars. Parts of the exterior of the roof were inspected from the attic floor velux windows and first floor bedroom window. It could be seen that the cement work to the skews (stone edges of the roof and chimneys) to the front elevation and to the rear wall of the rear projection had been renewed in recent times. The cement work to the skews to the rear of the main roof appeared weathered and cracked in places, particularly to the western side. The slatework appeared largely intact, although there were a number of chipped and cracked slates. The metalwork was of mixed ages with numerous patch repairs to the stairwell skylight, but appeared largely intact. There was a quantity of pieces of slate and cement lying on the ground at the rear of the building. Internally, wall and ceiling surfaces were inspected fairly closely for signs of water ingress, with particular attention to the attic floor accommodation and bedroom within the rear projection. A Protimeter Surveymaster moisture meter was used to test the moisture content of surfaces. Many wall surfaces had been redecorated in recent months. In most areas, there were no signs of water ingress and moisture readings were below 20%. Visually, there were two small areas (approximately 30cm x 30cm) with faint stains in the attic bedroom west gable wall, rear slope (lath and plaster) and within the fitness room, east gable, front slope (plastered on the hard). Moisture meter readings to these locations were 80% and 99%. There was a small area of staining and some cracked plaster around the lower edge of the skylight window over the staircase. This area could not be tested with the moisture meter as it was inaccessible.

- 12 The Tribunal was advised by the tenants that the loose cabling to the exterior and the issues with the guttering had been rectified.
- 13 Staining from previous water ingress to the vestibule ceiling and lintel was found to be dry when tested with the moisture meter. The plaster did not move significantly when pressure was applied. The mastic around the bathroom window, directly above the main front door was found to be weathered, with patch repairs to one section. The bathroom internal window sill was found to have been damaged by water absorption. Faint stains to the ground floor hall ceiling, beneath the first floor shower, were found to be dry when tested with the moisture meter. There was no obvious mould or damp odour encountered during the inspection. The damaged wall lining adjacent to the toilet roll holder had been rectified.
- 14 The Tribunal noted that some of the windows did not have “permavents” ie, openable slit vents to the pvc window frames. Those windows that were opened were found to operate properly. Mechanical ventilation to the bathroom and en-suite shower room operated properly and suction levels appeared satisfactory when tested with a sheet of paper.
- 15 There was no fixed toilet roll holder in the ground floor cloakroom.
- 16 Loose plaster to the stairwell was reported by the tenants as having been addressed.
- 17 The leak from the bath was reported by the tenants as having been repaired.
- 18 The main bathroom had been redecorated in recent months.
- 19 The French doors and adjacent double glazed panels of the conservatory were inspected. The locking mechanism was found to be stiff. Slightly more than 50% of the glazed panels to the doors and panels were significantly misted. Externally, the paintwork was weathered. The back gate was inspected. It was found to open and close properly. The paintwork was weathered and some timbers were showing signs of decay.
- 20 The carbon monoxide alarm had been re-positioned outside the boiler cupboard.

The Hearing

- 21 The Hearing took place following the inspection on 23 February 2023. The Tenants were in attendance. The Applicant was represented by Ms Card and Mr Barr of Martin and Co.
- 22 The Tribunal took the parties through the findings of the inspection and asked for their submissions.

- 23 With regard to the Aga and the provision of heating and hot water, the Tenants advised that the boiler had been inspected the day before the inspection. A gas engineer had attended. He had advised on several occasions that the boiler should be replaced. The Tenants confirmed that the property currently has heating and hot water. The outstanding issue was in relation to the water pressure. The Tenants referred to a report from Martin and Co that had been carried out recently which stated that the water pressure appeared to be low. Previous plumbers who had attended the property also noted this. The Tenants referred in particular to an invoice from JOR Property dated 20 October 2022 which confirmed this. The Tenants' position was that the pressure remained low in the bathroom shower. Whilst there was heating and hot water at present, there had been ongoing issues since around May 2022. The sheer number of invoices was evidence of the issues. The Tenants had lost heating and hot water on numerous occasions, once for seven days. It was a repeated issue. The Tenants advised that they had to continually repressurise the boiler. It was not a standard boiler that could be repressurised easily. The manual made it clear that repressurisation should only be done by a gas safe engineer. The Tenants had been told by the Landlord that the heating was not completely void when the boiler was not working as there were two gas fires in the lounge.
- 24 The Tenants advised that they were not aware if the Aga had been serviced or not . The ignitor was working correctly. However the isolation of the gas hob was still an issue and a safety concern. The spark ignitor was currently working but they weren't aware if any repairs had been carried out. The Tenants had been advised that there should be an isolator switch however the switch in the cupboard only isolated the oven. They advised that the immersion heater was now ok.
- 25 The Landlord's representative advised that repairs had been carried out and that the boiler was working as it should. The Landlord was aware of some issues with the water pressure but would need a quote from the contractor for a fix for this. The Landlord was also aware that the isolation of the gas hob had been mentioned by contractors but was not sure if this had been resolved. The latest gas safety certificate did mention that the boiler required replaced. It had last been repaired in September. The Landlord's representative confirmed that the Aga was out with the scope of the gas safety certificate but it had its own safety certificate.
- 26 With regard to the shower, the Tenants advised that a contractor had recommended that the shower cartridge be replaced. This had been on 20 September 2022 however the Tenants had not heard anything after that and had sought an update. It was not specifically looked at by a plumber. The Landlord should have investigated this after it had been reported. The Landlord's representative advised that he was aware of some issues with the water pressure but would need a quote from the contractor for a fix for this to put to the Landlord.

- 27 With regard to the roof the Tenant advised that works had last been carried out at the end of November 2022. Contractors had said there was an issue with skews and pointing that was causing internal defects. Martin and Co had advised that they would obtain a report from a third roofing contractor to see if any further works were required in order to put an end to the debate about the roof and the internal issues. There had been three visits by one contractor who advised that pointing and skews needed redone. Martin and Co had not advised them to carry out that work at the time but had since done so. Internal damp patches had previously been treated however had recurred in November, which led to further treatment in January 2023. The Tenants were concerned that the issues with the roof had not been fully resolved and there was still evidence of damp in the property. The Tenants noted that the Tribunal's inspection had shown dry readings in most areas however they wished confirmation that the external issues had been rectified. The Tenants noted the findings of the inspection report in relation to the bathroom and the extractor fan. The Tenants advised that roof tiles would still occasionally fall off the roof, although less frequently than before.
- 28 The Tenants confirmed that the whole wall in the small bedroom in the attic had black mould. There was cracking on the wall which indicated mould and damp. The wall would bend and flex when touched. The Tenants noted that the Tribunal had found damp readings in the room. In terms of a resolution the Tenants wished the Landlord to instruct a full investigation of the whole roof and the internal damp areas to identify the problem and come back with recommendations.
- 29 The Landlord's representative advised that AJ Donald, a roofing contractor, had been instructed to look at the roof elevations in November, having previously carried out work on the roof. Since the repair further redecoration had been carried out and there had been no further comments from the Tenants about damp recurring. The Landlord's representative confirmed that every window could be opened. The Landlord's representative did however take on board the Tenants' comments about a full inspection of the roof and had recommended this to the Landlord, but had yet to receive authorisation to proceed. The Landlord's representative outlined the works that had been carried out to the roof in the past. Most recently AJ Donald had recommended works in December 2022 however this consisted of repairs that the Landlord believed had been undertaken by a previous contractor. The Landlord had spent a significant amount of money on this and was trying to clarify whether there had been any negligence. There had been nothing done specifically to deal with the water ingress to the vestibule, it had just been works to the main roof.
- 30 The Tenants advised with regard to the windows that they were aware of the age of the property. The issue had been raised because a ventilation specialist had made recommendations on how to ventilate the property. However the issue had been more to do with water ingress rather than a lack of ventilation. They felt a building survey would have been more appropriate. They confirmed that the holes in the wall where the toilet roll holder had fallen

off had been plastered over. It had fallen off the wall fairly early on in the tenancy.

- 31 With regard to the French doors, rear gate and carbon monoxide alarm, the Tenants noted the findings of the inspection report. The French doors were misted and this had been reported to the Landlord. They had been told that these works had been authorised but had not yet been carried out. The Landlord's representative confirmed that they had received instructions to proceed with the redecoration of the French doors however the weather had not permitted this as yet. He confirmed that this related to the redecoration of the French doors and panels.

Reasons for decision

- 32 The Tribunal determined the application having regard to the terms of the application, the inspection, the written representations from the parties, and the submissions from the parties at the Hearing. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application. The items stated on the application that were noted to be rectified during the inspection did not require to be further considered by the Tribunal.
- 33 The Tribunal was satisfied based on the findings of the inspection that the Aga was functioning correctly. With regard to the isolation of the gas hob the Tribunal noted that there is no legislative requirement to have a gas isolation valve in an accessible position next to a cooker, albeit it would be good practice. The Tribunal took the view that in the event of any problems the gas shut off valve at the meter could be used. The Tribunal therefore found no breach of the Repairing Standard in relation to this aspect of the application.
- 34 The Tribunal found the water pressure when tested during the inspection to be moderate, both in the kitchen and bathroom, and no water leaks were noted although it was not possible to undertake a full assessment for leaks. However, whilst the boiler was also functioning correctly when tested, the Tribunal noted the Tenants' comments in terms of issues they had faced in the past with the heating and hot water and the recent recommendation from a contractor that the boiler required replaced. The Tribunal could not therefore be satisfied that the heating installation was in a reasonable state of repair and in proper working order and it would be incumbent upon the Landlord to arrange further investigations by a contractor to identify the cause of the recurring loss of pressure and ensure the boiler is functioning correctly.
- 35 The Tribunal also had concerns about the recurring instances of damp, along with the readings noted in the attic bedroom. Parties appeared to be in agreement that a full investigation of the roof was required, taking into account the areas of damp that have occurred in the past and continue to occur in the attic bedrooms, in order to find the root cause of the issue and carry out the

necessary repairs to address this. The Tribunal concluded that, until that work is done, this would amount to a breach of the Repairing Standard in that the Tribunal cannot be satisfied that the property is wind and watertight

- 36 In relation to the previous water ingress to the vestibule, although there was no dampness at the time of the inspection, there was no evidence of any rectification work having been carried out to prevent damp ingress recurring. In the Tribunal's opinion, this type of water ingress could be limited to and dependent on specific weather conditions, say rain coupled with wind from a particular direction. The Tribunal determined that this area of the property is unlikely to be wind and watertight during these occasions.
- 37 The Tribunal did not find any mould or condensation during the inspection and the property appeared to have appropriate ventilation. The Tribunal therefore found no breach of the Repairing Standard in respect of this aspect of the application.
- 38 With regard to the French doors, parties were in agreement that these required repair and repainting and it was noted that the Landlord intended on carrying out this work. The Tribunal therefore found that there was a breach of the Repairing Standard in respect of the doors and adjacent glazed panels, in that they are not currently in a reasonable condition.
- 39 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:
- (i) In respect of section 13(1)(a), the house is not wind and watertight and in all other respects reasonably fit for human habitation;
 - (ii) In respect of section 13(1)(b), 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; and
 - (iii) In respect of section 13(1)(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.
- 40 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal "must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard". The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is two months.
- 41 The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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 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 is abandoned or determined.

5 June 2023

Legal Member/Chair

Date