

# 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: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Ref: FTS/HPC/RP/20/2344**

**Title Number: LAN19101**

**Property at 173 Low Waters Road, Hamilton, ML3 7QQ (“the Property”)**

**Parties:**

**Miss Lorraine Lamey, 173 Low Waters Road, Hamilton, ML3 7QQ (“the Applicant”)**

**Mr Christopher Winsborough, 3/9 Gipps Ave, Mordialloc, Victoria 3195, Australia (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)  
Lori Charles (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 Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. On 9 November 2020, the Applicant submitted an application to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. Under normal circumstances the Tribunal would have arranged for the Tribunal to carry out an inspection of the property to assist in the determination by the Tribunal of the application. Unfortunately, this was delayed because of the COVID 19 pandemic. In the circumstances, a case management discussion (“CMD”) was arranged, to discuss

procedure in the case and to ascertain if an inspection was required or if other evidence was available or could be agreed.

2. A CMD took place by telephone conference call on 15 January 2021 at 2pm. The Applicant participated and was represented by Ms Young. The Respondent was represented by Mr McGlone. Following discussion with the parties, the Legal Member determined that the application should be continued to a further CMD so that parties could arrange for Mr McGlone to inspect the property and consider all the issues identified by the Applicant.
3. The parties were notified that a further CMD would take place by telephone conference call on 8 March 2021 at 10am. Prior to the CMD the Applicant lodged photographs, a list of the photographs submitted and estimates for window and roof repairs. She also notified the Tribunal that some work had been carried out by Mr McGlone at the end of February 2021. Mr McGlone lodged written submissions regarding access issues at the property. The second CMD took place by telephone conference call on 8 March 2021. The Applicant participated and was represented by Ms Young. The Respondent was again represented by Mr McGlone.

### **Summary of Discussion at the CMDs**

4. The Tribunal discussed the Applicant's complaints and noted the following: -
  - (a) **Vestibule - light fitting blocked off, no light in the vestibule.** At the second CMD Ms Lamey advised that a new light had been installed in the vestibule and that this complaint had been resolved.
  - (b) **Vestibule – rotted skirting board.** Ms Lamey advised that this had not been repaired or replaced. Mr McGlone said that he had inspected the skirting board and it had not rotted. However, he said that he would arrange for a joiner to replace it.
  - (c) **Kitchen – Replacement ceiling plasterboard has not been painted.** Ms Lamey said that this had now been painted to her satisfaction.
  - (d) **Kitchen. Two under plug sockets to right of the cooker only work when the timer for immersion heater/water tank is switched on.** Ms Lamey advised that the timer had been moved and the sockets now work.
  - (e) **No heater in the kitchen.** Ms Lamey advised that she had now been provided with a convection heater in the kitchen. It is not a proper, wall mounted heater and the location is unsuitable because she cannot access the controls which are on one side. She was told that the location was suitable for ventilation reasons. Mr McGlone said that the heater

has brackets and can be wall mounted. He also said that it could be moved, if the location is unsuitable, but he was told by the electrician that the current location is the most suitable.

- (f) **Kitchen. Hole in windowsill covered with wood but letting in cold air.** Ms Lamey said that Mr McGlone had put expanding foam round the outside of the window. As this was only at the end of February, and the weather had been mild, she was not sure if this has addressed the draught. Mr McGlone advised that there is no hole in the windowsill. The sill itself is made of wood. A hinge has been moved and the expanding foam installed. There is no draught coming through this window.
- (g) **Kitchen door needs to be re-hung as it has come off its hinges.** Ms Lamey advised that the kitchen door is now in working order.
- (h) **EICR** – a new EICR should be obtained as there has been work by a different electrician since the electrical check in July 2019 who said that the electrician who provided the report and did some work had done it wrong. Ms Lamey also said that the electric shower trips the consumer unit from time to time, although not recently. Mr McGlone said that he did not believe a new EICR was necessary but intended to have an inspection carried out by an electrician. This has not yet taken place due to access not being provided for the electrician. He also said that the electrician has indicated that the shower might trip the consumer unit if it is always left on. Ms Lamey said that the shower often trips the unit when she switches it on.
- (i) **Living room. Faulty radiator which should be removed from the property.** Ms Lamey advised that the radiator had been removed.
- (j) **Living room. Cold air coming through electrical consumer unit.** Ms Lamey advised that this matter had been resolved.
- (k) **Living room. TV aerial outside window is disconnected and the Applicant has to use a portable one.** Ms Lamey said that there had been no discussion about the availability or otherwise of an aerial when she agreed to let the property. Mr McGlone said that the property has never had an aerial and that is usual with rented properties. Ms Lamey said that she was happy to withdraw this complaint.
- (l) **Painting.** Ms Lamey said that the property needed painted where there was previous water damage. She advised that the vestibule, kitchen, bathroom, and part of the bedroom have now been painted.
- (m) **Windows.** Kitchen window is draughty and hard to reach, all windows are not wind and watertight, they are draughty and do not close properly. Ms Lamey lodged a quote from a window contractor in advance of the CMD. This provides an estimate for repairs to the kitchen, lounge and back bedroom windows and a replacement window for the front bedroom. She confirmed that the windows are all still draughty. Mr

McGlone said that the back bedroom window is fixed, a hinge has been ordered for the living room window and that the window in the front bedroom will be replaced. However, he said that when he inspected there was no draught at the living room window.

- (n) **Living room. Cold air coming in round plug sockets and windowsill area and through the carpet.** Wall and insulation may be damaged because of previous leaks. The insulation may not be adequate. Ms Lamey said that she thinks the source of the cold air is the damaged roof. Mr McGlone disputes the complaint.
- (o) **Hall. Storage heater not working properly – one of the panels needs to be replaced.** Mr McGlone said that it might be cheaper just to replace this with an electrical heater, and he would investigate. Ms Lamey said that there has been no action taken regarding this complaint. Mr McGlone said that he intended to have the defective panel replaced but that the heater had been on when the contractor attended. The heater must be off for the work to be carried out.
- (p) **Roof.** The Tribunal noted that there appear to have been repairs to the roof in the past to address leaks at the property. Mr McGlone said that he thought that all leaks had been resolved following these works. Ms Lamey disputed this and said that she had told him that there were still leaks in the bedrooms. Prior to the CMD Ms Lamey lodged two quotes from AGB Services. The first is for £14000, for a replacement roof. The second is for £9500, to repair the front of the roof. Several photographs of the roof were also submitted. These appear to show the roof to be in considerable disrepair. Ms Lamey said that there is still a leak from the roof and no work has been carried out since the last CMD. Mr McGlone said that he accepted that repairs are required, possibly a replacement roof. He has instructed solicitors to establish how many of proprietors are liable for the roof. The solicitor has indicated that they will have to review the title deeds of several properties before they can confirm this. He is waiting to hear from them. However, Mr McGlone disputes the claim that there is an ongoing leak. He said that he had been to the property in connection with the recent repairs and saw no evidence of any leak.
- (q) **Main back bedroom. Damage to the plasterboard.** Ms Lamey said that this defect had been fixed.
- (r) **Bathroom sink hot tap is not working.** Ms Lamey said that both taps had been replaced.
- (s) **Bathroom.** The hand wash basin is coming away from the wall. Ms Lamey advised that this had now been fixed.
- (t) **Front bedroom. No heater.** The Legal Member noted this is not on the table/list submitted to the Tribunal and Ms Lamey would require to establish that it was notified to the Landlord. Ms Lamey confirmed that

she has now been provided with a heater for this room but that it is a cheap heater, like the one installed in the kitchen. She does not think it is adequate although has not actually used it yet. Mr McGlone said that all he is required to do is provide a working heater, and that he has done this. Ms Young said that the type of heaters provided by Mr McGlone are a temporary fix and do not provide a long term solution to the problem.

5. The Tribunal noted that there is a dispute between the parties regarding access for inspection and repair. As Ms Lamey works from home, she indicated that she cannot always provide access when she has a confidential meeting or telephone call. As a result, Mr McGlone has had to try and arrange for work to be carried out at weekends. This is not always possible. The Tribunal noted that some repairs have been carried out, so access has been provided on some occasions, but parties were reminded that landlords are obliged to ensure that a rented property meets the repairing standard and tenants are legally obliged to provide access for inspection and repairs.
6. The Tribunal noted that several complaints had resolved between the first and second CMDs but that the Applicant's complaints in relation to the skirting board in the vestibule, the heater in the kitchen, the EICR, the windows, the draught in the living room, the storage heater in the hall, the roof and the heater in the bedroom remain unresolved. The Tribunal determined that the application would require to proceed to an inspection and hearing.
7. The parties were notified that the Tribunal would carry out an inspection of the property on 7 September 2021 at 10.30am and that a hearing on the application would take place by telephone conference call on 15 September 2021 at 10am. Prior to the inspection and hearing the tenant lodged a number of documents including a redacted copy of Works notice from the Local Authority in relation to the roof and copy text messages between the parties.

## **The Inspection**

8. The Ordinary Member of the Tribunal inspected the property on 7 September 2021 at 10.30am. Mr McHugh, a Legal Member of the Tribunal also attended. The Tenant and Mr McGlone were present. The Ordinary Member noted the following: - (i) Skirting in vestibule – no evidence of rot, moisture readings within normal levels; (ii) Storage heater in hall; (iii) Kitchen – wall mounted heater, controls inaccessible; (iv) Kitchen window – gap along external stone sill and upvc sill filled with expanding foam, no silicone applied, draughts could not be assessed due to weather conditions; (v) New bathroom installed; (vi) Living Room – draughts could not be assessed at socket due to weather conditions, evidence of historic water ingress at various locations but moisture

readings within normal levels; (vii) Back bedroom – window repaired, evidence of historic water ingress but moisture readings within normal levels; (viii) Front bedroom – misting/condensation between panes of glass in window, indicative of defective seal, evidence of historic water ingress, moisture readings within normal levels, wall mounted heater; (ix) landing – electrical cupboard with various types of fuse boxes, cables and wires; (x) Roof – damages, missing and broken slates, section of lead flashing has lifted at soil vent pipe.

## **The Hearing**

9. The hearing took place by telephone conference call on 9 September 2021. Ms Lamey participated, represented by Ms Young. Mr McGlone represented the Landlord. The Tribunal heard evidence from both parties in relation to the outstanding complaints.

## **Skirting in vestibule**

10. Ms Lamey advised that this has been in poor condition for a long time and is the result of previous water damage. It is also unsightly. Mr McGlone advised that the wood has not rotted but that it would have been replaced if access had been provided. He also said that it is behind the door and therefore not really visible.

## **Kitchen heater**

11. Ms Lamey advised that the location remains unsuitable and that she has to take it off the wall to switch it off and on. Mr McGlone said that it was placed there because that is where the vent is and that it is possible to access the controls. He is however happy to get it moved if access is provided.

## **Kitchen window**

20. Ms Lamey advised the Tribunal that she does not believe that the expanding foam will have fixed the draughts. However, she was unable to confirm that she had continued to experience draughts from the window following the repair, which was carried out in February. She stated that she thinks the roof is the source of problem. Mr McGlone advised the Tribunal that there was no evidence of draughts when the repair was carried out. There was also no hole. The foam was used because of the complaint, not because he thought it was needed. He also advised the Tribunal that there are vents in the window which may be a source of draughts. In response to questions from the Tribunal, Mr McGlone denied that silicone should have been used as well as the foam or this may deteriorate over time and silicone would be usual to ensure

that the window is watertight. Mr McGlone said that there was nothing wrong with the window and that the foam had just been to “pacify” Ms Lamey. He also denied that there had been a gap where the foam had been added.

## EICR

21. Ms Lamey advised the Tribunal that an electrician had come to the property to fix some cabling for a heater which had burnt out. It was the same electrician as had attended last year. She had put the heaters on, but they were not working. He re-set the heaters but that didn't work. He looked at the electrics and consumer unit and said that there were no circuit breakers which is not allowed. She said that an EICR from a registered electrician is required as the electrician who provided the previous report was not registered and was a friend of Mr McGlone. Ms Young advised the Tribunal that the photographs of the electricity boxes looked dangerous.
22. Mr McGlone said that Stephen McIlroy had carried out work for him for several years, he was not a friend and is qualified. He had changed his business name but that didn't affect his qualifications. He believes that he is registered with one of the professional bodies. He also advised that he had previously indicated that he would get a new EICR and would have done so if access had been provided.

## Windows

23. Ms Lamey advised the Tribunal that the back bedroom window has been fixed but that the living room and front bedroom windows still require attention. Mr McGlone responded by saying that he arranged for a window contractor to go to the house but had been refused access. Ms Lamey advised the Tribunal that the window contractor had appeared at the property on Easter Monday. It was her day off and she had a visitor. She had not been told in advance that he was coming. She said that it was not convenient and asked him to return the following day, but he refused, saying that he was just doing a favour for Mr McGlone.

## Draughts from plug sockets and windowsill in living room

24. Ms Lamey was unable to comment on whether she was still experiencing draughts but said that she thought that the defective roof was the source of these issues within the property and there would be problems again in the winter. Mr McGlone said that there was no evidence of draughts at the property and that moisture readings had all been normal at the inspection.

### **Storage heater in hall**

25. Ms Lamey advised the Tribunal that the elements in the heater are broken, and she is currently unable to use this heater. She then said that only one of the elements is currently working. Mr McGlone said that he would have arranged for the heater to be repaired but no access was provided. He also stated that the heater was on during the Tribunal's inspection. The Ordinary Member of the Tribunal indicated that this was not noted by her during the inspection and not brought to her attention. It had been noted that the living room heater was on, and the house was very warm.

### **The Roof**

26. Ms Lamey referred the Tribunal to the copy works notice she had lodged prior to the hearing. She said that the principal notice will have been sent to the Landlord. She obtained the redacted copy from Philip Kelly of South Lanarkshire Council. She advised the Tribunal that there was water ingress at the property in March and that she has heard water dripping into the property since the inspection.

27. Mr McGlone stated that there is no evidence of current water ingress and that he has no knowledge of the works notice. He advised that there have been no issues with the roof for at least a year and this is confirmed by the Tribunal inspection which noted historical but not current water ingress.

### **Front bedroom**

28. Ms Lamey said that she is unable to use the front bedroom because it is freezing. This is due to lack of insulation, leaks, and draughts. The Tribunal noted that the complaint regarding this room had been that there was no heater. A heater had then been installed. In response to questions regarding the effectiveness of the heater in addressing her concerns, Ms Lamey was evasive, eventually conceding that she had not used the heater because it would be expensive to do so and would not resolve the issues.

29. Mr McGlone advised the Tribunal that the heater in the room works and that Ms Lamey chooses to use this room for storage.

### **Access**

30. Mr McGlone advised the Tribunal that he has not been at the property or arranged for any inspection or repairs because Ms Lamey told him after the CMD that she would not allow access until after the Tribunal had carried out their inspection. This information was conveyed to him



in a phone call. Furthermore, she has not paid rent since last March. He confirmed that the only attempted access was by the window contractor in early April 2021. He has not contacted her for access since then. He has not made an application to the Tribunal under the Right of Entry provisions, having received legal advice not to do so. Ms Lamey denied that she had refused all access and said that Mr McGlone has a key for the property. She said that he has not contacted her since 6 March 2021. She referred to copy text messages which she lodged prior to the hearing.

### **Finding in Fact**

31. The heater in the kitchen cannot be used safely as the controls are inaccessible.
32. The kitchen and front bedroom windows are defective.
33. The electrical installation at the property is defective.
34. The heater in the hall is defective.
35. The roof of the property is damaged and requires to be repaired.

### **Reasons for decision**

36. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the Tenant and Landlord.
37. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 3 of the 2006 Act “The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it” The Tribunal is satisfied that the Tenant notified the Landlord of the repairs issues at the property prior to lodging the application.

### **Access issues and credibility and reliability of parties**

38. The Landlord of the property has not participated at any stage of the proceedings. It is understood that he resides in Australia and that Mr McGlone manages all aspects of the property on his behalf. The Tribunal heard evidence from the Tenant and Mr McGlone. Both had also

provided information to the Tribunal at the case management discussions. The Tribunal did not find either the Tenant or Mr McGlone to be credible or reliable during the hearing. The relationship between them has become acrimonious and both have adopted entrenched positions and are unwilling to be flexible and reasonable in relation to the property. This was particularly evident in relation to the issue of access to the property. Mr McGlone claims that he was told by Ms Lamey that he would not be allowed access to the property until after the Tribunal inspected it. He provided no evidence in support of this claim and was unable to confirm exactly when he was told this. Furthermore, he subsequently arranged for a window contractor to go to the property without first notifying the Tenant. The Tribunal also noted that some repairs were carried out at the property between the application being lodged and the second CMD, so access has not always been an issue. Ms Lamey denies that she told Mr McGlone that she would not allow access, although her evidence on the issue lacked conviction. Furthermore, it was clear from the evidence that she has been difficult about access in the past. She lodged copies of text and WhatsApp messages between herself and Mr McGlone. These clearly show that she has unreasonable expectations about when contractors can attend at the property and how long they can stay. There are several references to contractors only being allowed into the property at weekends. This does not support her claim that she is anxious for repairs to be carried out. All householders know that it might be necessary to take time off work or otherwise accommodate inconvenient visits by tradesmen when a repair is required. Furthermore, a private tenant is obliged by law to allow access for inspection and repair when a landlord gives notice. On the other hand, it is quite clear that no attempts have been made by Mr McGlone (on behalf of the Landlord) to carry out any repairs at the property since the last CMD, despite his statement at that CMD that he would deal with some of the complaints. Furthermore, he has not made an application to the Tribunal for assistances under the Right of Entry provisions.

39. The Tribunal notes that the obligation on a landlord to comply with the repairing standard is absolute and where a right of access exists, a landlord must comply. The Tribunal proceeded to consider the Tenant's complaints.
40. **Skirting board in vestibule.** The Tribunal is satisfied that although the appearance of the skirting board is poor, moisture readings taken at the property show that the wood has not rotted. The defect is cosmetic, and no breach of the repairing standard is established.
41. **Kitchen heater.** It was evident at the inspection that the location of the heater is unsuitable as the controls cannot be accessed. A heater which cannot be turned on or off unless it is removed from the wall is not compliant with the repairing standard which requires all appliances to be in proper working order and all furnishings to be capable of being used safely for the purpose for which they are designed (Sections 13(d) and

(e) of the 2006 Act). The Tribunal is satisfied that the Landlord has failed to comply with the repairing standard in connection with the heater.

**42. Kitchen window.** The Tribunal is satisfied that the repair which has been carried out is incomplete. It is evident that there was a gap prior to the repair, which has now been filled, and this is likely to have caused draughts during windy weather. The gap has been filled with expanding foam, but the repair has not been finished with silicone to protect the foam and keep the window wind and watertight. The Tribunal is satisfied that the condition of the window is a breach of the repairing standard.

**43. Electrics and EICR.** The EICR which has been produced does not appear to be from an electrician registered with one of the required professional bodies. This was raised with Mr McGlone at the CMDs and although he indicated that he would check and provide evidence of registration, he has not done so. Furthermore, he has not obtained a new EICR, although he indicated that he would do so. Electrical work has been carried out at the property since the existing EICR was obtained and the Tribunal is satisfied that some concerns were raised by the electrician who carried out that work. The Tribunal is also concerned about the condition of the fuse boxes and consumer unit and the safety issues which arise from that condition. The Tribunal is satisfied that a breach of the repairing standard has been established.

**44. The windows.** The Applicant confirmed that the back bedroom window has been repaired. This was also noted at the inspection and the Tribunal is satisfied that no breach of the repairing standard is established. Mr McGlone has conceded that the front bedroom window requires to be replaced and attributes the Landlord's failure to attend to this to lack of access. The Tribunal also noted that there is misting/condensation between the panes of glass, indicative of a defective seal. The Tribunal is satisfied that a breach of the repairing standard has been established in relation to the front bedroom. No draughts or defects at the living room window were noted at the inspection. During the hearing, Ms Lamey advised that the draughts in the living room were probably mainly due to the roof, rather than any other source. No breach of the repairing standard is established in connection with the living room window.

**45. Draughts in living room.** Although this is a specific complaint in the application, Ms Lamey advised the Tribunal that this issue is connected to the defective roof and therefore does not require to be considered as a separate breach of the repairing standard.

**46. Hall heater.** Although there is disagreement between the parties as to the extent of the defect, it is conceded by the Landlord that a repair is required. Again, lack of access is stated to be the reason for the failure to attend to this. The Tribunal is satisfied that a breach of the repairing standard has been established.

**47. The roof.** As with other aspects of the application, the Tribunal had difficulty with both party's' evidence on this issue. Mr McGlone had advised the Tribunal at the CMDs that he was investigating which owners were liable for the roof, with a view to arranging repairs. He confirmed that he accepted that roof repair work was required. Despite this concession, he is adamant that the roof does not leak, although the evidence established that he has been at the property on very few occasions in the last year. On the other hand, Ms Lamey insists that there were leaks in March 2021 and as no repairs have been carried out, she expects further leaks to occur. However, she did not appear to be claiming that leaks were a regular occurrence. Furthermore, she does not appear to have contacted Mr McGlone about leaks at the property since the CMD in March 2021, although there have been many episodes of heavy rain.

**48.** Based on the condition of the roof at the inspection, the Tribunal is satisfied that the roof is defective, with numerous missing and damaged slates. As the condition of the roof is very poor, it seems likely that there will be leaks. Furthermore, it would appear that the Council has issued a notice to the Landlord requiring work to be carried out to repair the roof by January 2022. The notice states that the Council is satisfied that that the roof does not meet the tolerable standard due to water ingress. The Tribunal is satisfied that the roof is damaged and requires to be repaired and that a breach of the repairing standard is established.

**49. Heater in front bedroom.** It is not clear from the application that the temperature of the front bedroom was intimated to the Landlord as a complaint prior to the application being submitted. It also appears that the Applicant's complaint about this room has changed. At the CMDs, the lack of a heater was raised. At the hearing, the draught from the windows and/or the defective roof were referred to by Ms Lamey as the source of the problems in this room. It appears that one of the possible reasons for this change is that Ms Lamey does not use the heater which was provided and cannot comment on its effectiveness. As the Tribunal is not satisfied that this complaint was intimated, and as the heater which was provided has not been used, the Tribunal is not satisfied that a separate breach of the repairing standard is established in relation to the temperature of this room.

## **Decision**

50. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

51. The decision of the Tribunal is unanimous.

## **Right of Appeal.**

**A Landlord, Tenant or Third-party applicant 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.**

In terms of Section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally 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 appeal is abandoned or so determined.

# J Bonnar

Josephine Bonnar, Legal Member

1 October 2021