

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/23/2172

Title Number: Subjects in the County of Inverness registered under Title Number INV2333

The Parties

Ms Tania Godwin, 15A Telford Road, Inverness, IV3 8HZ (“The Former Tenant”)

Mr Patrick McLellan, 40 Ross Avenue, Inverness, IV3 5QJ (“The Landlord”)

Subjects: 15A Telford Road, Inverness, IV3 8HZ (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr A Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) 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 failed to comply with the duty imposed by Section 14(1)(b).

Background

1. By application dated 20th May 2023 made under section 22 of 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 Act.
2. The Tenant stated in the application form that the Landlord had failed to comply with their duty to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation; and the Property fails to meet the tolerable standard.

3. The Former Tenant stated: *I reported a mould problem in the bathroom in May 2022 which has now escalated to the front room and back bedroom and is in electrical sockets. I have several kelp fungal growths and black mould.*
4. The Former Tenant enclosed a copy private residential tenancy agreement that commenced on 10th November 2020, email correspondence between the parties, correspondence with Highland Council, and a water ingress report dated 13th June 2023, which was prepared by the landlord.
5. Both parties lodged emails prior to the inspection and hearing. The Former Tenant lodged photographs of the bathroom. The Landlord lodged written representations and an inventory of productions.
6. By email dated 10th October 2023, the Former Tenant confirmed she had left the Property.
7. By email dated 11th October 2023, the Landlord notified the Tribunal that the tenancy had terminated.
8. The Tribunal decided to continue consideration of the application and a Minute of Continuation dated 18th October 2023 was issued.

The Inspection

9. An inspection of the Property took place on 27th October 2023. Both Tribunal members were in attendance. The Landlord was in attendance.
10. The Property is a terraced ground floor flat, built around 1900, with one bedroom, a boxroom, living room, kitchen and shower room. The Tribunal observed that the Property was in the process of being decorated. The bathroom was undergoing renovation. Some areas of the Property had been plastered.
11. The Tribunal observed normal damp meter readings on the upper areas of the front bedroom. In the lower areas of the outer walls and the ingos of the fireplace, the damp meter readings were 90%. No mould was observed.
12. There was no sign of damp or mould in the shower room. A new fan had been installed, but was not yet in operation. The fan was ducted through the kitchen cooker hood to the outside. Two walls had been re-lined with new moisture resistant plasterboard. Damp meter readings were normal.
13. It was not possible to take damp meter readings in the living room as it had been freshly painted. Fresh plasterboard had been installed in the area where the pipe had been leaking, as shown in photographs within the reports, and the area had been redecorated.

14. There was no sign of damp or mould in the kitchen. The kitchen window could be opened and closed, although the position of fitted kitchen units in front of the window made that difficult.
15. It was not possible to take damp meter readings in the box room, due to recent plastering and painting.
16. The Property has gas central heating with radiators in most of the rooms.
17. Externally, the pointing and stonework was weathered in places. At the front elevation, the gutter had lost support and was leaking, with staining to stonework. The ground level at the front of the Property was high and the vent was partially obscured.
18. A schedule of photographs is attached to this report.

The Hearing

19. A hearing took place at the Inverness Justice Centre on 27th October 2023. The Landlord was in attendance. Evidence was heard from the Landlord's witness, Mr Peter Jamieson, Letting Agent.
20. Mr Anderson explained the Tribunal's observations at the inspection.
21. The Landlord said he agreed there may be rubble build-up behind the external walls in the front bedroom. He said he now intended to strip the walls and install insulation. This would assist in improving the EPC for selling the Property. The Landlord said he is keen to sell the Property as soon as possible, and, hopefully, have it on the market by mid to end November.
22. The Landlord provided some historical background, stating that some joist end repairs had taken place before he purchased the Property. A damp-proof membrane had been installed in the kitchen, shower room, hall and bedroom.
23. The Landlord stated he believed the damp and mould issues during the tenancy to have been as a result of:
 - (i) Issues within the bathroom including the position of the fan, which was blocked and was not powerful enough. It was his position that the Former Tenant had not used the bathroom fan for the first year of the tenancy.
 - (ii) The Property had been crammed with furniture which had prevented ventilation and restricted the effectiveness of the radiators. The Former Tenant had dried clothing on the radiators and did not open the trickle vents on the windows.
 - (iii) There was a burst pipe in the living room and it was not discovered for some time. There were issues with getting access to the Property to repair the pipe. The pipe had now been replaced and the electrics attended to.

(iv) There was a leak from the flat above into the boxroom which had since been addressed.

(v) The heating in the Property was insufficient.

24. The Landlord said he has now upgraded the bathroom ventilation, installed ventilation grills above rooms, and vented the cooker hood to outside. He has installed insulation in the walls and doubled the heating capacity by installing a larger towel rail in the shower room.

25. Mr Jamieson said he has been a letting agent for 20 years. He was fully managing the Property on behalf of the Landlord. He said there would normally be 6-monthly inspections, but this had been difficult during the Covid-19 pandemic. It was his practice to work closely with tenants and ensure issues were dealt with. In this case, the Landlord had been called upon to do a report on the damp issues, as that is the nature of his work. Mr Jamieson said he observed laundry being dried indoors during the tenancy, and the windows were not opened. He said his company always emphasises the importance of airing a property, and tenants receive a letter regarding mould at the start of the tenancy. It was his position that the Former Tenant would have been told to use the shower room fan. He said he had tried to work with the Former Tenant, and she had been offered alternative accommodation and a landlord reference.

Tribunal discussion

26. The Tribunal determined that:

(a) The Property is not wind and water tight and in all other respects reasonably fit for human habitation.

The Tribunal considered the works carried out by the Landlord to date to the shower room and the living room have assisted in addressing the problems with mould and damp within the Property. The issue that now causes concern is the high meter readings within the front bedroom external walls. The Tribunal considered that, if this was not rectified, it would likely lead to dampness and mould in the future. This affects whether the Property is reasonably fit for human habitation.

(b) The Property meets the tolerable standard.

The Tribunal found that the Property meets the tolerable standard. The issue with high meter readings in the front room is not of sufficient severity to indicate a breach of the tolerable standard.

Observations

27. The Tribunal observed that the electrical label on the fuse box had expired. The Landlord said this would be attended to.

28. The Tribunal observed that there was no cover on the external vent on the back wall. The Landlord said this would be attended to.
29. The Tribunal observed that the defective rainwater goods to the front elevation were not in a reasonable state of repair and could contribute to damp ingress in the future.

Decision

30. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
31. The decision of the Tribunal was unanimous.

Right of Appeal

- 32. 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.

Helen Forbes
Legal Member and Chairperson
Date: 1st November 2023