



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/23/3241

Re: Property at 3 Alma Terrace, Laurencekirk, AB30 1FL (“the Property”)

Parties:

Marjorie Stewart, 4 Garvocklea Gardens, Laurencekirk, AB30 1BG (“the Landlord”); and

Mrs Julie May, 3 Alma Terrace, Laurencekirk, AB30 1FL (“the Tenant”)

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 Tenant sought an order against the Landlord on the basis that they 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 and in particular that the Landlords had failed to ensure that:-
 - (i) The house is wind and watertight and in all other respects reasonable fit for human habitation; and

- (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.
- 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 was scheduled for the 1 March 2024 with a hearing set for later that day.
- 4 On 6 February 2024 the Tribunal were contacted by the Landlord's daughters Catriona Truscott and Deirdre Latimer who confirmed that they were representing their mother in the proceedings and provided evidence of their authority to do so. They subsequently submitted written representations in response to the application on their mother's behalf.

The Inspection

- 5 The Tribunal inspected the property at 10.00am on 1st March, 2024. The Tenant was in attendance and permitted access. The representative for the Landlord, Ms Truscott was also present.
- 6 The property is situated in a residential area within the town of Laurencekirk. It was dry and bright during the inspection with mainly dry weather over the preceding few days.
- 7 The property is a detached bungalow which was constructed around 1965. There is a side extension and conservatory, which appear to be upwards of 25 years old. The main outer walls are of cavity brick construction, roughcast externally. The roof is mainly pitched and tiled, with felt covered areas over the rear dormer and side extension. There is an oil fired system of central heating. The heating was on and the house was warm throughout, with the exception of the conservatory. The windows are PVC framed and a double glazed.
- 8 The accommodation comprises on the ground floor: entrance hallway, Lounge, Kitchen, Utility Room, Conservatory, rear Bedroom, Cloakroom with WC, front Bedroom. First floor: Landing, Right hand Bedroom, Bathroom with WC, left hand Bedroom.
- 9 The inspection commenced within the conservatory in relation to damp and mould. Moisture levels were tested using a Protimeter Surveymaster moisture meter. High readings (99%) were observed to a small area at plasterboard at the outside corner and also to a small area of plasterboard to the left of the outside door. Normal readings (up to 20%) were observed to other areas of plasterboard and the window sills. Some mould growth observed to the window sill and to some areas on the plasterboard linings and skirting boards. A section of the fabric sun blind at the apex of the conservatory roof was seen

to be discoloured, probably due to water ingress at some point. It was not possible to test the moisture content of the blind. The central heating does not extend to this area but there is a wood burning stove.

- 10 The utility room was inspected in relation to damp in mould. A small patch of mould was apparent to the ceiling above the washing machine. A degree of mould was apparent to the window frame and adjacent plasterboard linings. When tested, normal (15-20%) readings were observed in both the ceiling and wall linings.
- 11 The kitchen was then inspected in relation to damp and mould. The tenant pointed out a small patch of mould to the ceiling at the outside corner of the room. When tested, normal (15-18%) readings were observed in both the ceiling and adjacent wall linings. A small stain to the wall between the kitchen and lounge was observed. When tested, normal (15-20%) readings were observed.
- 12 The lounge was then inspected. Slight shading was apparent to the upper section of the plastered-on-the-hard chimney breast. When tested, high (99%) readings were observed to the area. The adjacent plasterboard ceiling and other areas of the outer walls were found to have normal moisture levels.
- 13 The rear bedroom was inspected. A degree of mould growth was noted to the coving at ceiling level. Some smeared/wiped mould was noted to the outer walls. The outer walls were tested for moisture in several locations. Normal (15-20%) readings were observed. The walls are plastered on-the-hard in this room.
- 14 The front bedroom was inspected. Slightly more mould growth was apparent to the coving, outer walls and joinery when compared with the rear bedroom. The outer walls were tested for moisture in several locations. Normal (15-20%) readings were observed. The walls are plastered on-the-hard in this room.
- 15 At first floor level, the Tenant highlighted an area of ceiling between the bathroom and right hand bedroom door. A faint triangular shaped stain was apparent. When tested, high (99%) readings were observed to the stained area of ceiling.
- 16 Within the right hand bedroom, the tenant highlighted an area of shading at the junction of the ceiling and plasterboard linings of the chimney breast. When tested, normal (below 15%) moisture meter readings were observed. There was no significant mould observed. The wall and ceiling linings (all dry-lined plasterboard) were tested for moisture in several locations. Normal (15-20%) readings were observed.
- 17 Within the bathroom, a degree of mould was noted to the ceiling above the bath. The walls are mainly tiled, but a small amount of mould was present to the plasterboard at the right side of the window. Moisture meter readings to

both the ceiling and plasterboard were found to be normal (7%). Slight distortion was noted to the plasterboard adjacent to the ceiling downlighter.

- 18 Within the left hand bedroom, there was no significant mould. Where tested, the plasterboard wall and ceiling linings showed normal readings (below 10%)
- 19 Externally, the gulley at the rear elevation, adjacent to the kitchen quickly backed up with water when the kitchen tap was run for a short period. There was a degree of dried out effluent on the surface of the gulley next to the small drain pipe near the soil stack.
- 20 The chimney and felt roofs were inspected from ground level. Only a limited inspection was possible, but it could be seen that both cans had cowls and some remedial works had been undertaken to the coping and harling in recent times.
- 21 Photographs were taken during the inspection and are included in the attached schedule.

The Hearing

- 22 The hearing took place following the inspection in Aberdeen in the Employment Tribunal centre on Huntly Street. The Landlord was represented by Ms Latimer and Ms Truscott. The Tenant was present and accompanied by her son Ben May.
- 23 The Tribunal gave a summary of the findings from the inspection and proceeded to hear submissions from the parties. For the avoidance of doubt the following constitutes a summary of the discussion at the hearing and is not a verbatim account of what was said.
- 24 Ms May advised that she did not have much more to add other than what she had submitted with the application. The issues had been ongoing since she moved into the property and any time she had reported them to the Landlord's letting agent they had been quite dismissive. Throughout the tenancy Ms May had tried to address the mould by cleaning and painting, using anti mould paint. However the situation had gotten progressively worse. Water was coming in to various sections of the house. Ms May had reported this. She was concerned that the condition of the property was deteriorating despite her efforts to keep it clean, heated and ventilated. Ms May advised that there had been delays in repairs to the roof and this had resulted in more damage. She had been told that the Landlord couldn't do anything about it.
- 25 Ms May advised that she had thrown out clothes and bedding that had been stored in the downstairs bedroom due to the damp and mould. She had been accused of drying washing indoors, however she disputed this. She and her family lived normally but the damp and mould persisted. The smell was awful. Ms May had moved to a room upstairs as a result of the problems in the downstairs bedroom. Ms May explained that her daughter suffered from

dizziness and could not move upstairs. Her daughter's room had damp and mould and had to be frequently cleaned. Ms May had been advised by the Landlord's letting agent to keep a minimum temperature in the property therefore she had made use of portable radiators to keep the house warm.

- 26 Ms May advised that a contractor had told her that the roof of the property needed to be relined and tiles taken off. When it rained water would come through the light fixture in the downstairs bedroom. Damp patches would appear on the walls. Work had previously been carried out to the chimney but this had not sorted out the water ingress.
- 27 With regard to the blocked drains, Ms May advised that this happened regularly. She would unblock the toilet with a plunger and it would work for a while before blocking again. She understood this was an issue that had occurred prior to her taking on the tenancy. The drains had recently blocked in December 2023 and she had reported it to the Landlord's letting agent. A drainage company had come out at the end of January 2024 to fix the issue. By that time raw sewage had come up through the drains endangering her dogs. One of them had to spend the night at the vet. The drains had then blocked again and were cleared at the start of February.
- 28 Ms May explained that her daughter was unable to work due to her health and was in the property all day. She was supported by a carer. Ms May had never refused access for contractor appointments. Sometimes the work could be carried out externally. Ms May then took the Tribunal through the photographs that had been submitted with the application. In response to questions from the Tribunal she advised that she did use portable heaters in the house to provide warmth. They were switched on at night when the central heating went off. There was one in the living room and one in her son's room upstairs. The central heating would be switched on at 9am for an hour or so. Her daughter would also switch it on when it was cold. At night the central heating was on between 4.30 until around 9pm. When the weather was really cold the heating could be on all day and night.
- 29 The Tribunal heard from Ms Latimer on behalf of the Landlord. She reiterated that she and Ms Truscott were acting for their mother, the Landlord, under a power of attorney which had been granted in January 2023. Prior to that they had not had any involvement with the tenancy. Ms Latimer confirmed that her mother suffered from Alzheimers. Her father had been killed in a car accident in 2018. It had not been the easiest of times. When she and her sister began to get access to information they had to piece it all together in order to move forward. Ms Latimer was not disputing that there was damp in the property and money had been set aside to carry out works to address this. A damp survey had been carried out in April 2023 and a report was produced with recommendations. However they had been unable to gain access to the property in order to complete the works. There was also work required to the flat roof and money had been lodged with the Landlord's letting agent to enable that to happen. They were waiting for a slating company to attend the property. Ms Latimer stressed that she and her sister were keen for the works

to be completed as soon as possible. Ms Latimer advised that work had already been carried out to the chimney as it was originally believed that was the source of the damp.

- 30 With regard to the drains Ms Latimer confirmed that she had gone through the information that the Landlord's letting agent had provided. There had been an issue in 2017 with debris from the previous tenants which had been dealt with. The drains had blocked again in February 2019 due to debris, and in January 2020 due to a lid being found in the pipe. In January 2023 an air freshener had blocked the drain and a plumber was called out to remove it. In June 2023 and October 2023 the blockage was due to tissues. More recently there had been a blockage in January 2024 which they were in the process of addressing.
- 31 Ms Latimer advised that a survey had been carried out on the drains, with a camera, and no issues were noted in terms of the flow of water. The cost of the works would be borne by her mother and she and her sister therefore had to be confident that money was being spent where it was required. Given that the drain survey had showed water flowing with no problems Ms Latimer had to question whether further works were needed. There had only been one drain survey carried out as far as she was aware. No obvious defects had been identified.
- 32 In response to questions from the Tribunal Ms Latimer confirmed that previous damp reports had been commissioned on three occasions. She produced the most recent of these, and a copy was provided to the Tribunal and Ms May. Initially it was thought that the source of the damp was the chimney however when the problem still persisted a further survey was instructed. This was carried out in April 2023. Ms Latimer advised that she didn't think the roof over the utility room had been repaired in recent times but she hoped that it would be included in the scope from the roofing contractor. She advised that electricians had been called out to the property but she didn't know if they had specifically looked at the light fitting in the downstairs bedroom. She could however arranged with the Landlord's letting agent for this to be inspected.
- 33 Ms May was then given the opportunity to respond to the Landlord's submissions. She advised that with regard to the blocked toilets there had been two contractors who had previously attended to look at the drains. She did not use air fresheners and her understanding was that the item had been found in the upstairs toilet when it was in fact the downstairs toilet that frequently blocked. Ms May had been told by one of the contractors that the toilet was blocking because the pipes were too narrow. Raw sewage would break down but toilet paper would take a bit longer. Ms May had been advised that the drainage system would need to be replaced.
- 34 Ms Latimer explained that she had understood the air freshener had been found in the downstairs toilet but she would require to confirm this with the contractor. There had only been one drain survey carried out and no other information had been provided regarding the drains. Ms Latimer confirmed

/that she could seek further information from the Landlord's letting agent if required.

35 Findings in Fact

The Tribunal found the following facts to be established:-

- 36 The Landlord and Tenant entered into a tenancy agreement which commenced on 19 May 2018.
- 37 The property is not watertight due to the presence of damp, which can be confirmed by high damp meter readings taken during the inspection.
- 38 There is a degree of mould growth, notable within the ground floor bedrooms.
- 39 It cannot presently be established whether the cause of the mould is due to a defect with the structure of the building, the central heating system or ventilation arrangements
- 40 The drains pertaining to the property are not in proper working order.
- 41 It cannot presently be established that the roof is in a reasonable state of repair.

Reasons for decision

- 42 The Tribunal determined the application having regard to the terms of the application, the written representations and the findings of the Tribunal's inspection. 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.
- 43 Based on its findings in fact the Tribunal was satisfied that the property was not watertight, in that there was damp present in the first floor landing, lounge and conservatory, as confirmed by the meter readings taken during the inspection. Whilst the Landlord's representative had produced a damp report with recommendations, the proposed remedies for addressing the damp and mould within that report did not, in the view of the Tribunal, fully address the issues that had been identified in the course of the Tribunal's inspection.

The Tribunal was also unable based on the evidence before it to determine that the cause of the mould, which was most prevalent in the ground floor bedrooms, was due to a defect with the structure of the building, the central heating system or ventilation arrangements. Whilst the Tribunal noted the opinion of the damp specialist in the report produced by the Landlord that that the construction of the outer walls meant the ground floor rooms were prone to condensation, it was unable to determine based on a lack of sufficient

evidence whether this was the primary cause of the mould or whether there were other factors contributing to the issue, such as a lack of proper heating and ventilation.

- 44 The Tribunal would therefore require the Landlord to instruct a further report from a different qualified damp and condensation specialist in order to satisfy itself as to what works may be required to fully eradicate damp from the property and address the presence of mould.
- 45 The Tribunal was satisfied, based on its own observations during the inspection, that the drains are not functioning correctly. The Tribunal accepted that a drainage survey had been carried out, and had not identified any issues, however it was clear that water was pooling in the drain when the kitchen tap was running. The Tribunal could not therefore make a finding that the drains were in proper working order and further inspection will be required in order to identify the cause of the problem. The Tribunal considered that a different drain specialist should carry out further investigation in light of the findings from the aforementioned drainage survey.
- 46 Finally the Tribunal could not conclude from the inspection that the roof was in a reasonable state of repair. The Tribunal accepted, on the balance of probabilities and based on the evidence before it, that there was the likelihood of water ingress to the downstairs bedroom and utility room. The Tribunal noted that the Landlord's representative had planned works to the roof and chimney as outlined during her submissions at the hearing. Said works should include a full inspection of the roof in order to identify any defects and remedy same.
- 47 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 wind and watertight but not 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) is not in a reasonable state of repair and in proper working order.
- 48 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.
- 49 The Tribunal further determined that an appropriate timescale for the works to be carried out is eight weeks. The Tenant expressed concerns during the hearing regarding the extent of the works and the requirement for her to obtain alternative accommodation which would be challenging, however on

the basis that the Tribunal is simply seeking reports from the Landlord at this time, with the exception of the roof repairs that would not require relocation by the Tenant, it is considered that eight weeks would be reasonable in the circumstances.

50 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 appeal is abandoned or determined.

R O'Hare

Legal Member/Chair

Date 8 April 2024