

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order Ordered by the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/RT/24/0448

9 Cruden Terrace, Lockerbie, DG11 2HY being the subjects registered in the Land Register of Scotland under title number DMF32911 ('The Property')

The Parties:-

Andrew Lowrie, Wyseby Hill Farm, Kirtlebridge, Lockerbie, DG11 3AW ('the Landlord').

Dumfries and Galloway Council ('Third Party')

Karen Heatlie ('the Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Sara Hesp (Ordinary Member).

NOTICE TO The said Andrew Lowrie

Whereas in terms of their decision dated 23rd May 2024 the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that the Property is wind and water tight and in all respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order and the Property meets the tolerable standard.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord to:

1. Exhibit a current valid and compliant EICR Certificate.
2. Exhibit a current valid and compliant Gas Safety Certificate
3. Install:
 - 3.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
 - 3.2 One functioning smoke alarm in every circulation space, such as hallways and landings.
 - 3.3 One heat alarm in every kitchen and
 - 3.4 All alarms should be interlinked and the installation should comply with the regulations.
5. Repair the electric shower pull cord to render it in proper working order.
6. Repair the stained and loose wallpaper on the kitchen ceiling to render it in a reasonable state of repair.
7. Repair the defective and missing render to the front external wall of the Property to render it in a reasonable state of repair.
8. Repair the dislodged roof slates to render them in a reasonable state of repair.
9. Repair the front door and surround of the Property to render it wind and water tight.
10. Repair the back door and surround of the Property to render it wind and water tight.
11. Repair the damp to the external wall of the living room to render it water tight.

The Tribunal orders that these works must be carried out and completed by **30th June 2024**.

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.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes a landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement in relation

to a house at any time during which a RSEO has effect in relation to the house.
This is in terms of section 28(5) of the Act: IN WITNESS WHEREOF these presents
typewritten on this and the preceding two pages are subscribed at Glasgow on 24th May 2024 by
Jacqui Taylor, chairperson of the Tribunal, in the presence of the witness Jamie Buchanan, Glasgow
Tribunal Centre, York Street, Glasgow.

J Taylor

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision 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/RT/24/0448

9 Cruden Terrace, Lockerbie, DG11 2HY being the subjects registered in the Land Register of Scotland under title number DMF32911 ('The Property')

The Parties:-

Andrew Lowrie, Wyseby Hill Farm, Kirtlebridge, Lockerbie, DG11 3AW ('the Landlord').

Dumfries and Galloway Council ('Third Party')

Karen Heatlie ('the Tenant').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Sara Hesp (Ordinary Member).

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. The Tenant leases the Property from the Landlord in terms of the private residential tenancy agreement dated 11th October 2021. The Third Party applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

2. The application stated that they considered that the Landlord has failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and 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 proper working order; and the Property does not meet the tolerable standard.

In particular the application stated :-

- 2.1 No evidence of EICR supplied.
- 2.2 No evidence of Gas Safety Certificate.
- 2.3 No Energy Performance Certificate has been provided to the Tenant.
- 2.4 There is a gap of 25mm between the render cladding and the exterior of the Property exposing the underlying house to weathering and rainwater penetration.
- 2.5 The roof tiles above the front door are uneven and broken.
- 2.6 In the living area there is a damp patch on the external wall adjacent to the cracked/detached external render cladding.
- 2.7 There is no smoke detection in the living area.
- 2.8 The kitchen ceiling was stained and wallpaper was coming away from the ceiling.
- 2.9 In another area of the kitchen ceiling there was bubbling wallpaper.
- 2.10 There is no heat detection in the kitchen.
- 2.11 The back door is in poor condition with black mould/dampness evident on the paint.
- 2.12 The door leaks when it rains and daylight can be seen at the bottom and right hand side of the door.
- 2.13 There is no smoke detection in the downstairs hall.
- 2.14 The downstairs hall door leaks.
- 2.15 The shower pullcord cannot be switched off.
- 2.16 There is no mechanical extractor fan in the bathroom, an openable window is available.
- 2.17 The bath moves when the tenant gets in and out.
- 2.18 In the main bedroom there is mould and damp evident on the exterior wall under the window and towards the ceiling.
- 2.19 The ceiling was wet in bedroom 2. There is slight staining on the ceiling.
- 2.20 Bedroom 3, There is evidence of damp and mould on the external wall.
- 2.21 There is only one smoke alarm in the property.

3. On 9th February 2024, Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that she had considered the application, comprising documents received on 25th January 2024, and she referred the application under Section 22 (1) of the Act to a Tribunal.

4. The Inspection.

The Tribunal attended at the Property at 11.00 am on 22nd May 2024. The Tenant was present at the inspection together with Fiona Smith, a Private Rented Sector Housing Officer with Dumfries and Galloway Council. The Landlord was not present and was not represented. The Tribunal Administration had sent the Landlord notification of the inspection and the hearing by recorded delivery letter dated 11th April 2024, which he signed for on 12th April 2024.

The Property, 9 Cruden Terrace, Lockerbie, DG11 2HY is a mid terraced villa with a slate roof. The accommodation comprises 3 bedrooms, lounge, kitchen and bathroom.

The Tribunal inspected the alleged defects and found as follows:-

4.1 No evidence of EICR supplied.

No EIRC had been supplied to the Tenant or the Tribunal.

4.2 No evidence of Gas Safety Certificate.

No Gas Safety Certificate had been supplied to the Tenant or the Tribunal.

4.3 No Energy Performance Certificate has been provided to the Tenant.

The Tribunal advised the representative from Dumfries and Galloway Council and the Tenant that the obligation to provide the Tenant with an Energy Performance Certificate was not part of the Repairing Standard.

4.4 There is a gap of 25mm between the render cladding and the exterior of the Property exposing the underlying house to weathering and rainwater penetration.

The external rendering near the front door of the Property had fallen off leaving a bare patch of the external wall. A section of the remaining rendering at the front of the Property was loose. There is a gap of approximately 25 mm between the loose rendering and the wall.

4.5 The roof tiles above the front door are uneven and broken.

Several roof slates to the front of the Property were dislodged.

4.6 In the living area there is a damp patch on the external wall adjacent to the cracked/detached external render cladding.

Mrs Hesp tested this area with a damp meter and amber damp readings were obtained indicating low levels of damp.

4.7 There is no smoke detection in the living area.

A smoke alarm had been installed but it was not interlinked.

4.8 The kitchen ceiling was stained and wallpaper was coming away from the ceiling.
and

4.9 In another area of the kitchen ceiling there was bubbling wallpaper.

Water damage to the décor of the kitchen ceiling was apparent. Mrs Hesp tested this area with a damp meter and green damp readings were obtained indicating that the area was not damp.

4.10 There is no heat detection in the kitchen.

A heat detector had been installed but it was not interlinked.

4.11 The back door is in poor condition with black mould/dampness evident on the paint.

There was evidence of dark staining to the door consistent with mould. Mrs Hesp tested the door and adjacent frame with a damp meter and green damp readings were obtained indicating that the door was not damp.

4.12 The door leaks when it rains and daylight can be seen at the bottom and right hand side of the door.

The back door was ill fitting and daylight was visible between the door and the door frame.

4.13 There is no smoke detection in the downstairs hall.

A smoke alarm had been installed but it was not interlinked.

4.14 The downstairs hall door leaks.

There was a damp stain on the hall carpet close to the front door and a broken section of the external brass door threshold plate.

4.15 The shower pullcord cannot be switched off.

It was not possible to turn off the shower pullcord.

4.16 There is no mechanical extractor fan in the bathroom, an openable window is available.

As stated in the complaint, there is no mechanical extractor fan but the window in the bathroom opens.

4.17 The bath moves when the tenant gets in and out.

No movement of the bath was detected at the inspection.

4.18 In the main bedroom there is mould and damp evident on the exterior wall under the window and towards the ceiling.

There was evidence of mould high upon the bedroom wall. Mrs Hesp tested the bedroom wall with a damp meter and green damp readings were obtained indicating that the wall was not damp.

4.19 The ceiling was wet in bedroom 2. There is slight staining on the ceiling.

There was evidence of damp staining to the bedroom wall and ceiling. Mrs Hesp tested the bedroom wall and ceiling with a damp meter and green damp readings were obtained indicating that the wall was not damp.

4.20 Bedroom 3, There is evidence of damp and mould on the external wall.

There was evidence of damp staining to the bedroom wall. Mrs Hesp tested the bedroom wall with a damp meter and green damp readings were obtained indicating that the wall was not damp.

4.21 There is only one smoke alarm in the property.

Smoke alarms had been installed but were not interlinked.

Photographs were taken during the inspection and are attached as a Schedule to this report.

5. The Hearing.

Following the inspection of the Property the Tribunal held a telephone conference at 14.30 pm.

The Tenant and Fiona Smith, a Private Rented Sector Housing Officer with Dumfries and Galloway Council attended the hearing.

The Landlord did not attend the hearing. The Landlord had been notified of the hearing. The Tribunal were satisfied that Procedure Rule 29 had been complied with and proceeded with the hearing, even although the landlord did not attend.

In respect of the matters in the application Fiona Smith and the Tenant advised as follows:

5.1 Fiona Smith explained that she had arranged for the Scottish Fire and Rescue Service to install smoke alarms in the Property. They were installed on 24th August 2024 but they were not interlinked.

5.2 Ms Heatlie explained that she has had a serious problem with damp in the Property which began three or four months into the tenancy. The damp and mould started after the time of the bathroom leak. She did not understand how the damp meter readings taken by Mrs Hesp at the inspection did not show that there was damp in the Property. She has had to destroy many items of clothing that had been affected by the damp.

6. Decision.

6.1 As a preliminary matter the Tribunal found it was not a requirement of the Repairing Standard to :-

6.1.1 Provide a tenant with an Energy Performance Certificate.

6.1.2 Install a mechanical fan in a bathroom when there is a window capable of opening.

6.2 The Tribunal made the following findings in fact:

6.2.1 The Tenant and the Tribunal had not been supplied with a copy of the Electrical Installation Condition Report.

6.2.2 The Tenant and the Tribunal had not been supplied with a copy of the Gas Safety Certificate.

6.2.3 Rendering had fallen off the front external wall of the Property.

6.2.4 The Rendering to the front external wall of the Property was loose and there was a gap of approximately 25mm between the rendering and the external wall where it was loose.

6.2.5 A number of roof slates at the front of the roof are dislodged.

6.2.6 There are no interlinked smoke alarms or heat detectors in the Property.

6.2.7 There is no carbon monoxide alarm in the Property (but the Tribunal acknowledge that this was not part of the application).

6.2.8 Sections of kitchen ceiling were stained and the decoration was loose.

6.2.9 Light is visible between the back door and the door frame when the door is closed.

6.2.10 There is damp in the external wall of the living room.

6.2.10 The back door was not damp.

6.2.11 The downstairs hall door is not watertight.

6.2.12 The shower cord cannot be turned off.

6.2.13 There was no movement of the bath when weight was put on it.

6.2.14 There was no damp in the three bedrooms at the inspection.

The Tribunal do not doubt the evidence of the Tenant that there is regularly mould on the walls of the Property that has affected clothing in the Property. However, there was no evidence of damp penetration in the bedrooms of the Property at the inspection. Mould in a Property can be caused by a number of factors. The Tribunal did not find any defects in relation to the condition of the Property at the inspection that would result in the Landlord being responsible for any mould that has occurred in the Property.

In connection with the requirements of the Repairing Standard:

6.3.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

The Tribunal determine that the condition of the front and back doors and the condition of the external wall of the living room results in them not being wind and water tight and in all other respects reasonably fit for human habitation.

6.3.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

The Tribunal determine that the condition of the defective rendering at the front of the Property and the displaced roof slates results in them not being in a reasonable state of repair and proper working order.

6.3.3 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

Regulation 36 of the Gas Safety (Installation and Use) Regulations 1988 requires landlords to have a Gas Safety Certificate carried out for all gas installations within their rental properties annually.

The Housing (Scotland) Act 2014 introduced the requirement for landlords to have an Electrical Installation Condition Report (EICR) carried out on all electrical installations, fixtures and fittings within their rental properties. All tenancies must have a valid EICR, a copy of which must be provided to the tenant. The EICR lasts for 5 years and must include Portable Appliance Tests (PAT) for all electrical appliances within the tenancy supplied by the landlords.

The Tribunal determine that the fact that (i) the Landlord has not produced a valid Gas Safety Certificate and EICR certificate and (ii) it is not possible to turn off the shower pull cord results is a breach of the Repairing Standard.

6.3.4 Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order. (Section 13(1) (d) of The Housing (Scotland) Act 2006).

The Tribunal determine that wallpaper on the ceiling of the kitchen is a fixture and the fact that it is peeling away from the ceiling results in it not being in a reasonable state of repair.

6.3.5 The house meets the tolerable standard. (Section 13(1) (h) of The Housing (Scotland) Act 2006).

The Tribunal acknowledged that the statutory guidance requires:

- One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
- One functioning smoke alarm in every circulation space, such as hallways and landings.
- One heat alarm in every kitchen.
- All smoke and heat alarms to be ceiling mounted and
- All alarms should be interlinked.

The Tribunal determine that the fact that the heat and smoke detectors are not interlinked is a breach of the statutory guidance.

7.3. The Tribunal accordingly determine that the Landlords have failed to comply with the duties imposed by Sections 13 (1)(a)(b)(c)(d) and (h) of the Act, as stated.

8. The decision of the Tribunal was unanimous.

Appeal

9. 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.

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 Taylor

23rd May 2024

24/5/24

Housing and Property Chamber
First-tier Tribunal for Scotland



9 Cruden Terrace, Lockerbie DG11 2HY

FTS/HPC/RT/24/0448

Schedule of photographs taken on 22 May 2024



Photograph 1: Front elevation

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Photograph 2: Downstairs hallway: smoke detectors



Photograph 3: Kitchen: heat detector



Photograph 4: Landing: smoke detectors



Photograph 5: Front elevation: missing rendering



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Photograph 6: Front elevation: gap beneath outer layer of rendering



Photograph 7: Front elevation: Raised and uneven slates above window of bedroom 3



Photograph 8: Living room: front wall: damp content raised



Photograph 9: Kitchen: ceiling - staining and bubbling to wallpaper



Photograph 10: Kitchen: ceiling - staining and bubbling to wallpaper



Photograph 11: Kitchen: back door



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Photograph 12: Kitchen: back door



Photograph 13: Bathroom: general view



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Photograph 14: Bathroom: Shower power switch



Photograph 15: Bathroom: Window



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Photograph 16: Bathroom: Bath



Photograph 17: Bathroom: Bath



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Photograph 18: Bathroom: Bath panel



Photograph 19: Bedroom 1: Staining to ceiling and wall



Photograph 20: Bedroom 1: Damp meter reading to wall



Photograph 21: Bedroom 1: Damp meter reading to wall



Photograph 22: Bedroom 2: Staining to ceiling



Photograph 23: Bedroom 2: Damp meter reading to ceiling



Photograph 24: Bedroom 2: Damp meter reading to wall



Photograph 25: Bedroom 2: Gas boiler



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Photograph 26: Bedroom 3: Damp meter reading to wall



Photograph 27: Rear elevation



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