



Tribunal for Scotland Housing and Property Chamber) (“the Tribunal”)

STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24 (1) OF THE HOUSING (SCOTLAND) ACT 2006

Case Reference FTS/HPC/RP/24/2549

Wee Glen, Skyreburn, Gatehouse of Fleet, DG7 2HG being part of the subjects recorded in the General Register of Sasines for the County of Kirkcudbright in the Disposition by Trustees under the Deed of Trust by Claude Langrish Faber proprietor of the lands and farm of Glen extending to 1727 acres in the Parishes of Kirkmabreck and Anwoth referred to in the Disposition to James Robertson Robertson and another recorded 15 August 1960 (under exception of subjects in Disposition to Audrey Mildred Falkner or Surtees recorded 16 September 1965) (“the Property”)

Parties:

Dumfries and Galloway Council, Housing and Licensing Standard, Militia House, English Street, Dumfries, DG1 2HR (“Third Party and Applicant”)

C L Faber Trust, Upton Wold Farm, Moreton-in-Marsh, Gloucestershire, GL56 9TR (“The Landlord and Respondent”)

Doreen Parkin residing at Wee Glen, Skyreburn, Gatehouse of Fleet, DG7 2HG and Sarah Wilson, residing at 5 Frensham Drive, Castleford, West Yorkshire, WF10 3RQ Attorney for Doreen Parkin (“The Tenant”)

Tribunal Members:

Melanie Barbour (Legal Member) and Donald Wooley (Ordinary Member - Surveyor)

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 had 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) of the Act, and has determined to make a Repairing Standard Enforcement Order (“RSEO”).

BACKGROUND

1. By application received on 3 June 2024 (hereinafter referred to as “the Application”) the Third Party applied to the Tribunal for determination as to whether the landlord had failed to comply with the duties imposed by section 14 (1)(b) of the Housing (Scotland) Act 2006.
2. The application stated that the third party considered that the landlord had failed to comply with the duty to ensure that the property meets the repairing standard, and that the landlord had failed to ensure compliance with Section 13 (1) of the 2006 Act.
3. The third party attached various documents in their application:-
 - a. Note of additional information
 - b. Timeline of communication with agencies and tenant
 - c. copy letter to landlord dated 11 April 2024 attaching repairing standard checklist and advising that the third party considered that the property did not meet tolerable standard or repairing standard
 - d. proof of delivery of letter to landlord
 - e. one page of tenancy agreement.

Note: This checklist was not included in the application, but was provided by the third party to other parties and the tribunal in an email dated 13 September 2024.

4. The third party checklist detailed the nature of each complaint and the work they considered required to be done to address matters. The checklist was dated the 11th of April 2024. This checklist was an in-house repairing standard checklist stating that the landlord has failed to ensure that :-
 - a. the property is wind and watertight and in all other respects reasonably fit for

people to live in,

- b. the structure and exterior (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, and
- c. the property must meet the tolerable standard.
- d. The checklist set out the detailed issues as follows:-
 - i. Utility area damp staining evident on ceiling to left hand side of back door. Cause should be investigated and repairs undertaken.
 - ii. Bedroom 1 (master) plaster was cracked and coming away from the wall in the area beneath window. Repair required.
Exterior of property.
 - iii. Window frame to exterior of the utility area was showing signs of rot and vegetation growth was noted. Stone sill beneath was disintegrating. Repair required.
 - iv. Slippage of slates noted beneath ridge to left hand side of roof at rear of property and to gully above bedrooms on right hand side of roof. Investigation and repairs required.
 - v. Bathroom window frame was showing signs of rot and disintegration. Repairs required.
 - vi. Sitting room window holes noted in the area between stone sill and wooden frame and window frame showing evidence of rot. Repair required.
 - vii. Kitchen window holes noted in the area between stone sill and wood frame and window frame showing evidence of rot. Repair required.
 - viii. Gully between main property and bedrooms showing vegetation growth. Investigation and removal of debris required.
 - ix. Private water supply previous water sample taken for the property failed to meet acceptable levels. Please confirm the actions that have been taken to resolve the issue and confirm date when re testing will take place.
 - x. Please supply copy of electrical installation condition report.
 - xi. Oil boiler please confirm annual servicing of this appliance takes place.
 - xii. Please confirm that there are no lead pipes within the property

5. The application was accepted by the Chamber President and was referred to this Tribunal for consideration on 19 June 2024.
6. A Direction was issued on 11 September 2024 requiring the third party and landlord to provide certain information namely:- a copy of the attached sheet referred to in their letter to the respondent dated 11 April 2024; a copy of the tenancy agreement; a copy of the up to date electrical inspection condition report; and a copy of a risk assessment for the private water supply. The direction was complied with in part. There was no risk assessment for the private water supply provided by the landlord. An electrical installation certificate was provided.
7. The tribunal intimated to all parties that they would inspect the property on 15th of October 2024 at 10:00 AM. Parties were advised that a telephone hearing would take place at 2:00 PM on the same date.
8. On 15th of October 2024 the third-party, Susan Lafferty from Dumfries and Galloway Council, the landlord legal advisor Andrew Maxwell, from Brazenall Orr LLP, the tenant Dorren Parkin and her daughter and attorney Sarah Wilson were all in attendance at the property inspection. They all also attended the telephone hearing.

PROPERTY INSPECTION

9. The tribunal inspected the property on the 15th of October 2024. The landlord's legal agent gave access to the property. The landlord's legal agent, third-party, tenant and her attorney were present at the time of the inspection. The tribunal took photographs during the inspection and reference is made to the Photograph Schedule Attached

10. The property comprises a single storey detached late eighteenth century cottage in a relatively remote rural setting. The property is mainly of traditional stone and brick construction under a pitched slate roof. The accommodation comprises, one living room, two bedrooms, kitchen, utility room and bathroom.
11. Damp staining and flaking paintwork was visible on the utility room ceiling adjacent to the rear external wall. Moisture readings taken at the affected area confirmed the presence of penetrating damp at a level likely to cause further deterioration to the internal fabric if left unrepaired. As viewed externally it was noted that there was defective roof slating, badly corroded and broken rainwater goods and choked valley gutters which were all likely to be a contributory source of water ingress.
12. The external window frame on the rear wall of the utility room is decayed with significant vegetation growing on and around the stone sill, contributing to further deterioration.
13. On the external front elevation at the bathroom, living room and kitchen windows, all of varying timber design, there was evidence of localised rot, disrepair and flaking paint, recent maintenance having been neglected. There were visible gaps between the base of the window frames and stone sills although when viewed internally there is no evidence of any penetrating damp corresponding with these areas.
14. At the main bedroom there was a small area of missing plaster affecting a skimmed "top coat" below the window and above the radiator. The surrounding plaster in the immediate area is slightly cracked and bossed although this defect was considered to be relatively cosmetic and minor in nature.
15. There was no current "satisfactory" Electrical Installation Condition Report (EICR) within the property and none was held by the tenant.
16. A floor standing "Worcester" oil fired boiler was located in an outbuilding accessed from the rear of the property. It was understood to have been installed around May 2023 although the tenant stated that it has been "broken"

since 16th June 2024 and was subsequently “vandalised” on or around 18 July 2024.

17. No lead pipes were identified within the property and the tenant was unaware of the existence of any.
18. The water supply was not tested. The tenant stated that the system had previously been tested by Environmental Health and did not satisfy statutory requirements. No documentation was available for inspection at the property.

HEARING

19. At the hearing the tribunal’s ordinary member went through the items which had been inspected during the property inspection. Both the landlord’s agent and tenant confirmed that they agreed with the tribunal’s assessment of the matters set out in the checklist and as detailed in the Property Inspection section above.
20. Other points noted were that :-
21. The tribunal confirmed that the electrical report which had been supplied by the landlord was not the correct report. It was confirmed that what was required was a copy of an *electrical installation condition report*, but what had been supplied was an electrical installation certificate. The agent for the landlord noted the difference in the two documents. The tribunal confirmed that the electrical installation condition report should have been in place since the start of the tenancy on the 8th of July 2020.
22. The tribunal noted that it did not have any documentation in relation to the private water supply in order to assess whether or not it met statutory standards. The tenant confirmed that they had received an e-mail from the environmental health department confirming that the private water supply had failed on the biological markers. The tenant advised she was not aware of any

works being done to the private water supply by the landlord. The tenant advised that a date had been arranged for the 3rd of July 2024 for water testing to be carried out but that testing was subsequently cancelled by the landlord. The tenant advised that she had received correspondence in November 2023 that she was not to use the water supply as it had failed testing. It had been tested in June 2024 by environmental health and it was found to have failed to meet statutory standards at that time. The third party confirmed the failure in the private water supply testing and referred to the timeline she had submitted with the application about the private water supply.

23. The landlord's agent advised that the private water supply supplied the property, Wee Glen and another property called Glen Brig. He stated that there had been testing to the water supply carried out in 2024 at Glen Brig and the testing results had shown that the water supply passed the bacterial testing but it had not passed the colour test. Arrangements were made for re-testing in July 2024 but they were cancelled due to the occupant. The landlord's position is that there had been difficulties obtaining access to the property Wee Glen for testing purposes. The landlord's agent advised that the landlord wished to make sure there was a clear communication route with the tenant in order for arrangements for testing to be carried out quickly.
24. The tenant advised that there were no issues with getting access to the property. The tenant advised they were currently buying water for drinking as they had been told not to consume water from the water supply to the property. The tenant had also been told not to use the private water supply for bathing or showering.
25. There was a discussion regarding the functioning of the oil boiler. The tenant advised that it was not functioning. The tenant advised that a new oil boiler had been installed in May 2023. It had been working since May 2023. On 16 June 2024 the tenant found the boiler to have stopped working. On 18 July the tenant stated that it had been vandalised, the switches had been removed, wires cut and the boiler had been switched off. The tenant contacted the landlord on 16 June 2024 and 18 July 2024 to ask to have the boiler fixed. The

tenant said that there had been no response from the landlord. The tenant advised that they require the boiler to provide the heating and hot water including for the shower.

26. The landlord's agent advised he had no knowledge about the working order of the oil boiler. He indicated that there was an entry regarding an engineer having been in touch about servicing the boiler on 6 November. He suggested that there had been issues with contact between the parties. The landlord had had difficulties in trying to arrange access with the tenant and he noted the tenant had the same concerns.
27. The landlord's agent advised that the landlord had believed that the tenant was not residing within the property earlier in the year. The landlord's agent advised that a notice to leave had been served on the tenant earlier in the year as it was believed the tenant was not living in the property. No proceedings will be raised in terms of the notice to leave. The landlord's agent confirmed that the landlord is a Trust. One of the beneficiaries of the Trust lives locally. The Trust as landlord provides instructions to act.
28. The tenant confirmed that she continued to reside in the property. She advised that until she fell ill, she had been a carer for someone who lived locally and had been at that person's home, but she returned to her property in the evening.

FINDINGS IN FACT

29. Having viewed the property and having considered the available evidence, the tribunal makes the following findings in fact: -
30. The Landlord is the owner of the property, and the title is recorded in their name.
31. The tenant is still a party to the tenancy.

32. By letter dated 11 April 2024 the landlord was notified by the third party of outstanding repairs prior to this application being made to the tribunal and given an opportunity to rectify matters.
33. This application was lodged with the tribunal on 3 June 2024.
34. No current “satisfactory” Electrical Installation Condition Report (EICR) had been provided to the tribunal in relation to this application for this property.
35. The landlord did supply an electrical installation certificate dated 13 May 2024.
36. There is penetrating damp on the utility room ceiling adjacent to the rear external wall. Defective roof slating, badly corroded and broken rainwater goods and choked valley gutters are all likely to be a contributory source of water ingress.
37. The external window frame on the rear wall of the utility room is decayed with significant vegetation growing on and around the stone sill.
38. On the external front elevation of the property the bathroom, living room and kitchen windows, all show evidence of areas of localised rot, disrepair and flaking paint. Recent maintenance to these windows has not taken place. Internally there is no evidence of any penetrating damp corresponding with these areas.
39. In the main bedroom under the window there is a small area of missing plaster found to be slightly cracked and bossed. This defect was relatively cosmetic and minor in nature.
40. A floor-standing “Worcester” oil-fired boiler was located in an outbuilding accessed from the rear of the property. It had been installed around May 2023.

41. On a limited investigation by the tribunal, no lead pipes were identified within the property. The tenant and the third party were unaware of the existence of any.
42. The private water supply had been tested by the third party's Environmental Health Department in 2022 and re-tested in June 2024. The piped water supply to the property had been found on both occasions to not be of wholesome quality and did not meet statutory requirements. No documentation relating to the private water supply was provided to the tribunal to confirm that the piped water supply quality was wholesome and currently met statutory requirements.
43. The property does not meet the repairing standard as set out in the foregoing findings in fact.

REASONS FOR DECISION

44. The Tribunal had regard to what it found at the property inspection and considered the evidence at the hearing from all parties. The tribunal had regard to statutory obligations imposed upon a residential landlord to comply with Scottish Government guidelines. We also considered the terms of sections 13 and 14 of the 2004 Act in relation to the repairing standard.
45. We find that the property is let as a residential tenancy.
46. The Tribunal did not find that there was evidence of dampness in the area of plaster under the window in the master bedroom. The damp readings did not show any evidence of damp. The Tribunal found a cosmetic and minor defect under the bedroom window. We do not find there to have been any breach of the repairing standard in relation to this aspect of the application.
47. The Tribunal asked the parties if they were aware that there were lead pipes in the property. No party could direct the tribunal to any evidence of lead pipes. The tribunal carried out a restricted inspection, while not exhaustive, there was

no evidence of lead pipes in the property from that inspection. The Tribunal do not intend to make any order in relation to this aspect of the third party's application.

48. The Tribunal were advised that the oil boiler was less than one year old on the date when the application was made. We also understood that it was in good working order on that date, 11 April 2024. The third party asks for an order seeking confirmation from the landlord that the annual servicing of the appliance takes place. The repairing standard statutory guidance does not require a landlord to provide annual servicing reports. It requires a landlord to provide a space or water heating system which is safe and in good working order. As we do not consider that there is a statutory duty on the landlord to provide annual servicing reports, then we do not consider that the landlord is in breach of their repairing standard duty to repair and maintain. In addition, the order sought is for a continuing obligation for the provision of inspection reports, we do not consider that such an order would be competent.

49. In relation to the external windows. There were some concerns in relation to utility, bathroom, sitting room and kitchen windows within the property. They all showed signs of deterioration and required repair work to be carried out to maintain them. The tribunal did not consider that those windows were in a reasonable state of repair given the areas of localised rot and flaking paint noted and we consider that the landlord is in breach of their duty to repair and maintain.

50. The Tribunal found that there was damp in the ceiling at the utility room and consider that, specifically at this location, the property was not wind and watertight.

51. Externally, the tribunal was concerned about the exterior of the house. It did not appear to be in a reasonable state of repair given that there was noted to be defective roof slating, badly corroded and broken rainwater goods and choked valley gutters. We find that they are all likely to be a contributory source

of water ingress. We find therefore that the structure and exterior of the property was not in a reasonable state of repair.

52. We were not supplied with a current copy of an electrical installation condition report. This is a requirement in terms of the repairing standard.

53. We note that there had been correspondence between the third party and the landlord in relation to the private water supply and whether the water quality met acceptable standards. In the application papers and Miss Lafferty's evidence at the hearing, we were advised that the private water supply had failed to meet acceptable standards when tested in 2022. She advised that the private water supply had been most recently tested by the Environmental Health Department in June 2024 and it had again failed to meet acceptable standards and was not of wholesome quality. The landlord's agent advised that they had recently had testing carried out and it had met acceptable standards. There was however no documentary evidence provided by the landlord which evidenced that this private water supply for this property met acceptable standards. The tenant considered that it did not. She confirmed that the quality of the water caused her concern. The tribunal was not satisfied that the property met the tolerable standard as there was no evidence before it that the property had an adequate supply of water available within the property.

54. The tribunal concludes that the property does not meet the repairing standard for the reasons set out above. In terms of section 13 of the 2006 Act we find that the house is not wind and watertight and in all other respects reasonably fit for human habitation; we are not satisfied the structure and exterior of the house is in a reasonable state of repair and in proper working order; and we are not satisfied that the property meets the requirements of the tolerable standard.

55. The tribunal determined that the landlord had failed to comply with the duty imposed by section 14 (1)(b) of the 2006 Act in respect of the matters set out above. The tribunal therefore must require the respondent to carry out the works necessary for meeting the repairing standard and will therefore make a

repairing standard enforcement order (“RSEO”) in terms of Section 24 (2) of the 2006 Act.

56. Having decided to make an RSEO the tribunal considered the length of time which should be provided for compliance. The tribunal elected that a period of 12 weeks from the date of service of the RSEO was suitable having regard to the nature of the matters which require to be addressed by the landlord, the length of time it appears that they have been outstanding for, and the likely length of time to instruct and carry out the required works and provide supporting evidence of same.

57. OBSERVED The tribunal observes the oil boiler may not currently be in good working order. We do not however make any order in relation to the oil boiler, as it appears to have been in good working order when the application was made on 3 June 2024 and when the third-party inspection was carried out In April 2024. As the tenant raised the matter at the hearing that the oil boiler was not working, and as the tenant advised that she had contacted the landlord about this matter and asked for repairs to be carried out, then we would recommend that parties liaise with each other and make the necessary arrangements for the oil boiler to be looked at by a suitably qualified engineer and repaired as necessary. We do not consider that this matter is formally before the tribunal and we do not therefore determine this matter, it remains open to the tenant or the third party however to make a further application if the matter is not resolved.

RIGHT OF APPEAL

Landlords, tenants or third-party applicants aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

EFFECT OF SECTION 63

Where such an appeal is made the effect of the decision and of 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 decision and the order will be treated as having effect from the date in which the appeal is abandoned or, so determined.

Melanie Barbour

Legal Member

29 October 2024

Date

Photograph Schedule Attached

Schedule of Photographs
Wee Glen, Skyreburn, Gatehouse of Fleet
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Schedule of Photographs taken at the inspection on 15 October 2024



1. Front elevation.



2. Utility room damp staining at ceiling



3. Damp readings at utility room ceiling



4.

Photographs 2 & 3:- Damp staining and damp readings utility ceiling.

Photograph 4:- Area circled in red highlights badly corroded and broken rainwater goods and chipped slates immediately above and outside the utility area.



5.

Photograph 5:- Temporary repair between badly corroded downpipe and gutter outside the utility area.



6.

Photograph 6:- Rot and vegetation growth at window and sill of utility room.



7.



8.

Photograph 7:- Slipped, broken and missing roof slates in the rear left valley gutter between main property and rear projection and significant vegetation choking valley gutter specifically at junction with eaves gutter

Photograph 8:- Slipped, broken and missing roof slates in the rear right valley gutter between main property and rear projection and significant vegetation at eaves and valley gutter.



9.



10.



11.



12.



13.

Photograph 9:- Localised rot and flaking paint at bathroom window.

Photographs 10 & 11:- Localised rot and flaking paint at living room window.

Photographs 12 & 13:- Localised rot and flaking paint at kitchen window.



14.

Photograph 14:- Worcester Oil fired Boiler in outhouse installed circa May 2023



15.

Photograph 15:- Water filter below sink unit in utility room.

This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Tuesday 15 October 2024 in connection with a Repairing Standard application under consideration.

Donald Wooley MRICS
15 October 2024

