

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier tribunal for Scotland (Housing and Property Chamber)**

**Determination of First-tier tribunal for Scotland (Housing and Property Chamber)**

**Statement of Decision of First-tier tribunal for Scotland (Housing and Property Chamber)**

**Chamber Ref:PRHP/RP/16/0330**

**Title no FFE60515**

**56 Whyterose Terrace, Methil, Fife KY83AS (“The house”)**

**The Parties:-**

**David Mitchell, Bowhouse Farm, East Wemys, Kirkcaldy, Fife ( “the Landlord”)  
Represented by Fife Properties, 9 Mitchell Street , Leven, Fife , KY84JH**

**Gerald Ovenstone, 56 Whyterose, terrace, Methil, Fife, KY83AS (“the Tenant”)**

**First-tier tribunal for Scotland (Housing and Property Chamber) ( “the tribunal”) comprising Judith lea (legal member) and Harry McLean (ordinary member)**

**Decision**

**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 house concerned and taking into account all relevant evidence, determines that the Landlord has not failed to comply with the duty imposed by Section 14(1) (b) of the Act. The tribunal decision is unanimous.**

## **Background**

1. By application dated 19th October 2016 , the Tenant applied to the Private Rented Housing Panel for a determination that the Landlord had failed to comply with his duties under section 14(1) of the Act. With effect from 1/12/2016 the Private Rented Housing Panel has been incorporated into the tribunal.
2. The Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard and in particular that the Landlord had failed to ensure that:- the house was wind and water tight and in all other respects reasonably fit for human habitation, 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, that the installations in the house, the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order and that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. On 14 December 2016, the Convenor of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee (as it then was). The Private Rented Housing Committee served notice of the inspection and hearing on both the Landlord and the Tenant.
4. The tribunal issued a Direction requiring the Landlord to produce an up to date Electrical Installation Condition Report by 8 February 2017.
5. Written representations and an up to date Electrical Condition Installation Report were submitted by the landlord prior to the inspection and hearing.

## **The Inspection**

The tribunal inspected the house on 10 February 2017. The Tenant was present during the inspection. The landlord was also present at the inspection accompanied by his jobbing builder. Photographs were taken during the inspection which are attached to this decision.

## **The Hearing**

Following the inspection, the tribunal held a hearing at the Lomond Centre ,Glenrothes. Both the tenant and the landlord were present at the hearing. The tenant outlined the history of the various problems with the flat and advised that he had had difficulty in getting the Landlord to resolve the problems. He had been living with the damp problem since March 2016 and it was only recently that work had been carried out. He advised that his view was that it was only once the tribunal were involved that the Landlord rectified matters. The Tenant indicated that he thought there was still an ongoing problem with the leak in the roof as there was still a problem after work was done on the roof in November. The Tenant confirmed that since the wet wall was put into the shower there had not been any apparent problem. The Tenant confirmed at the inspection that the problem with the mould on the switches in the cupboard in the bedroom had been rectified and that there was no need for the tribunal to inspect this as it was difficult to get into that room because all his furniture was in there the moment.

The Landlord advised that he was presently waiting for The Preservation Company to finish the work at the flat and issue a certificate. Both the Landlord and the Tenant confirmed that consideration had been given to applying for a grant for roof insulation but nothing had been done about this as yet.

### **Findings in fact**

The tribunal considered each of the issues raised by the Tenant.

#### Hole in the roof, cracked slates and lack of roof insulation

The ordinarily member of the tribunal viewed the roof space through the hatch and there was no sign of any roof leak. It was clear from inspection that the stone skewers on the roof have been relaid and the tribunal considered that the house was currently wind and watertight. There was no loft insulation and whilst this is not in itself a breach of the Repairing Standard the tribunal would recommend that consideration be given to installing loft insulation.

#### Dampness in the walls

It was clear from inspection that recent work has been carried out on the wall in the living room. This work has been done by The Preservation Company which is a reputable local dampproofing company. The landlord confirmed that the work would be concluded over the next few weeks and that he had been trying to arrange access for the plasterwork to be done. Damp meter readings were taken and showed no current damp problem in the living room. A damp meter reading was taken in the kitchen which showed slight damp but it is likely that this is as a result of the previous damp problem which has now been rectified. The tribunal was satisfied that the landlord had rectified the damp problem in the property. The tribunal noted the tenant's concerns in connection with how long it had taken to have this resolved but the tribunal has to consider whether or not the property meets the repairing standard as at the date of inspection. The tribunal accordingly did not find a breach of the Repairing Standard but noted that one of the gutters outside was dripping and would recommend that the landlord deal with this matter to avoid any future damp problem.

#### Electrics

The Tenant confirmed that the damp and mould on the plugs in the cupboard in the bedroom had been resolved. The Landlord provided an up-to-date Electrical Condition Installation Report from a suitably qualified electrician and accordingly the tribunal found no breach of the Repairing Standard.

#### Shower

The Tenant had complained about mould in the shower and leaks from shower. It was clear from inspection that a wet wall has now been installed and there was no sign of any ongoing problem with the shower.

The tribunal accordingly did not make a Repairing Standard Enforcement Order.

### **Right of Appeal**

**A landlord, tenant or third party applicant 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.**

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.

Signed J Lea  
Chairman and legal member

Date 16/2/17



Sitting room – damp remediation works



Sitting room – smoke detector taped over during remediations



Medium damp readings below kitchen worktops



Kitchen – Heat detector and CO detector



Shower cubicle - tile grouting



Recent wet wall to shower cubicle



Leaking gutters to rear extension



Loft hatch in hallway