

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)

Chamber Reference Number: FTS/HPC/RP/19/3389

Title Number DMB60299

26 Firthview Terrace, Brucehill, Dumbarton, G82 4DT ("the property")

The Parties:

Jacqueline Clark and Graeme Hendry, 26 Firthview Terrace, Brucehill, Dumbarton, G82 4DT (" the Tenants")

Gregory Beese, 10 Trough Lane, Watnall, Nottingham, NG16 1HR ("the Landlord")

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 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) of the Act.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Mr Greig Adams, Ordinary Member

Background

1. By application dated 23 October 2019 the Tenants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The Application states that the Tenants consider that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. Specifically, the Tenants state that the Landlord has failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (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, (iii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order and, (iv) The house does not meet the tolerable standard. Specifically, the Tenant complains of;- (1) All windows in the house leaking and draughty, (2) Cracks and damp patches in rendering, (3) Damaged/leaking gutters, (4) Dampness round front door porch (5) Cold, damp and draughts coming from defective fuse box door and draught proofing required, (6) Bottom hallway cold and draughty, (7) Living room – damp patches and fire has been condemned, (8) Dining room floor smells when washed, (9) Outdated kitchen, damaged and missing kickboards, problem with electrics in relation to hob and oven, (10) All sockets in property need checked and fixed, (11) Doors in living room need planned, (12) Hallway/stairs cold and draughty, no heater in hallway or stairs, (13) main bedroom cold, draughty, dampness, skirting board has holes, (14) Bathroom shower head rusty, bath needs re-sealed, toilet pan leaking, dampness on ceiling, no ventilation, bath panel cracked and hanging off, door not painted
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 15 January 2020. The parties were notified that an inspection would take place on 24 February 2020 at 10am and that a hearing would take place on 24 February 2020 at 11.30 at Glasgow Tribunal Centre, York Street, Glasgow.
4. Prior to the date of the inspection and hearing the Landlord lodged a substantial bundle of documents, including copy text messages, photographs, a lengthy statement/chronology.

5. The Tribunal inspected the property on 24 February 2020. The Landlord was present together with his representative, Chris Daniels. The Tenants were both present. Thereafter the Tribunal held a hearing at Glasgow Tribunal Centre, York Street, Glasgow. The Landlord and both Tenants attended. The Landlord was represented by Mr Daniels.

The Inspection

6. At the time of the inspection the weather was cold with wintry showers. The Tribunal inspected the property, which is a three bedroom, former local authority house in Brucehill, Dumbarton, of cavity wall construction and incorporating a render finish externally. The Tribunal noted (i) Bedroom - hairline crack to textured ceiling coating, surface wall temperature below dewpoint allowing condensation, loose socket (ii) Bathroom - corroded shower hose, mould growth, split and loose bath panel, defective bathroom seal, (iii) In attic – defective repair to plasterboard, areas of missing insulation in eaves void, (iv) Windows – wet cloths on window sills throughout property, (v) Dampness recorded in living room at bay window, timber decay at bay window floor, (vi) Kitchen – damaged kitchen unit door, missing and damaged kickboards (vii) Entrance vestibule – peeling paper and surface wall temperature below dewpoint allowing condensation, (viii) External – missing sections of render with brick exposed, entrance vestibule cladding missing trims, defective render, leaking gutter joint over front elevation at first floor. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

7. At the hearing the Tribunal noted that the parties are agreed that the following items have now been resolved – All sockets have now been repaired or fixed, except one behind the bed in the main bedroom; the toilet has been replaced and an extractor fan fitted in the bathroom; the electrics in the kitchen have been fixed. The Tribunal was also advised that there are separate proceedings before the Tribunal for eviction and rent arrears. It was noted that a hearing is to take place regarding the eviction and rent arrears applications after the present application has been determined. The Tribunal proceeded to hear evidence and submissions from the parties regarding the repairs issues detailed in the application.

8. **The Windows.** Mr Daniels advised the Tribunal that following a complaint about the windows two contractors were consulted. The first said that all windows required to be replaced. The second, Chambers the Glaziers, said that the bathroom window needed to be replaced but that the others could be fixed by flushing the drain holes and replacing the sealed units. This work was carried out and the contractor advised the Landlord that the problems with the windows had resolved. When the Tenants made further complaints, Chambers were asked to return and carried out further work. They have recently been asked to go back again to investigate the current complaints, but have not been able to get access to the property. The Tribunal was advised that the Landlord is relying on the contractor's expertise and will carry out any recommended repairs. That said, Mr Daniels advised the Tribunal that he noted only one small patch of water on one window ledge during the Tribunal's inspection, which could have been placed there, and the windows appeared otherwise to be in working order. The Tenants advised the Tribunal that the windows are draughty and leak, and that the Landlord was told by the first contractor that all required to be replaced. Instead, he chose the cheaper option.
9. **Dampness.** Mr Daniels advised the Tribunal that a damp specialist has been instructed to inspect the property. They had attempted to arrange this inspection for the 14 or 17 February 2020, but the Tenants would not provide access. An inspection has now been arranged for 27 February 2020. It is the Landlord's intention to carry out the work recommended by the specialist, when his report is received. Until this report is received the Landlord is unable to comment on the issue of dampness but concedes that investigation is needed. The Tenants confirmed that they had been unable to provide access on the 14 and 17 February 2020, due to work commitments, but would facilitate this access on the 27 February 2020 for the inspection which has been arranged.
10. **Rendering.** Mr Daniels advised the Tribunal that following complaints from the Tenants about cracks in the render and associated dampness, the Landlord arranged for a contractor to attend and fill in these cracks in September 2019. He further indicated that this is evident from the condition of the property at inspection, although it is conceded that the appearance of the property is poor as it has not been painted. Repairs to the ridge and roof tiles were also carried out. He also advised that he noted a few cracks during the inspection which require to be filled in. It is assumed that these have occurred since the contractor completed the work. The Landlord confirmed to the Tribunal that he did not visit the property after completion of this work but accepted the information from the contractor that it was complete. The Tenants

advised the Tribunal that the contractor who carried out the work did not fill in all the cracks and the condition of the property is unchanged since that work was carried out.

11. **Gutters.** Mr Daniels advised the Tribunal that the Landlord arranged for work to be carried out to the gutters and accepted the contractor's assurance that the issues had resolved. He conceded that on inspection the gutters were noted to be leaking and should be replaced.
12. **The Fuse Box.** The Tenants advised the Tribunal that Scottish Power carried out a repair in 2018 to fix the fuses. The door is not secure and there are a lot of draughts causing the porch to be cold. They have put up a curtain between the porch and the hall to try to address this. Mr Daniels advised that he noted no problem with the fuse box door.
13. **The gas fire.** Mr Daniels confirmed that this has never worked, and that the Tenants were aware of this when they moved in. In response to questions from the Tribunal the Landlord confirmed that he had received advice that it would be easier to replace it with an electric fire and that there had been discussions with the Tenants regarding this. However, no electric fire has been provided
14. **Flooring in the dining room.** The Tenant's confirmed that the previous occupants had dogs who were frequently left alone for long periods of time in the property. They advised that when the dining room floor is washed, there is a smell of urine and faeces from the floor. Mr Daniels stated that he noted no smell from the floor during inspection, and therefore maintained that there is no issue with the floor.
15. **Cold/Insulation.** The Tenants advised the Tribunal that there is inadequate insulation throughout the house, leading to the property being cold even when the heating is on. They confirmed that the heating is on for several hours, morning and evening, as they both work during the day. When they are in the house at weekends it is on all the time. Mr Daniels pointed out to the Tribunal that the property received a D rating in its Energy Performance Certificate and stated that the property is adequately insulated.
16. **Kitchen.** Mr Daniels advised the Tribunal that the kitchen units may be outdated and shabby, but they are functional and not in breach of the repairing standard. The Landlord advised that the missing kickboards were there when the property was let to the Tenants. The Tenants advised the Tribunal that they were told that there was to be new kitchen installed, which has never materialised.
17. **Doors.** The Landlord denies any issue with the doors as these were seen to be in working order.

18. **Hallway.** Mr Daniels advised the Tribunal that the property has sufficient heating provision and that there is insufficient space in the upstairs hall for a radiator. He advised also that the window contractor will check for draughts when he visits.
19. **The attic.** Mr Daniels advised the Tribunal that the attic seems to be used as a bedroom, which was not the intention. The property was let as a three bedroom house. The Tenants advised that they have put in additional insulation in the loft. Some of the original insulation was moved by the electrician who fitted the extractor in the bathroom. They also advised that the room is not used as a bedroom, but that their son sometimes works there.
20. **Bathroom.** The Landlord advised that the shower hose appears to have been damaged by the Tenants but that this would be replaced, given the limited cost of same. The Tribunal was also advised that he has been let down by the contractor who installed the extractor and toilet, as he was supposed to re-seal the bath as well. Mr Daniels advised that he considered the damage to the bath panel to be cosmetic only. The Tenants advised the Tribunal that they cannot use the shower because the water is tinged brown by the rusty hose.

Findings in Fact

21. The property is a three bedroom semi detached dwelling house located in Brucehill, Dumbarton
22. The Tenants have occupied the property since 2018.
23. The property suffers from dampness.
24. The windows in the property are defective.
25. There are cracks in the render of the property.
26. The gutters at the property are damaged and leak.
27. The socket in the main bedroom, behind the bed, is loose.
28. The fire in the living room is broken and unsafe to use.
29. The shower hose and bath panel in the bathroom are damaged and the seal round the bath is in disrepair.
30. There are damaged and missing kickboards and a damaged unit door in the kitchen.

Reason for decision

31. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
32. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 3 of the 2006 Act " The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it" The Tribunal is satisfied that the Tenants notified the Landlord of the repairs issues at the property.
33. The issue of access to the property was raised by the Landlord in advance of and during the hearing. The Tribunal noted that the Tenants both work and accept that they have not always provided access to the property when asked to do so, due to work commitments. However, access has been provided to contractors on many occasions. It appears therefore that any access issues have not prevented the Landlord from arranging for work to be carried out, although it may have sometimes caused delay. The Tribunal is not persuaded that any failure by the Landlord to carry out repairs have been as a result of a refusal to provide access by the Tenants.
34. **Dampness.** The Tribunal undertook a "qualitative assessment" utilising a moisture profiling technique providing sub-surface/at depth moisture readings. This is a non-disruptive technique that does not provide the true moisture content, rather the relative measurement compared to other readings recorded. Anomalies were observed within the Living Room Bay window where very high readings were recorded, indicative of penetrating dampness.
35. A "quantitative assessment" was also undertaken to the timber floor at the bay window utilising the pin-mode of the moisture meter. Such meters are calibrated to timber and provide the true moisture content of any timbers tested. Moisture content to the floor was considered to be at an unacceptable level with elevated readings and timber decay noted. Analysis of the environmental conditions was also undertaken which revealed that the surface temperature on a number of walls and most significantly the Bathroom and Entrance Vestibule was extremely low and despite relative humidity being recorded within a reasonable range, such surface temperatures were notably below dewpoint with heat loss apparent.

36. As part of the Tribunal inspection, infra-red images were recorded utilising a Thermal Camera. The Thermal Imaging System deployed on-site detects Infra-red Radiation, which in basic terms means that heat is being observed instead of light. The Thermal Imaging System then automatically allocates a colour palette to the different temperatures which are detected. Thermal anomalies were recorded at window perimeters, window sills, within the bathroom walls and ceilings and within the entrance vestibule.
37. The Tribunal noted that the property was very cold, although is served by gas central heating which appears to be in working order, with all radiators on during the inspection. The Landlord does not concede that the property is affected by damp but accepts that investigation is warranted. A contractor has been instructed, albeit only recently, and a report will be obtained which is to be lodged with the Tribunal. The Tribunal is satisfied that repair work to address the dampness is required and that in its current condition, the property does not meet the repairing standard.
38. **The windows.** The Tribunal observed water and wet cloths on several window ledges during the inspection. The weather was not particularly wet or windy, and no water penetration or draughts were noted. However, it was noted that some windows are undersized with larger than recommended gaps between the sealed units and the frames. The Landlord has twice arranged for a window contractor to attend and carry out remedial work. This does not appear to have been successful and the Tribunal is satisfied that the windows are defective and as a result the property is not wind and watertight.
39. **External walls and gutters.** It was evidence from the inspection that the gutters are in disrepair and leaking. This was conceded by the Landlord at the hearing. It was also conceded that there are cracks in the render, although the Landlord thought that this had been addressed in September 2019. The Tribunal notes that the Landlord did not inspect the property following this repair or make other enquiries to establish if the work had fully addressed the issue. He simply accepted the word of the contractor. The Tribunal is satisfied that there are cracks which require to be repaired and that the current condition of the external walls does give rise to a breach of the repairing standard.
40. **Fire in living room.** The Tribunal notes that this has never worked and that the Tenants were aware of this when they moved in. However, the Tribunal also notes that the Act requires the landlord to ensure that the property meets the repairing standard both at the beginning and throughout the tenancy. The fire is not in working order. Furthermore, it appears from the evidence that the Tenants were told that they would be provided with a suitable alternative

source of heat. The Tribunal is satisfied that the defective fire is a breach of the repairing standard.

41. **Bathroom fittings.** The Tribunal is not persuaded by the Landlord's argument that the bath panel and shower hose are cosmetic defects. The panel is cracked and loose. The shower hose has several rust spots which have led to the Tenants not using same. The bath seal is also defective. The Tribunal is satisfied that all three require to be repaired for the property to meet the repairing standard
42. **Socket in bedroom.** The Tribunal noted the explanation that the electrician ran out of parts when fixing the other sockets in the house. The Tribunal is satisfied that the socket is loose and requires to be repaired.
43. **Kitchen.** The Tribunal noted that there are missing and damaged kickboards in the kitchen and a damaged kitchen unit door, which require to be repaired.
44. The Tribunal is not persuaded by the Tenants complaint regarding the door of the fuse box, which appeared to be in working order. Furthermore, no issues with the dining room floor were noted, and this appeared to be in a reasonable state of repair. The Tribunal accepted the evidence that the kitchen is outdated and shabby, but that does not amount to a breach of the repairing standard. No problems with the doors of the living room were established. With regards the complaint regarding the lack of a radiator in the upper hallway, the Tribunal noted that the property has gas central heating and the radiators in the property appear to be in working order. The house is however cold and damp. The Tribunal concludes that this is likely to be the result of the defective windows and dampness affecting the property, rather than the lack of a radiator in the small hall at the top of the stairs. There was no specific complaint in the application relating to the attic and insulation. The Tribunal is therefore unable to make a determination regarding same but would recommend that the Landlord carry out some investigations with regard to the effectiveness of the insulation which is in place.
45. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the following; - dampness affecting the property, defective windows, cracks in render, defective gutters, defective fire, missing and defective kickboards and cupboard door in kitchen, socket in bedroom, shower head, bath seal and panel in the bathroom.
46. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(a), (b), (d) and (h) of the Act.

Decision

47. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
48. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)
49. The decision of the Tribunal is unanimous

Right of Appeal.

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.

In terms of Section 63 of the Act, 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 Bonnar

Signed..

..... 9 March 2020

Josephine Bonnar, Legal Member



**26 Firthview Terrace, Brucehill,
Dumbarton, G82 4DT ("the Property")**

Chamber Ref: FTS/HPC/RP/19/3389

SCHEDULE OF PHOTOGRAPHS



1 Cracking evidenced to rendered ingoes.



2 Hairine crack to textured ceiling coating.



3 Surface wall temperature noted to be below dewpoint allowing condensation.



4 Shower hose corroded.



5 Mould growth within Bathroom.



6 Mould growth to bathroom ceiling.



7 Split and loose bath panel.



8 Defective bathroom seal.



9 Patch repair plasterboard at attic floor.



10 Areas of missing insulation in eaves void.



11 Typical example of cloths laid at windows.



12 Cracking at rendered window ingoes.



13 Further cracking at rendered window ingoes.



14 Dampness recorded in Living Room at Bay window.



15 Timber decay at bay window floor.



16 Damaged doorfront to kitchen.



17 Peeling paper in entrance vestibule.



18 Surface wall temperature below dewpoint allowing condensation in entrance vestibule.



19 Missing section of render with brick exposed.



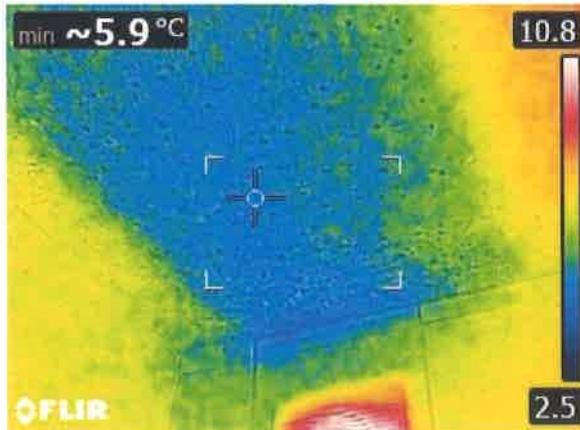
20 Entrance vestibule cladding missing trims.



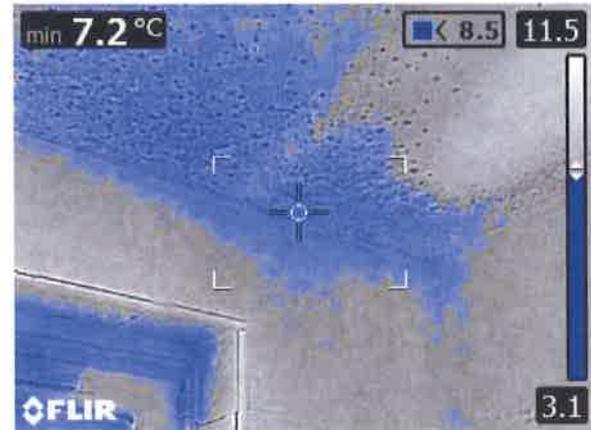
21 Defective rendered ingoie.



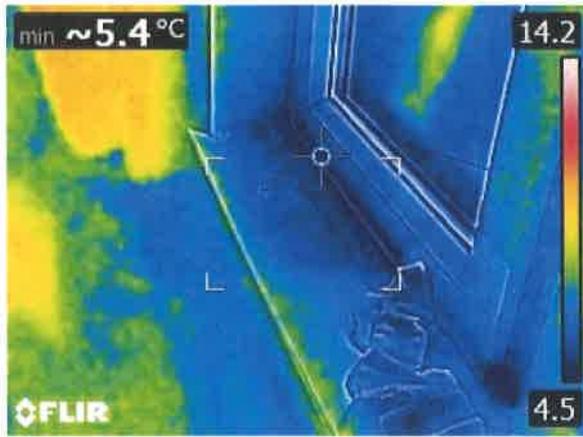
22 Leaking gutter joint over front elevation at first floor.



23 Cold areas within bathroom ceiling.



24 Condensation assessment, blue areas all below dewpoint.



25 Water ingress at window.