

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier 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**

In connection with

22 Hillfoot Road, Gartlea, Airdrie ML6 9PN ("the House")

The Parties:

Sharelle Raybould and John Rafferty ("the Tenants")

**Piotr Jablonski and Beata Jablonska, 10 Fir Grove, New Stevenston, Motherwell
ML1 4DP ("the Landlord")**

Reference number: FTS/HPC/RP/21/1590

DECISION

The Tribunal, having made such enquiries as are 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 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the inspection and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 30 June 2021 (hereinafter referred to as "the Application") the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that 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 compliance with the following paragraphs of section 13(1) of the Act:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...

...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...

...(h) the house meets the tolerable standard.”

The Tenant complained about: penetrating dampness throughout the House, problems with electrical sockets including the absence of plastering around them; the operation of the shower; a continually running overflow pipe; the condition of the kitchen units; the drain at the rear of the House and the condition of the flashings above the bay window.

By letter of 4 August 2021, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination. On the same day, having been informed that the Tenant had vacated the House, the President issued a Minute of Continuation under paragraph 7(2) of schedule 2 to the Act.

The Tribunal comprised the following members:

John McHugh, Chairperson
Mark Andrew, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Tribunal held a Case Management Discussion (CMD) on 8 September 2021 and made a Direction that the Landlord should produce a Landlords Gas Safety Certificate and an Electrical Installation Condition Report (EICR).

A hearing and inspection were fixed for 29 October 2021.

A Landlords Gas Safety Certificate dated 28 January 2021 and an EICR dated 7 October 2021 were produced by the Landlord. These confirmed that the current installations were safe.

The Tribunal inspected the House on 29 October 2021. The Tenants were present. Mr Jablonski was present also.

Following the inspection, the Tribunal held a telephone hearing on 3 November 2021. Both tenants were present and represented by Jim Melvin of Coatbridge Citizens

Advice Bureau. Mr Jablonski attended. The Tribunal considered the written evidence submitted by the parties and their submissions.

Submissions at the Hearing

The Tenant confirmed that there was no issue around the electrical sockets since the landlord had undertaken repairs as had been observed at the inspection.

The Tenant and Landlord confirmed that the Landlord had, after the inspection, carried out a repair which had stopped the overflow from leaking.

The Tenant confirmed that there had been no issues since the Landlord had carried out repairs to the flashings over the bay window some weeks ago.

The Tenant complained that the water pressure of the shower was low. The Landlord confirmed that he would look into the issue but thought it would be difficult to resolve and that he considered the pressure low but acceptable.

The Tenant complained of the following issues in the kitchen: the wall panelling near to the boiler was loose and secured by tape; there was only one drawer; the front of the drawer would become loose during use; the handles were inadequate; there is a gap under the boiler through which items can fall; and there is a hole on the cupboard beneath the sink through which slugs can pass. Mr Jablonski indicated that he had been unaware of some of these issues and would consider them. He advised that the panelling beside the boiler was intentionally loose to permit access to a valve.

The Tenant complained of the drain outside the back door being unsafe as it was sunken and represented a risk of injury to children. Mr Jablonski was unaware of any problem.

Mr Jablonski indicated that he was making arrangements for contractors to attend to survey the House for dampness. He thought it might take some time to organise the work.

The Tenant said that the boiler was working but the bottom panel could come loose. The landlord indicated that he was unaware of that issue.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a ground floor flat in a block of four.
- 2 The Tenants are the tenant under a private residential tenancy agreement.
- 3 Piotr Jablonski and Beata Jablonska are the registered owners of the House.
- 4 The Tenant took possession of the House from 5 July 2019. The tenancy is continuing.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Tenant notified the Landlord's representative of the defects in the House which are now the subject of the Application by emails including an email of 20 April 2021.
- 7 The inspection on 29 October 2021 revealed:
 - a. Electrical sockets were in reasonable repair and plastering had been carried out around them.
 - b. The electric shower has relatively weak water pressure.
 - c. There was no evidence of any problems with the flashings over the bay window.
 - d. There is evidence of penetrating dampness at various locations in the House including in the entrance vestibule, the front facing and rear facing bedrooms.
 - e. Water is flowing continuously from an overflow pipe in the roof.
 - f. The kitchen is in poor condition with damaged handles. There is a hole in the cupboard beneath the sink.

- g. Wall panelling is loose near the back door and is secured by tape.
- h. There is a drain outside the back door.

A schedule of photographs taken at the inspection has been provided to the parties.

Reasons for the Decision

Penetrating Dampness

A damp meter revealed high moisture levels in the front and rear facing bedrooms and in the entrance vestibule. The House is badly affected by dampness which has significant impact upon its ability to be occupied comfortably.

Heating & Electrics

We identified no issues with the electrics or the gas boiler. The Tenants noted at the hearing that the bottom panel of the boiler could come loose but we did not observe that during the inspection and we note a satisfactory landlords gas safety certificate.

Bay Window Flashings

There was no evidence of any problem with the flashings at the bay window since they were repaired.

Overflow

There are now no issues with the leaking overflow since the landlord's repair undertaken after the inspection.

Kitchen

The kitchen is in generally poor condition. Cupboards have damaged handles. There is a hole in the cupboard beneath the sink. Wall panelling is held on by tape.

Shower

Although the water pressure was relatively low, it did not appear to be so poor as to constitute a breach of the repairing standard.

Drain

The condition of the rear drain does not appear to be dangerous or to constitute a breach of the repairing standard.

The Repairing Standard

The Tribunal considers that the presence of high levels of dampness, the items in the kitchen (the hole in the cupboard; broken handles and loose panelling) represent breaches of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made. Having regard to the significant nature of the works required at the House, the Tribunal have allowed 80 days for the repairs to be carried out.

Observations

The general condition of the House is poor and it would benefit from upgrading.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

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.

Effect of Section 63 of the 2006 Act

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 day on which the appeal is abandoned or so determined.

J McHugh

John M McHugh
Chairperson

Date: 18 November 2021