

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 Ref: FTS/HPC/RP/20/1458

**Miss Beverley Bailey, formerly residing at Flat 6 13 Ayr Street, Troon
KA10 6EB (“The Tenant”)**

**Mr Ameer Ghauri c/o Waddell & Mackintosh, 71 Whiteacres Road,
Glasgow (represented by Mellicks Incorporating Naftalin Duncan & Co.,
160 Hope Street, Glasgow) (“The Landlord”)**

**Tribunal Members –
Graham Harding (Legal Member)
Donald Wooley (Ordinary Member)**

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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 28 November 2019 the former Tenant applied to the 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 stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) 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.

- (c) The installations in the house for 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
- (d) The house meets the tolerable standard.

Specifically, the Tenant complained that:-

There had been a partial ceiling collapse in the living room reported to the Landlord's letting agent that had not been repaired and rain was entering the property.

Paint chips were falling from the front bedroom ceiling in the bedroom which was damp.

The electric heaters in each room were not working.

The bathroom window was locked and did not open and also let in rain.

3. Following correspondence between the Tenant and the Tribunal administration the application was accepted on 7 December 2020 and a Case Management Discussion was assigned. The Tribunal was subsequently advised that the former Tenant had vacated the property.
4. By Minute of Continuation dated 12 January 2021 the Legal Member of the Tribunal intimated a decision to continue to determine the application on health and safety grounds.
5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 7 December 2020.
6. Following service of the Notice of Referral. The Landlord's representatives by email dated 8 January 2021, made written representations to the Tribunal.
7. A Case Management Discussion was held on 12 January 2021 and the case was adjourned to allow time for communal repairs at the building of which the property forms part to be completed.
8. Between 20 April 2021 and 21 December 2021, the Landlord's representatives submitted written representations to the Tribunal providing updates as to the progress of the communal repairs.
9. The Tribunal inspected the Property on the morning of 12 January 2022 the Landlord was present during the inspection. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
10. Following the inspection of the Property the Tribunal held a hearing by teleconference on 19 January 2022 and heard from both the Landlord and his representative Ms Baxter.

The Hearing

11. The Landlord and Ms Baxter confirmed they had received the Pre-hearing Inspection summary and Schedule of Photographs and did not take any issue with its contents.
12. The Landlord advised the Tribunal that he had instructed YOPA Estate Agents to market the property for sale. He said he had been sent a Home Report that had been prepared by Shepherd, Chartered Surveyors the previous day. He said that the surveyor had commented that the high moisture readings in the living room may well be residual from the works carried out to the roof of the building. He said the surveyor had also commented on dampness in the communal close that could be the same.
13. Ms Baxter confirmed it was not the Landlord's intention to carry out any further remedial work at the property but that it would be sold as seen without attending to any electrical work or redecoration.
14. The Landlord explained that he had been trying since late November to source an electrician to attend at the property without success. He said that he had previously ordered four new panel heaters but as he had not been able to secure the services of an electrician had not proceeded with their purchase. He thought whoever purchased the property might want to carry out a full refurbishment in which case there might be little point in doing anything further to the property at this stage.
15. The Landlord confirmed that the bathroom window now opened.
16. In response to a query from the Tribunal the Landlord said that he had obtained an Electrical Installation Condition Report when the property was first rented out. It was dated 15 September 2017.
17. The Tribunal explained that whilst it acknowledged that it was the Landlord's intention to sell the property it was quite possible that a purchaser might wish to continue to rent it out. That being the case it was important from the Tribunal's viewpoint that the property met the tolerable Standard. For her part Ms Baxter said she understood that any landlord purchasing the property would require to address any such issues and suggested that should be a matter for them. She did however accept that if the Tribunal required the remaining electrical issues to be addressed then the Landlord would need to attend to these.
18. Following the hearing Ms Baxter submitted to the Tribunal by email a copy of the Home Report and the Electrical Installation Condition report together with additional information.

Summary of the issues

19. The issues to be determined are whether the Landlord has addressed the complaints made by the former tenant identified at Paragraph 2 above.

Findings in fact

20. The property is an upper flat in a tenement block of mixed residential and retail properties.
21. Extensive communal repairs have recently been carried out to the roof, gutters, chimney and bay windows at the property.
22. Internally some high damp readings remain in the front bedroom and living room.
23. It is not possible to ascertain if the panel heaters in the property are in working order.
24. The wall heater in the bathroom is not working.
25. The Electrical Installation Condition Report dated 15.09.2017 raised a number of issues requiring attention.
26. The Landlord has provided invoices from Electrical Solutions Network that appear to deal with these issues.
27. The Landlord intends to sell the property and has obtained a Home Report prepared by Shepherd Chartered Surveyors.
28. There are no smoke or heat detectors in the property.

Reasons for the decision

29. The Tribunal was satisfied that remedial works have been carried out to the roof, gutters chimney and bay windows at the property. Internally damp readings remain at the front wall although given the recent completion date of the external common repairs it is likely that these are the result of residual damp stemming from defects at the roof and associated leadwork which have since been addressed. The affected areas of plasterwork do appear to be drying out although the lack of any functional space heating within the property has hindered the drying process.
30. The former tenant complained that none of the panel heaters at the property were working and it has not been possible to confirm if they work or not. The bathroom heater is definitely not working.
31. The Tribunal was concerned that although there was a current Electrical Installation Condition Report (EICR) it would be due to be renewed in

September 2022. Given that the Home Report also suggested that the electrical installations should be checked by a registered electrician the Tribunal was of the view that it was appropriate for the Landlord to obtain a new EICR.

32. The Tribunal acknowledged that the Landlord wished to sell the property and that a future owner may not wish to rent it out and indeed may wish to undertake a complete refurbishment. However, The Tribunal has to consider whether at this time the property meets the repairing standard and given the state of the panel heaters most of which are not fixed to the wall and the inoperative bathroom heater the Tribunal is satisfied that the property does not meet the repairing standard. It is also quite possible that if sold the property could be purchased as a buy-to-let by another landlord. The Tribunal therefore considers it necessary to impose a Repairing Standard Enforcement Order.
33. The Tribunal noted that the property no longer has hard wired smoke and heat detectors fitted in the living room, kitchen and hall. As this did not form part of the original complaint the Tribunal cannot insist on these being fitted but it would strongly recommend that the Landlord consider replacing these.
34. Finally, during the reinspection to confirm that the issues in the RSEO have been addressed, the Tribunal will also reinspect those areas of damp noted in the "pre-hearing inspection and schedule of photographs" (**appendix 1**) in order to confirm the success or otherwise of the repairs to the external fabric of the building. Functional space heaters should significantly improve the timescale in relation to the drying out process.

Decision

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

Right of Appeal

38. **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

39. 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.

Graham Harding
Legal Member

2 February 2022
Date

Housing and Property Chamber
First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Property **Flat 6, 13 Ayr Street, Troon, KA10 6EB**

Ref No: **FTS/HPC/RP/20/1458**

Tribunal members Graham Harding, Legal Member
Donald Wooley, chartered surveyor, Ordinary Member

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 10.30 am on 12 January 2022. Also in attendance was Mr. Ameer Ghauri, the landlord who provided internal access.

Externally the property was inspected from ground level at the front elevation and, at the rear, from the flat roof projection accessed from the common internal stairwell. Prior to the inspection the Tribunal received documents from the landlord's representative including a report and accompanying photographs prepared by

Wiseman Associates, Chartered Building Surveyors, based on an inspection undertaken on 17 December 2021. The photographs were taken from roof level and are clearly of the subject property. The scaffolding has now been predominantly removed.

Weather conditions at the time of inspection were dull and overcast.

Description

The property, estimated to have been constructed around 1900, comprises a top floor 3/4 apartment flat in a four storey tenement building. On the ground floor there are retail premises and access from Ayr Street is taken via an internal common close and stairwell shared with the other upper floor co-proprietors.

The outer walls are of sandstone, partially rendered and the roof is pitched clad externally with slates.

Photographic Schedule

Front Elevation



1.



2.



3.

Photographs 1-3 illustrate recent repairs and renewal at the guttering, leadwork, bay window projections and chimneyhead.

Rear Elevation



4



5



6

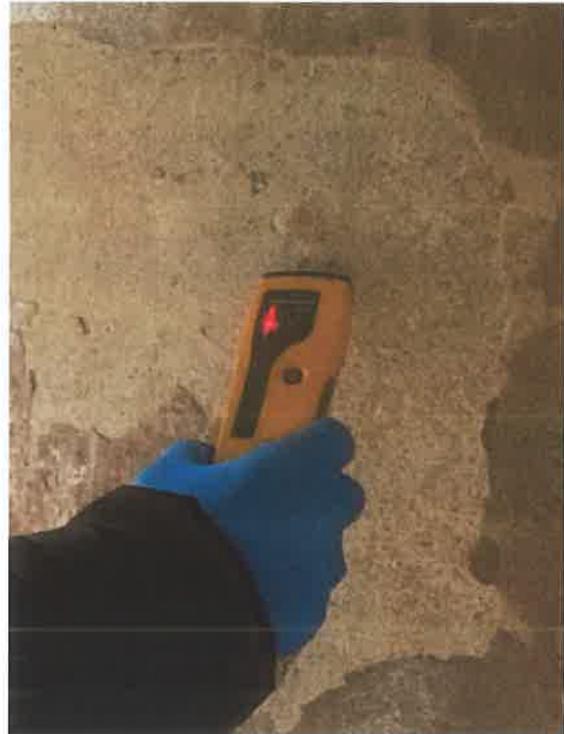
Photographs 4-6 illustrate the remains of the scaffolding, currently being removed, freshly rendered chimneyhead, replacement gutters and exposed stonework.



7.



8



9

Photographs 7-9 illustrate damaged plasterwork at the internal face of the front elevation (bedroom and living room) and high, possibly residual, damp readings in the wall plaster.



10

Patched repair at living room ceiling plaster.



11



12



13

Space heating (not in operation) is provided by wall mounted electrical heaters. Several remain unsupported and are resting on the floor – Photographs 11-13.



14:- Wall mounted, non-operational electric bathroom heater



15

The electricity meter indicates a single standard tariff. The hot water cylinder was not accessible although the "hot water switch" at the meter appeared functional when in the on position.

General Observations

The property is currently vacant, the tenant has left and it is understood that it will shortly be placed on the market for sale, the landlord having expressed no wish to re-let.

From the photographic evidence provided by the supervising surveyors, their accompanying report and my observations on site, it is clear that the substantial common repairs, including re-roofing, replacement gutters, renewal of leadwork and rendering at chimney have been completed. These major works were finished on or around 20th December. Scaffolding is currently being removed (photograph 4)

Internally damp readings remain at the front wall although given the recent completion date of the external common repairs it is likely that these are the result of residual damp and surrounding areas of plasterwork do appear to be drying out.

The damaged ceiling identified in the application has been the subject of limited local repair (photograph 10) although this area, together with the remainder of the flat in general, has not been redecorated. Significant damp staining within the common close and stairwell remains although it is assumed that this will dry out following completion of the repairs to the common fabric.

I was unable to confirm that the electrical heaters and hot water supply are functioning satisfactorily.

Within the flat there are no interconnected smoke or heat detectors. While this did not form part of the original application to the Tribunal, the lack of such fittings is a

breach of the Repairing Standard and could form the basis of any future claim should the property be re-let on behalf of the present or any new owner.

Following changes to the law in Scotland, with effect from February 2022 owner occupied residential accommodation will require to be fitted with interlinked smoke and heat detectors.

Donald Wooley MRICS

Ordinary (Surveyor) Member
First-Tier Tribunal for Scotland
12 January 2022

Schedule of photographs taken during the inspection on 12 January 2022