

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Statement of Reasons: Housing (Scotland) Act 2006 Section 24**

**Chamber Reference: FTS/HPC/RP/23/2365**

**Re: Property at 52c Castle Street, Montrose, Angus DD10 8AG (“the Property”)**

**The Parties:**

**Brian McComiskie and Karen McComiskie, 2A Broomfield Way, Montrose, Angus DD10 8UD (“the Landlord”)**

**Emma McKay, formerly of 52c Castle Street, Montrose, Angus DD10 8AG (“the Tenant”)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘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 (the “Act”) in relation to the house concerned, determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.**

The decision was unanimous.

The Tribunal consisted of: -

M            Kelly, Chairing and Legal Member

D            Godfrey, Ordinary Member (surveyor)

## **Background**

1. By application dated 11<sup>th</sup> July 2023, the tenant applied to the First-tier Tribunal (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.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard. The application contained a notification letter from the tenant to the landlord. The letter was not dated and no proof of delivery was provided. The letter specified that the following repairs were outstanding:
  - *Remove ivy plant completely from bedroom wall*
  - *Clean out gutters*
  - *Install heat/fire alarm in the bedroom*
  - *Ensure mould does not grow in either room, which it does during winter*
3. The tenant submitted text messages to the landlord, Mr. McComiskie spanning the period from 15<sup>th</sup> June 2023 to 4<sup>th</sup> July 2023 notifying him of the issues with ivy growth and problems with mould and dampness in the flat.
4. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 30<sup>th</sup> August 2023.
5. On 22<sup>nd</sup> September 2023 the applicant confirmed that she had moved out of the property. In terms of paragraph 7 of Schedule 2 of the Housing (Scotland) Act 2006 as the tenancy was terminated the tenant is treated as having withdrawn the application. In terms of 3 (b) of Schedule 2 the Tribunal continued to determine the application as the repairs notified in the application raised concerns for the health and safety of future tenants in the property.
5. Prior to the hearing the third party lodged written representations disputing that there were any outstanding repairs and providing an electrical installation condition report (EICR) dated 26<sup>th</sup> August 2021 showing that the installations were in satisfactory condition.

## **Preliminary matter**

6. The Tribunal noted that evidence of notification was provided for the following repairs issues and accordingly the inspection and hearing would be limited to considering those items:
  - Dampness and Mould
  - Ivy growth to the rear of the property

### **Inspection and hearing**

7. The Tribunal inspected the house on the morning of 13<sup>th</sup> November 2023. A hearing took place at Endeavour House, Dundee at 12:15pm on 13<sup>th</sup> November 2023. Mr. McComiskie was in attendance at both the inspection and hearing. Mr. McComiskie provided a written mandate from Mrs. McComiskie authorising him to act on her behalf.
8. Photographs were taken during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
9. The property is a first floor flat. The accommodation comprises an entry hall, kitchen/living room, bedroom and shower room.
10. At the inspection and hearing the Tribunal considered each of the items specified in the application which had been notified to the landlord:
12. Ivy growing to the rear of the building: It was noted that the ivy had been cut back and was not covering the bedroom window and had been cut back from that area. The ivy plant originated in a neighbouring garden. Mr McComiskie confirmed that he had arranged for the ivy to be cut back after the tenant had raised the issue.
13. Dampness and mould: During the inspection it was noted that there was no evidence of dampness and mould in any of the rooms within the property. A water stain from a leak from the upstairs flat was noted on the ceiling in the livingroom/kitchen however this was historic and there was no evidence of water ingress. It was noted that there was heating within the property. Mr McComiskie stated at the hearing that in his view the tenant had not been heating the property adequately. He explained that he had owned the property for 11 years. He had carried out improvement works to the property himself and had arranged for the heating to be upgraded. The property had previously been rented out to

other tenants. To his knowledge there had never been an issue of dampness within the property.

14. The Tribunal made the following observations in relation to the items in the application for which no evidence of notification had been provided:

15. Gutters: The gutters to the rear of the property showed evidence of having been recently cleaned

16. Fire/heat alarm: There is currently no statutory requirement for fire/heat alarms to be installed in bedrooms. Smoke and heat detectors were observed in the kitchen/living room and entrance hall.

### **Summary of the issues**

25. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1)(c) and (d) of the Act.

### **Findings in fact: -**

26. The tribunal find the following facts to be established: -

- a. The tenant and the landlord entered into a tenancy agreement with a commencement date of 31<sup>st</sup> August 2021.
- b. The monthly rent payable in respect of the house was £300
- c. The tenant moved out of the property after making the application and the property is currently unoccupied.
- d. The ivy growing to the rear of the property has been cut back and is not causing dampness within the property.
- e. There is no evidence of dampness or mould growth within the property.

### **Reasons for the Decision**

27. The Tribunal determined the application having regard to their observations at the inspection, the oral representations from Mr. McComiskie and the bundle of papers which had been available to parties prior to the hearing which included written representations.

28. The Tribunal was only able to consider those items which formed part of the intimated application.

29. It was evident from the inspection that there was no dampness or mould in the property and that the ivy growing to the rear of the property had no impact on the property internally.

### **Decision**

The Tribunal determined that the Landlord has not failed to comply with the duty imposed by section 14(1)(b) of the Act.

### **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.**

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.

M Kelly

Chairperson:

Date: 17<sup>th</sup> November 2023