



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

**Statement of Decision of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under section 60(5) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/23/3431

**12 Iris Court, Ayr, KA7 3XQ being the subjects registered in the Land
Register of Scotland under Title Number AYR16100 ("the Property")**

The Parties:-

**David Marshall and Lynsey Stafford residing at 12 Iris Court, Ayr, KA7
3XQ ("The Tenants")**

Gerard Tierney ('The Tenants' Representative')

**Euan Blaikie residing at 43 Ardlochan Road, Maidens, KA26 9NS ("The
Landlord")**

Norman Fraser, Solicitor ('The Landlord's Representative')

Tribunal Members:

J. Taylor (Chairperson) and D. Wooley (Ordinary Member)

1. Background

1.1 The Tenants lease the Property from the Landlord in terms of the Private Residential Tenancy between the parties.

1.2 The Tenants applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

2. Application

The application by the Tenants dated 23rd June 2023 stated that they considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. They advised that the Property is not wind and watertight and in all other respects reasonably fit for habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order and the Property does not meet the tolerable standard.

In particular the application stated that the work that needed to be carried out was as follows:

- 2.1 Bathroom floor rotten, water damaged, crumbling and unstable.
- 2.2 Bathroom major leak from bath and shower.
- 2.3 Bath seal removed as per instructions for insurance inspection.
- 2.4 Kitchen ceiling collapsed from water damage from the bathroom.
- 2.5 Upstairs hallway floorboards visibly water damaged and rotten wood from several bathroom leaks.
- 2.6 Master bedroom loose floorboards, several broken or damaged.
- 2.7 Second bedroom large crack along ceiling edging on three walls, significantly worse since last inspection.
- 2.8 Kitchen flooring purchased and installed by co tenant has been damaged from water damage due to kitchen exterior door leaking, unsealed door window filling up with water in bad weather.
- 2.9 Kitchen exterior door does not have both 'keepers' which enables the door to be pushed open even if locked.
- 2.10 Front exterior door does not have any 'keepers' which means that the door is not secure and voids the tenants' insurance.
- 2.11 All of the downstairs windows do not have security of under lock and key which also voids insurance.
- 2.12 Patio door has a very noticeable gap between the door frame. This has been repaired previously but they have not come back to make a second repair.
- 2.13 Small leak in loft window causing water leaking in bad weather, which is getting worse over time.

3. Notice of Acceptance

On 2nd October 2023, Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received on 26th June 2023, and she referred the application under Section 22 (1) of the Act to a Tribunal.

4. Inspection

The Tribunal, attended at the Property at 10.00 am on 7th December 2023.

The Tenants were present at the inspection together with their representative Gerard Tierney and the Landlord's solicitor Norman Fraser.

The property comprises a two storey mid terraced house originally built by and on behalf of the local authority, now in private ownership and situated in the Kincaidston estate to the south of Ayr town centre. The outer walls are of brick cavity construction and the roof is pitched, clad with concrete tiles.

The accommodation comprises living room, two bedrooms, kitchen and bathroom.

The Tribunal inspected the repairs detailed in the application and found as follows:

4.1 Bathroom floor rotten, water damaged, crumbling and unstable.

The bathroom was fitted with laminate floor covering adjacent to the bath with fitted side panel. There was no evidence of damp or defective flooring.

4.2 Bathroom major leak from bath and shower.

There was no sign of any leak around the bath or shower attachment either within the bathroom or on the mutual wall between the bathroom and the landing area.

4.3 Bath seal removed as per instructions for insurance inspection.

The seal surrounding the rim of the bath had been renewed and was in fair condition.

4.4 Kitchen ceiling collapsed from water damage from the bathroom.

There had been historic damage to the kitchen ceiling, possibly arising from a previous defect in the bathroom on the upper floor. A section of previously damaged ceiling plaster has been cut out and renewed. There has been no attempt at "integrating" the new plasterboard which remains out of alignment with the original ceiling. Holes remain in the surrounding plaster and completion of the repair is outstanding.

4.5 Upstairs hallway floorboards visibly water damaged and rotten wood from several bathroom leaks.

There was no evidence of damage to the first floor landing floorboards.

4.6 Master bedroom loose floorboards, several broken or damaged.

There was slight evidence of movement affecting one/two floorboards below the carpet adjacent to the radiator in master bedroom. Flooring was generally well supported with no evident trip hazard.

4.7 Second bedroom large crack along ceiling edging on three walls, significantly worse since last inspection.

There was cracking at the junction of internal walls at second bedroom and plasterboard ceiling. Estimated width of cracking is around 1-2mm and there was no evidence of any significant drafts.

4.8 Kitchen flooring purchased and installed by co tenant has been damaged from water damage due to kitchen exterior door leaking, unsealed door window filling up with water in bad weather.

Due to dry weather at time of inspection, the Tenant "poured" several jugs of water over and around the double glazed window fitting at the rear door. There was no evidence of the window "filling up" with water although some evidence of water penetration was noted on the kitchen flooring around the left hand side of the door as viewed from within.

4.9 Kitchen exterior door does not have both 'keepers' which enables the door to be pushed open even if locked.

The rear exterior door leading from the kitchen was fitted with a multipoint locking mechanism. The top locking socket space had no proper lining or "keeper" and was incapable of "triple locking" the door. The locking mechanism was not considered to be in proper working order.

4.10 Front exterior door does not have any 'keepers' which means that the door is not secure and voids the tenants' insurance.

The front exterior door is fitted with a multipoint locking mechanism. Both the top and bottom locking socket spaces had no proper lining or "keeper" and were incapable of "triple locking" the door. The locking mechanism was not considered to be in proper working order.

4.11 All of the downstairs windows do not have security of under lock and key which also voids insurance.

The living room was fitted with a large deadlight front facing widow with two "top hung hopper" fittings. Both hoppers were secured internally by two individual handles. These were functioning satisfactorily. They were not fitted with any additional locking mechanism.

Within the kitchen, the rear facing window was secured by two individual handles which incorporate locking mechanisms. As viewed from within the kitchen, the left hand handle is "broken" and in its present condition is incapable of being locked. There is no key available to lock the right hand handle.

4.12 Patio door has a very noticeable gap between the door frame. This has been repaired previously but they have not come back to make a second repair.

Above the left hand patio door, as viewed from within, there was a very slight draft although this was not significant during the inspection.

4.13 Small leak in loft window causing water leaking in bad weather, which is getting worse over time.

Historic damp staining affecting the timber sarking and rafters within the roof space around a corroded skylight is evident. "Protimeter" readings taken at the affected areas identified low levels of moisture, unlikely to cause damage to the surrounding area.

Around the access hatch to the attic at ceiling level and on the carpet below there are visible signs of residual damp staining. Moisture readings taken were at an acceptable level.

The photographs taken at the inspection are attached as a Schedule to this Decision.

5.Hearing

This case called for an inperson Hearing at Russell House, King Street, Ayr, KA8 0BQ at 10.00 on 7th December 2023.

The Tenants attended together with their representative Gerard Tierney. The Landlord did not attend but his solicitor Norman Fraser attended on his behalf.

In connection with the matters detailed in the Mr Wooley reported on the condition of the items detailed in the application, as set out above, and the parties advised as follows:

5.1 Bathroom floor rotten, water damaged, crumbling and unstable.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.2 Bathroom major leak from bath and shower.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.3 Bath seal removed as per instructions for insurance inspection.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.4 Kitchen ceiling collapsed from water damage from the bathroom.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.5 Upstairs hallway floorboards visibly water damaged and rotten wood from several bathroom leaks.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.6 Master bedroom loose floorboards, several broken or damaged.

Mr Tierney explained that he considered the condition of the floorboards to be unsafe. Mr Fraser advised that he considered the condition of the floorboards to be reasonable.

5.7 Second bedroom large crack along ceiling edging on three walls, significantly worse since last inspection.

Mr Tierney explained that although there was no draft evident today this is an ongoing structural problem.

Mr Fraser advised that he considered the condition of the ceiling to be in a reasonable state of repair and reflected that the standard is not an absolute standard but it is a relative standard.

5.8 Kitchen flooring purchased and installed by co tenant has been damaged from water damage due to kitchen exterior door leaking, unsealed door window filling up with water in bad weather.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.9 Kitchen exterior door does not have both 'keepers' which enables the door to be pushed open even if locked.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.10 Front exterior door does not have any 'keepers' which means that the door is not secure and voids the tenants' insurance.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.11 All of the downstairs windows do not have security of under lock and key which also voids insurance.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.12 Patio door has a very noticeable gap between the door frame. This has been repaired previously but they have not come back to make a second repair.

Mr Tierney and Mr Fraser agreed with Mr Wooley's comments.

5.13 Small leak in loft window causing water leaking in bad weather, which is getting worse over time.

Mr Tierney explained that when there is heavy rain a receptacle has to be placed under the trap door to the attic to collect the drips. Mr Fraser agreed with Mr Wooley's comments.

Mr Fraser reminded the Tribunal that the Tenants will soon be vacating the Property and he invited the Tribunal to defer their determinations until after they had vacated as he considered it was fair and just to do so.

6.Decision

6.1 The Tribunal determined that the following items detailed in the application have been satisfactorily repaired or did not fail to meet the Repairing Standard:

- 6.1 Bathroom floor had been repaired.
- 6.2 Bathroom major leak from bath and shower had been repaired.
- 6.3 Bath seal had been repaired.
- 6.5 Upstairs hallway floorboards had been repaired.
- 6.6 Master bedroom loose floorboards were slightly uneven but were in a reasonable state of repair and did not constitute a tripping hazard.
- 6.7 Second bedroom crack along ceiling edging on three walls. The crack was 1-2mm and was not sufficient to render the ceiling defective.
- 6.12 Patio door had a gap between the door frame. The gap was not sufficient to render the patio door as being not in a reasonable state of repair.
- 6.13 Small leak in loft window. As there was no evidence of the leak at the inspection the Tribunal could not determine that the loft window was not wind and water tight.

6.3 The Tribunal made the following determinations in relation to the remaining items detailed in the application:-

6.3.1 Section 13(1)(a) of the Housing (Scotland) Act 2006: The Property is not wind and watertight and in all other respects reasonably fit for habitation.
The water ingress to the kitchen external door results in it not being wind and water tight.

6.3.2 Section 13(1)(b) of the Housing (Scotland) Act 2006: The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order.
The partially repaired kitchen ceiling was not in a reasonable state of repair.
The absence of keepers to the Front and Rear external doors render them not in proper working order.
The defective handle of the kitchen windows and absence of a key renders it not in proper working order.

6.4 The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Sections 13 (1) (a), 13(1)(b and 14(1)(b) of the Act, for the reasons stated.

6.5 Section 24(2) of the Housing (Scotland) Act 2006 states that where the Tribunal decide that a Landlord has failed to comply with the Repairing

Standard they must by a Repairing Standard Enforcement Order which requires the Landlord to carry out such work necessary to ensure that the Property complies with the Repairing Standard. The Tribunal do not have discretion not to impose a RSEO. The RSEO will be issued separately.

6.6. The decision of the Tribunal was unanimous.

7. 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.

Signed

Chairperson

Date: 12 December 2023

