

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/23/2492

12 Craigielaw Farm Cottages, Lingniddry, East Lothian, EH32 0PY being part of the subjects comprising one and a half acres of ground and more particularly described in the Feu Charter by Trustees of the Deceased Francis Wemyss Charteris Douglas, Earl of Wemyss and March recorded in the Division of the General Register of Sasines applicable to the County of East Lothian on 16 July 1928 (“the Property”)

The Parties:-

Mr Stuart Tait and Mrs Kimberly Tait, residing at the Property (“the Tenant” and “the Applicant”)

The First Grandchild’s Fund, Lord Wemyss Trust, Estate Office, Longniddry, East Lothian, EH39 0PY (“the Landlord” and “the Respondent”)

Tribunal Members:

M McAllister, Solicitor (Legal Member) and G Adams, Chartered Surveyor (Ordinary Member) (“the tribunal”)

Decision

The tribunal determined to make a repairing standard order (RSEO) in terms of Section 24 (2) of the Housing (Scotland) Act 2006 (“the 2006 Act.”)

Background

1. By application dated 23 July 2023, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act. The application is in terms of Section 22 (1) of that Act.
2. The Applicant and Respondent are parties to a private residential tenancy agreement in respect of the Property.

3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order and that any furnishings provided by the provided under the tenancy are capable of being used for the purpose for which they are designed.
4. Specifically, the application states that the Property does not meet the repairing standard in a number of aspects:
 - 4.1 Windows throughout the Property are not wind and watertight.
 - 4.2 Windows cannot be fully opened and closed
 - 4.3 Moisture build up and mould.
 - 4.4 Deficiencies in ventilation, heating and thermal insulation.
 - 4.5 Kitchen storage unit placed directly above gas cooker.

Inspection

5. The tribunal inspected the Property on 1 December 2023. Mrs Tait was present. The Landlord had previously indicated that it would not be attending the inspection or the Hearing.
6. A copy of a schedule of photographs prepared by the Ordinary Member is attached to this Decision.

Findings on Inspection

7. The property comprises an end terraced single storey cottage in a semi rural area.
8. Weather conditions at the time of inspection were dry, relatively cold and followed a period of a few days of extremely cold weather.

9. As part of a review of the dampness complaint to the Property, the ordinary member carried out a “qualitative assessment” utilising a Moisture Profiling technique providing a sub-surface/at depth moisture reading to the individual areas of concern raised within the Property. The use of qualitative assessment is a non-disruptive technique and does not provide the true moisture content, rather the relative measurement compared to the other readings.
10. The internal moisture sensor detects moisture to a depth of approximately 19mm (0.75”). The actual depth will vary depending upon the amount of moisture, the material under test, surface roughness, and other factors. Pinless measurement readings are ‘relative’ scaled (0~1000) whilst the LED display provides a traffic light colour dependant on the reading obtained with readings of most concern provided with a red coloured backscreen colour. Elevated moisture readings were evident with a higher reading recorded in the areas of visual staining such as at low level within the Kitchen.
11. A basic condensation assessment was also progressed. One practical issue with condensation assessments is that any on-site assessment is at a snapshot in time, analysing the environmental conditions prevalent at the time of inspection. By its very nature environmental conditions can vary resulting in differing conditions to that found at the time of the inspection. Various measurements were recorded regarding the environmental conditions prevalent at the Property in order to assess any “active” Condensation. An example data set from the Kitchen outlines various environmental data recorded within this area at the time of inspection such as Relative Humidity of 53.9%, Ambient temperature of 17.5°C and Dewpoint of 8.1°C.
12. Infra-red images were also recorded utilising a Thermal Camera. Such Infra-red Images contain an array of colours. The Thermal Imaging System deployed on site detects Infra-red Radiation, which in basic terms means that heat is being observed instead of light and manipulation is possible using such equipment to detect surfaces falling below dewpoint.

13. In order to aid diagnosis of condensation issues affecting the Property a basic review of Internal Air Quality was undertaken. The table below depicts a scoring matrix and traffic light colour coding system across various parameters relating to internal ambient temperature, humidity and vapour pressure before calculating the Internal Air Quality (IAQ). A scoring template is provided below with the bottom row of the table providing the Property's specific scorings:

	Temperature °C Matrix	Relative Humidity % Matrix	Vapour Pressure Excess kPa Matrix	Internal Air Quality Score Matrix
Score 1 - Inadequate	<15 or >24	<20 or >80	>1.0	=/ <6
Score 2 - Poor	>=15-<16 or >23- 24	>=20-30 or >65- 80	0.5-1.0	7-8
Score 3 - Fair	>=16-<17 or >22- 23	>30-40 or >60-65	0.4-0.5	9-10
Score 4 - Good	>=17-<18 or >21- 22	>50-60	0.3-0.4	11-12
Score 5 - Excellent	18-21	>40-50	<=0.3	13 & above
PROPERTY	17.5°C	53.9%	0.5 kPa	10

14. It is also possible to determine "Mould Risk to Surface", the scoring matrix and Property scores are detailed below:

Scoring Matrix	Mould Risk to Surface Matrix	Property Mould Risk to Surface Matrix
1	High Risk >=90%	
2	Moderate Risk 75-90%	
3	Low Risk 70-75%	
4	Very Low Risk 60-70%	
5	No Risk <=60%	

15. From the data recorded, the “Risk to Surface Mould” matrix is indicative of a humidity issue at the surface. This can be caused by i) a low ambient temperature, ii) high internal humidity or iii) low surface temperature. At the time of our inspection, there were noted to be very low surface temperatures with some areas noted to extend over 5°C below dewpoint although it was a very cold morning with external ambient temperature at 4.8°C. There was also considered to be a poor vapour pressure excess which is an indicator that there is inadequate ventilation as may be expected given the absence of mechanical extract ventilation within the Kitchen and paint seized window sashes.
16. The timber sash and casement windows were visually inspected and, to aid review of underlying timber decay, a sharp implement was pushed against the timber. In sound timber the sharp implement will be unable to penetrate the timber whilst in decayed timber the implement will penetrate into the depth of the timber. The windows were found to be in poor condition with various areas of timber decay evident to sashes, astrigals and sills, defective glazing putties, defective perimeter seals and a variety of poor attempted repairs evident. Numerous sashes were also found to be paint seized and not operational for ventilation purposes whilst impairment was noted to the majority of the remainder. It was noted that it appeared that the adjoining property, which is understood to belong to the Respondent, had replacement windows installed.
17. A kitchen wall unit was positioned directly over the gas range cooker and it was measured to be 483mm above the cooker. Typically, this area would be designated a “hot zone” within 750mm above the cooker and any wall units located within this area would be considered to be a fire risk.
18. Mrs Tait said that the fan oven in the gas range cooker supplied by the Landlord has not worked for some years and had previously been reported to it. She said that, at her expense, she had instructed a contractor to repair it but had been advised that the necessary part is unobtainable.

The Hearing

19. A Hearing was held on 1 December 2023 by audio conference at 2 pm and was attended by Mr and Mrs Tait.
20. The Respondent was not in attendance but had submitted written representations dated 29 November 2023 which had been prepared by Mr Andrews, its factor.
21. It was stated that the Respondent maintains a full time maintenance team and that it is an ongoing programme of replacing existing wooden single glazed windows with uPVC double glazed units. The representations state that the work to replace the windows in the house next to the Property was underway and that replacement windows for the Property were in store and would soon be installed. The representations stated that the work should have been completed sooner but there had been delays because of weather and issues with other programmed works.
22. The representations state that the kitchen cabinet would be removed as soon as access could be arranged.
23. Mr and Mrs Tait stated that the Respondent had not advised them about the imminent replacement of the windows and their stated position was that, over many years, complaints about repairs had been made and had not been attended to.

24. Findings in Fact

- 24.1 There are issues with condensation and ventilation within the Property.
- 24.2 The sash windows in the Property are not draughtproof and not all are capable of being opened.
- 24.3 There is timber decay in the window frames, sills and astrigals. Some window astrigals are missing.
- 24.4 There is a wall unit situated over the gas range cooker which is within 750 mm from the top surface of the cooker.
- 24.5 The fan oven in the gas range cooker does not function.

Reasons

25. The tribunal had inspected the Property and the schedule of photographs is referred to. It relied on what it had found at the inspection.

Disposal

26. The tribunal determined to make a repairing standard enforcement order in the following terms:

The landlord is required to

- 26.1 To instruct a competent condensation specialist such as a Chartered Building Surveyor or Property Care Association accredited specialist/company to undertake a fuller Condensation Assessment of the Property to provide recommendations to address the underlying cause(s) of condensation and to provide the report to the Tribunal for further consideration.
- 26.2 To repair or replace the windows such that all windows serving the Property are capable of being opened and closed fully as designed and without any significant impairment; have no broken panes; are reasonably draughtproof; are free from timber decay; are free from any cracked or defective glazing putties; are free from defective perimeter sealants; free from damaged/missing sections of astrigals and to ensure that all mortice and tenon joints are not open and watertight on completion whilst allowing for any remedial decoration works on completion of such works.

26.3 To remove or relocate wall units positioned over the gas range cooker to ensure that no wall units are located within a 750mm distance from the top surface of the cooker.

The tribunal determined that the RSEO requires to be complied with by 31 January 2024

Note

27. The tribunal noted that, although not part of the application, the an oven in he range cooker supplied by the Respondent was not functioning. The tribunal hoped that the Respondent would deal with the matter to obviate the need for the Applicant submitting another application to the Tribunal.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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 J. McAllister,
Legal Member
15 December 2023