

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Reference number: FTS/HPC/RP/23/2384

Re: Flat 9B Avon Court, Avon Street, Motherwell ML1 3AA (‘the house’)

Parties:

Mr Matthew Despard, residing at the house (“the tenant”)

Allstones Properties Limited, having its registered address at 10 Clydesdale Street, Hamilton, South Lanarkshire, ML3 0DP (“the landlord”)

c/o Clyde Properties, 8 Busby Road, Clarkston G76 7XL

Land Register Title No: LAN39329

Tribunal Members:

Sarah O’Neill (Chairperson) and Mike Links (Ordinary (Surveyor) Member)

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has not failed to comply with the said duty. The tribunal’s decision is unanimous.

Background

1. By application received on 18 July 2023, the tenant applied to the tribunal for a determination that the landlord had failed to comply with its duty under Section 14(1) of the Act.

2. The tenant's complaints were all related to his concerns about the water supply within the house. They can be summarised as follows:
 - 1) The drinking water is contaminated and had made him very ill.
 - 2) The water from the shower is also contaminated and had caused sores on his body and his arms.
 - 3) There is a yellow substance on the drying area at the kitchen sink.
 - 4) There is black residue on his toothbrush which had come from the water in the bathroom sink.
 - 5) There is black sludge in the toilet bowl.
 - 6) There is brown mould around the bath.
3. Further representations were received from the tenant on 31 July 2023, following a request by the tribunal administration for further information. Following a further request for additional information on 25 August, further information was received from the tenant on the same date. Further emails were received from the tenant on 4 and 20 September 2023.
4. The tribunal administration again wrote to the tenant on 20 September, asking him to amend his application form to show the correct details for the landlord (i.e. Allstones Properties Ltd) rather than those of their letting agent, which had been provided on the original application form. An amended application form was received from the tenant on 22 September 2023.
5. On 12 October 2023, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. An inspection and hearing were arranged for 22 January 2024.
6. The landlord was invited to submit written representations no later than 8 January 2024. Written representations were received from Mr Paul di Mambro, a Director of the landlord, Allstones Properties Ltd, on 5 January 2024.
7. On 21 December 2023, having noted that Clyde Properties Limited was still named as the landlord in the case, the tribunal issued an order under rule 32(1) of the 2017 rules. The order removed Clyde Properties Limited as a party to the application and substituted Allstones Properties Limited, c/o Clyde Properties Limited, as the landlord and respondent to the application.

The inspection

8. The tribunal inspected the house on the morning of 22 January 2024. The weather conditions at the time of the tribunal's inspection were wet and windy. The tenant was present at the inspection. The landlord was not present or represented at the inspection.

9. Photographs were taken during the inspection. These are attached as a schedule to this decision.

The house

10. The house is a second floor flat within a block of nine flats which forms part of a development made up of three blocks, which are in the region of 35-40 years old. It comprises a bedroom, living room, kitchen, bathroom and hallway.

The hearing

11. Following the inspection, the tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The tenant was present at the hearing and represented himself. The landlord was not present or represented at the hearing.
12. The tribunal noted that in his written representations on behalf of the landlord, which were received on 5 January 2024, Mr di Mambro stated that the landlord did not wish to attend a hearing.
13. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the absence of the landlord, in terms of rule 29 of the 2017 rules.

The evidence

14. The evidence before the tribunal consisted of:
 - The application submitted by the tenant, comprising completed application form with appended information detailing his complaints.
 - Letter from Scottish Water to the tenant dated 28 March 2023 regarding testing of the water at the house.
 - Letter from North Lanarkshire Council Environmental Health to the tenant dated 5 July 2023 regarding testing of the water at the house.
 - Emergency discharge summary from University Hospital Wishaw dated 23 March 2023 regarding the tenant.
 - Letter from Scottish Water to the tenant dated 20 July 2023, and attached test report, regarding testing of the water at the house.
 - Notification letter from the tenant to Clyde Properties Limited dated 28 July 2023, notifying the landlord of his complaints, together with certificate of posting dated 29 July 2023.

- Email correspondence between the tenant and Clyde Properties Limited dated between 26 April 2023 and 25 July 2023 regarding his complaints.
- Further written representations received from the tenant on 31 July 2023, with various photographs attached.
- Emails received from the tenant on 25 August and 4 and 20 September 2023.
- Amended application form received from the tenant on 22 September 2023.
- Registers Direct copy of Land Register title LAN39329.
- Scottish Landlord Register registration details for the house, showing that Allstones Properties Ltd is the registered landlord.
- Short assured tenancy agreement between the landlord and the tenant in respect of the house which commenced on 17 June 2015, together with the relevant notices and tenant information pack.
- Written representations received on behalf of the landlord on 5 January 2024.
- The tribunal's inspection of the house.
- The oral representations of the tenant at the hearing.

Summary of the issues

15. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed by section 14 (1) (b).

Findings of fact

16. The tribunal made the following findings in fact:
 - The house is owned by Allstones Properties Ltd, which is also the registered landlord for the house.
 - The landlord entered into a tenancy agreement with the tenant which commenced on 17 June 2015.
 - Scottish Water had taken samples of the water from the kitchen tap within the house on 24 March 2023 and again on 7 July 2023, and had these laboratory tested. On both occasions, they had found that the sample met the standards set out in the Public Water Supplies (Scotland) Regulations 2014.
 - Environmental Health Officers from North Lanarkshire Council had taken drinking water samples from the kitchen tap at the house on 1 June 2023. These had been laboratory tested and the tests found that the water samples met the standards set out in the Public Water Supplies (Scotland) Regulations 2014.

- At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - Having run the water in the bathroom wash hand basin for several minutes, the water was running clear. There was no evidence of any discolouration or particles in the water.
 - Having run the shower for several minutes, the water was running clear. There was no evidence of any discolouration or particles in the water.
 - There were some signs of mould around the bath seal underneath the electric shower.
 - There were black/brown marks around the inside of the toilet bowl.
 - When flushed, the water circulating in the toilet appeared to be clear.
 - Having run the water in the kitchen sink for several minutes, the water was running clear. There was no evidence of any discolouration or particles in the water.
 - There was some dirt on the draining board next to the kitchen sink. No evidence of any yellow substance was observed.
 - There was no water tank in the common roof void outside the tenant's flat.

Reasons for decision

17. It was not clear from the tenant's application exactly which aspect of the repairing standard his complaint related to, as he had not ticked any of the relevant boxes on his application form. The tribunal proceeded on the basis that his complaint was that either a) the installations in the house for the supply of water were not in a reasonable state of repair and in proper working order or b) the house does not meet the tolerable standard. The tolerable standard requires, among other things, that the house has: 1) an adequate piped supply of wholesome water available, 2) a sink provided with a satisfactory supply of both hot and cold water, and 3) a fixed bath or shower and a wash hand basin, each provided with a satisfactory supply of both hot and cold water¹.

18. The tribunal considered each of the tenant's complaints in turn, as set out below.

1. **The drinking water is contaminated and had made him very ill**
2. **The water from the shower is also contaminated and had caused sores/blotches on his body and his arms**

¹ Section 86 (1) (d) (e) and (fa) Housing (Scotland) Act 1987

19. The tenant told the tribunal that while he had been living in the house since 2015, the issues which gave rise to his complaints had arisen in 2023. In February 2023, prior to leaving for a holiday in Spain, he had noticed that the water from the kitchen tap looked black. He had become very ill in March after returning from Spain. He had been violently sick, and thought that he was going to die. He believed that he had the symptoms of legionnaires' disease and went to hospital. He was later discharged from hospital and shortly afterwards was very ill and unable to get out of bed. He managed to get up but he fell and badly damaged the tendon in his arm. He believed that the fall was caused by the sickness, which he believed was caused by drinking, and showering in, contaminated water. He was later diagnosed with a lung infection.
20. At around the same time, he had also suffered from sores/blotches on his back and his arms. He had submitted an undated photograph of his arm to the tribunal, which showed these marks. When he was on holiday in Spain, the blotches had cleared up, but when he returned home they recurred. He had then stopped using the shower in the house, as he believed this was the cause of the sores.
21. Scottish Water came to test the water on 24 March 2023, and had concluded that it was safe to drink. He had also later contacted North Lanarkshire Council, and its environmental health service also took samples of the water from the kitchen tap on 1 June 2023. It also concluded that the water met the appropriate standard. Further testing of a water sample taken from the kitchen tap on 7 July 2023 was carried out by Scottish Water. This also concluded that the water met the appropriate standards and was safe to drink.
22. The tenant did not consider that the testing which had been carried out by Scottish Water and North Lanarkshire Council was sufficient. He had taken swabs of the yellow residue from the draining board and the black substance taken from his toothbrush and from the shower. He had asked both Scottish Water and North Lanarkshire Council to test these, but they had both refused to do so. He said that the property factor for the block had later sent out a plumber, who had run the taps for half an hour and had observed black particles in the water
23. The tenant had stopped drinking the water from the tap, and now drank only bottled water. He did not shower at the house, and did not wash his clothes there either, as he had seen a similar black substance in the washing machine to that in the toilet bowl. He said that several of the neighbours within his block had experienced similar issues with

discolouration of their water. Some had been ill and had fallen over, which he believed was a result of contaminated water. He believed that there was a problem with the pipe supplying the water, as those living in the two neighbouring blocks, who were supplied from a different main in another street, had not experienced the same issues.

24. At its inspection, the tribunal ran the water in the kitchen sink, the bathroom wash hand basin and the shower all for several minutes, and in each case observed that the water was running clear. There was no evidence of any discolouration or particles in any of the water.
25. It appeared to the tribunal that the issues complained about by the tenant were historic, dating back almost a year. The tribunal found no evidence of any problems with the water in either the kitchen or the bathroom at the time of its inspection. There was no evidence of any water tank within the block, and the water in both the kitchen and the bathroom at the house was presumed to come from the same rising main.
26. In his written representations on behalf of the landlord, Mr di Mambro stated that the landlord had always responded promptly to any repair issues raised by the tenant. He said that the landlord had become aware of the tenant's concerns about the quality of the water within the house, and had followed its agent's advice in having the water tested. No issues had been identified, and a second test had been carried out. The landlord's agents had also asked the property factor to attend, and it had also identified no issues. The landlord's agent had then sent one of its property inspectors to carry out an inspection. He had found no issues related to the water supply. The landlord could only rely on the advice received from experts, all of whom had reached the same conclusion.
27. The tribunal notes that the Scottish Government's [statutory guidance for private landlords on the repairing standard](#) states that "*laboratory analysis is the only way to determine conclusively if a supply of water is wholesome at the kitchen tap*"². Such an analysis had been carried out on three occasions, twice by Scottish Water (in two separate reports) and once by North Lanarkshire Council on various dates in 2023, all after the tenant's various health issues had become apparent. All of these tests found that the water supply met the standards set out in the [Public Water Supplies \(Scotland\) Regulations 2014](#). These regulations set out the standards of "wholesomeness" of water which Scottish Water is required to provide for

² Section D.14 on page 30. Note: while this version of the guidance incorporates forthcoming changes to the repairing standard which apply from 1 March 2024, the relevant wording remains unchanged from the previous March 2023 version of the guidance, which applied at the time of the tenant's application and of this decision.

the domestic purposes of all owners and occupiers of premises who are entitled to a supply for those purposes, in terms of section 8 of the Water (Scotland) Act 1980.

28. These standards set out clear requirements that water should not contain any (i) micro-organism; (ii) substance; or (iii) parasite, at a concentration or value which constitute a potential danger to human health. The regulations set out clearly the prescribed concentrations and values of a variety of substances which are permissible, and the test report dated 13 July 2023 from Scottish Water clearly reflects these.
29. The tenant was unable to articulate clearly why he did not believe that these tests were sufficient. He wanted Scottish Water and North Lanarkshire to test the swabs he had taken. The tribunal considers, however, that any issues with the water would have been picked up by the scientific testing of the water samples themselves. It is unlikely that the swabs would disclose anything different to these. The tenant's evidence was also inconsistent: at various points he said that the particles could be seen in the water, but then said that he believed there were issues with the water which could not be seen.
30. While the tribunal does not dispute that the tenant suffered from the various health issues he described in 2023, there was no evidence before it to support his claims that these had been caused by the water supply in the house. The various water reports referred to state that the water was safe on three separate dates, several months apart, when samples were taken.
31. The emergency discharge summary dated 23 March 2023, which was signed by a consultant in the emergency department at University Hospital Wishaw, stated that the tenant presented with legionnaires' disease after drinking contaminated water. It went on to state, however, that he was diagnosed with nausea and vomiting and that he had a likely viral infection. The tenant himself said that he had later been diagnosed with a lung infection. He did not produce any medical evidence to support his claims that the water had caused the sores on his back and arms, or caused his dental fillings to fall out. There was also no evidence to support his claims that some of his neighbours had suffered health issues due to the water supply.
32. In light of the above, the tribunal determines on the balance of probabilities that the water supply within the house, including both the water from the kitchen sink and the water from the shower, meets the repairing standard. There was no evidence to suggest that the installations in the house for the supply of water were not in a reasonable state of repair and in proper

working order. In terms of the tolerable standard, the tribunal determines that the house has :1) an adequate piped supply of wholesome water available, 2) a sink provided with a satisfactory supply of both hot and cold water, and 3) a fixed bath or shower and a wash hand basin, each provided with a satisfactory supply of both hot and cold water.

3. There is a yellow substance on the drying area at the kitchen sink

33. At its inspection, the tribunal observed that there was some dirt on the draining board next to the kitchen sink, but saw no evidence of any yellow substance. While there may have been issues with this at an earlier date, there was no evidence of this at the time of the inspection. The tribunal did not therefore consider that there were any repairing standard issues to be addressed. The tribunal has set out above its conclusions on the alleged issues relating to the water supply.

4. There is black residue on his toothbrush

34. The tenant told the tribunal that he was concerned about black residue which he had found on his toothbrush and in his toothbrush mug. He had taken swabs of this and asked for these to be tested, but both Scottish Water and North Lanarkshire Council had declined to do so. He said that his fillings had fallen out, as had those of a neighbour, and he believed that this was the result of contamination of the water supply. He now uses only bottled water to brush his teeth. He had spoken to his dentist about this, but they had not expressed a view on whether the water had been the cause of his lost fillings.

35. At its inspection, the tribunal ran the water in the bathroom wash hand basin for several minutes. It observed that the water was running clear, and there was no evidence of any discolouration or particles in the water. The tribunal therefore determines that there are no repairing standard issues to be addressed in relation to this issue. The tribunal has set out above its conclusions on the alleged issues relating to the water supply.

5. There is black sludge in the toilet bowl

36. The tenant told the tribunal that on returning from his Spanish holiday in March 2023, he had found the toilet bowl to be full of black sludge. He said that he had cleaned the toilet regularly, but that the black substance kept returning. He believed that this was also caused by the alleged contamination of the water supply.

37. In email correspondence with the tenant dated 17 May 2023, the landlord's agent stated that following an inspection of the house by their inspector, they had contacted the property factor, Speirs Gumley. The factor agreed that there was significant residue in the toilet's cistern, but considered that this was a normal build up and could be easily cleaned. The landlord's agent had sent the tenant information on how to do this.
38. At its inspection, the tribunal observed that there were black/brown marks around the inside of the toilet bowl. When flushed, the water circulating in the toilet appeared to be clear. When asked when he had last cleaned the toilet, the tenant was unable to answer this, saying that he had wanted to leave the marks there to show them to the tribunal. He was unhappy with the suggestion from the landlord's agent and the factor that the toilet simply needed to be cleaned. While the cause of the marks in the toilet bowl is unclear, the various scientific reports on the water supply in the house do not indicate that there are any safety issues arising from it.
39. The tenant did not appear to have cleaned the toilet bowl recently, and it was unclear whether he had cleaned the cistern as suggested by the landlord's agent. The tribunal has set out above its conclusions on the alleged issues relating to the water supply within the house. On the basis of the evidence before it, the tribunal determines that on the balance of probabilities the toilet and the water supply within it are in a reasonable state of repair and in proper working order and that the water supply meets the tolerable standard.

6. There is brown mould around the bath

40. The tenant complained that there was mould around the bath which was caused by the alleged issues with the water supply in the house. The tribunal observed during its inspection that there were some signs of mould around the bath seal underneath the electric shower. This appeared to the tribunal to be consistent with the typical mould found around the bath seal in any bathroom, given the warm and wet conditions. It therefore determined that the bath and the seal around were in a reasonable state of repair and in proper working order.

Summary of decision

41. On the basis of all the evidence before it, the tribunal determined that the landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

Rights of Appeal

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.

S O'Neill

Signed...
Sarah O'Neill, Chairperson

.....Date: 5 February 2024

Housing and Property Chamber

First-tier Tribunal for Scotland



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

SCHEDULE OF PHOTOGRAPHS

ADDRESS: Flat 9B AVON COURT, AVON STREET, MOTHERWELL ML1 3AA

DATE: 22nd JANUARY 2024

REFERENCE: FTS/HPC/RP/23/2384



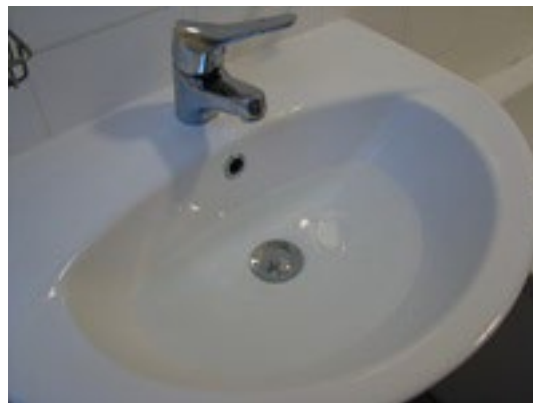
FRONT ELEVATION



REAR ELEVATION



WATER CLOSET



BATHROOM WASH HAND BASIN



BATH



KITCHEN SINK



SHOWER

Mr M LINKS

ORDINARY MEMBER (SURVEYOR)

HOUSING AND PROPERTY CHAMBER

DATE: 22nd JANUARY 2024

