

# **Housing and Property Chamber**

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

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

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

**Chamber Ref: FTS/HPC/RT/23/3454**

**Property: 105 Mary Street, Laurieston, Falkirk FK2 9PR ('The House')**

**Title reference: STG5877**

**The Parties: -**

**Arfan Ahmed, L&T Dental Group, c/o Property 4 U, 434 Cathcart Road, Glasgow G42 7BZ ('the landlord')**

**Mutiu Abdussalam, formerly of 105 Mary Street, Laurieston, Falkirk FK2 9PR ("the tenant")**

**Falkirk Council, Private Sector Team, The Forum, Suite 2, Callendar Business Park, Falkirk FK1 1XR ("the third party")**

### **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, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**The decision was unanimous.**

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Sara Hesp, Ordinary Member (surveyor)

## Background

1. By application dated 29<sup>th</sup> August 2023, the third party 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 and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
  - *the house is wind and watertight and in all other respects reasonably fit for human habitation*
  - *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*
  - *any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.*
3. The application contained correspondence between the third party and the landlord dated 9<sup>th</sup> August 2023 which specified that the said failure was established as the following work needed to be carried out
  - *provide a copy of the current electrical installation condition report (EICR), from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no category C1 or C2 items of disrepair. The report must include specific reference to the provision for smoke and heat detection in accordance with existing Scottish Government statutory guidelines*
  - *Clear the foliage and masonry from the gutter where it meets the downpipe (this issue sits directly above the tenant's bedroom window)*

- *Assess water ingress above and to right of window in tenant's bedroom (this is likely caused by the external from gutter being blocked)*
  - *Repair/replace the mirrored doors of the large fitted wardrobes as they are loose when on the runners. The tenant had to remove the heavy doors as they were a safety concern given they have young children.*
4. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 7<sup>th</sup> December 2023.
  5. Prior to the hearing the landlord's agent lodged an electrical installation condition report ("EICR") dated 26<sup>th</sup> November 2023 showing the electrical installations to be in a satisfactory condition at that date.

### **Hearing and Inspection**

6. The Tribunal inspected the house on the morning of 22<sup>nd</sup> January 2024.
7. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
8. A hearing took place by teleconference at 2.45pm on 22<sup>nd</sup> January 2023. The landlord's agent Zubair Inwar who was authorised to represent the landlord and Craig Beatt, private sector officer from the third party were in attendance at the inspection and hearing.
9. The landlord's agent confirmed at the hearing that the tenant had moved out of the property on 26<sup>th</sup> October 2023. The property was unoccupied at the time of the inspection. The landlord's agent confirmed that the landlord's intention was that property would be re-let once it had been redecorated and a new tenant secured.
10. At the inspection and hearing the Tribunal considered each of the issues specified in the application in turn: -
11. Blocked gutters at the downpipe: The Tribunal noted that the gutters to the front of the property had been cleared of vegetation. The landlord's agent stated that he was disappointed that this issue had been included in the application as works to the gutters constituted a common repair and the landlord was not solely responsible. He confirmed that the gutter and downpipe had been cleared 14 days before the inspection. Mr Beatt

confirmed that the gutters had been cleared since he had last visited the property.

12. Water ingress in former tenant's bedroom: The Tribunal noted during the inspection that the wall surrounding the window in the tenant's bedroom and the adjoining wall within the fitted wardrobe were affected by dampness evidenced by elevated damp meter readings. The water ingress was from an external source and appeared to be caused by issues at the front/side of the house in or round the roof and/or the rainwater goods. The landlord's agent stated that they had carried out redecoration works after the tenant had moved out. As the wall within the wardrobe had previously been painted a dark colour he stated that the dampness had not been obvious. It had been noted that the paint around the window in the bedroom had discoloured due to dampness. The landlord's agent stated that the works to clear the gutters and downpipe had remedied the problem and any dampness was residual and would dry out over time. He stated that a dehumidifier had been used to try and dry out the remaining damp.
13. Fitted wardrobes: It was noted during the inspection that new wardrobes had been fitted in the bedroom. These were of sound construction. The landlord's agent confirmed that these had been recently fitted and were in good working order.
14. EICR: The Tribunal noted that prior to the hearing the landlord's agent had provided an up to date EICR which stated that the electrical appliances in the property were in a satisfactory condition

### **Summary of the issues**

15. 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: -**

16. The tribunal find the following facts to be established: -
  - a. The tenant moved out of the property on 26<sup>th</sup> October 2023.
  - b. The landlord intends to re-let the property.
  - c. The landlord produced a satisfactory EICR for the house.

- d. The fitted wardrobes in the property are in a reasonable state of repair and proper working order.
- e. Water ingress has taken place in the bedroom to the front of the property.
- f. At the time of the inspection there was evidence of water penetration into the bedroom at the front of the property from an external source.

### **Reasons for the Decision**

- 17. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.
- 18. The Tribunal was only able to consider those items which formed part of the intimated application.
- 19. The Tribunal accepted that the landlord's agent had instructed works to be carried out in the house, including redecoration works, the installation of fitted wardrobes and clearing works to the external gutter and drainpipe. However at the date of the inspection and hearing the bedroom to the front of the property was still being affected by penetrating damp. The landlord's agent stated that the works to the gutter had been carried out 14 days before the inspection however the walls continued to show elevated damp readings.
- 20. The Tribunal noted that in respect of common repairs sections 16(4) and (5) of the Housing (Scotland) Act 2006 stated:

*16 (4) landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.*

*(5) For the purpose of subsection (4), in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary rights.*

The landlord's agent stated in written representations that the landlord's liability for common repairs was 2/7<sup>ths</sup>. However no evidence was provided that any common owners did not consent to intended repairs. The landlord's agent had carried out repairs to the gutters and downpipe without assistance from

the common owners. In the event that section 16(5) applies in relation to the work required to address the issue of dampness in the tenants bedroom then it is open to the landlord to provide evidence of non-consent to the repair by common owners and request that the Repairing Standard Enforcement Order be varied on that basis.

### **Decision**

The tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

### **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.

Mary-Claire Kelly

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**Legal Member**

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Chairperson:

Date: 30<sup>th</sup> January 2024

# Housing and Property Chamber

## First-tier Tribunal for Scotland

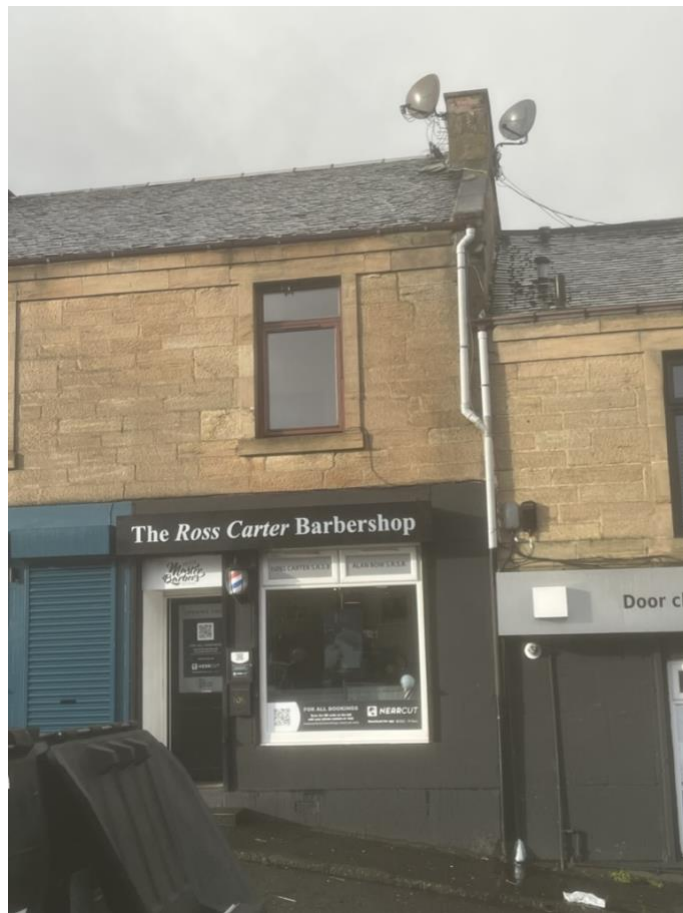
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105 Mary Street, Laurieston, Falkirk FK2 9PR

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Schedule of photographs taken on 22 January 2024



*Photograph 1: Front elevation*

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*Photograph 2: Front right-hand corner of roof*



*Photograph 3: Junction front and right-hand side elevations*





*Photograph 4: Upper front elevation (bedroom 1 window)*



*Photograph 5: Bedroom 1: to upper right hand side of window (indicating higher than normal levels of moisture)*



*Photograph 6: Bedroom 1: to upper left hand side of window*



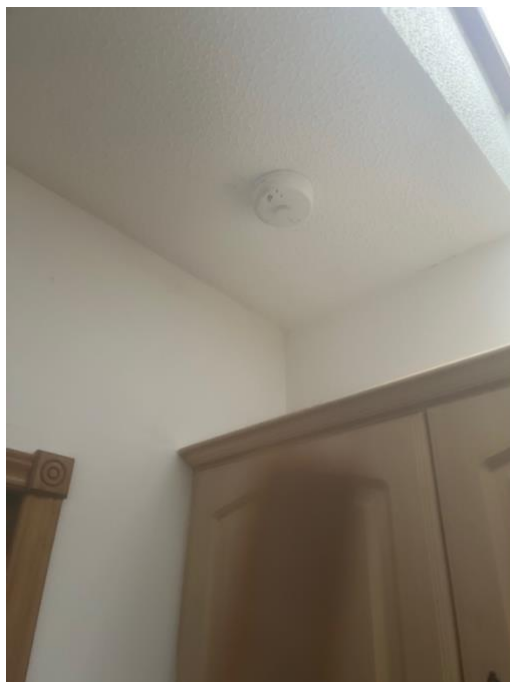
*Photograph 7: Bedroom 1: to upper inside of wardrobe  
(indicating higher than normal levels of moisture)*



*Photograph 8: Bedroom 1: wardrobes*



*Photograph 9: Kitchen: heat detector*



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*Photographs 10 and 11: smoke detectors to living room and hallway*

