



**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/23/3809**

**8 Milldown Place, Bourtreehill South, Irvine, KA11 1EF being the subjects registered in the Land Register of Scotland under Title Number AYR33720 (“the Property”)**

**The Parties:-**

**Adelle de Wet residing at 8 Milldown Place, Bourtreehill South, Irvine, KA11 1EF (“The Tenant”)**

**Mrs Andrea Gibson, CHAP, 71 Princes Street, Ardrossan, KA22 8DG (‘The Tenant’s Representative’)**

**Thomas and Alison Maitland residing at Braehead Farm, Irvine, KA11 1EF (“The Landlords”)**

**Tribunal Members:**

**Jacqui Taylor (Chairperson) and Donald Wooley (Ordinary Member)**

**1. Background**

1.1 The Tenant leases the Property from the Landlords in terms of the Private Residential Tenancy between the parties.

1.2 The Tenant 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 Tenant dated 15<sup>th</sup> March 2023 stated that she considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. She advised that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water 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 The boiler is not working. It needs to be investigated by a gas engineer and repairs carried out.

2.2 Leaking shower. This needs to be repaired by a qualified plumber.

2.3 Faulty Electrics. This needs to be investigated by a qualified electrician and repaired.

### **3. Notice of Acceptance**

On 8<sup>th</sup> November 2023, Martin McAllister, 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 27<sup>th</sup> October 2023, and he 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 14<sup>th</sup> February 2024. The weather conditions at the time of inspection were overcast with light rain.

The Tenant was present at the inspection. The Landlord did not attend the inspection but was represented by George Maitland.

The property comprises a two storey mid terraced house, originally built by and on behalf of the Irvine Development Corporation around 1980. Now in private ownership, it is situated in the Bourtreehill area of Irvine. The outer walls are of rendered brick cavity construction and the roof is pitched, clad with concrete tiles

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

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

#### **4.1 The boiler is not working. It needs to be investigated by a gas engineer and repairs carried out.**

Within the kitchen there is a wall mounted "Ideal Atlantic" combination boiler providing both space heating and hot water. It was functioning at the time of the inspection. On the underside of the worktop, immediately below the boiler there is evidence of significant damp affecting the area around the copper pipework relating to the boiler.

It is understood that the boiler has only recently been installed although the copper piping appears to be considerably older, showing signs of significant wear and oxidation.

The tenant was unable to exhibit a valid "satisfactory" landlord's Gas Safety Certificate and was unaware if one existed

#### **4.2 Leaking shower. This needs to be repaired by a qualified plumber.**

Within the upper floor bathroom there is a shower fitting at the bath. The area around the tiles, bath rim and shower appears adequately sealed with no evidence of any leak and the tenant confirmed that this was no longer a problem.

4.3 Faulty Electrics. This needs to be investigated by a qualified electrician and repaired.

Within the cupboard below the sink unit and embedded in the rear wall, there is an electrical power point. The plasterwork around the power point was, during the inspection, dry and unaffected by the “leak” from the boiler. The tenant stated that, when in use, the kitchen lights tended to “trip” the RCD (Residual Current Device). The Tribunal tested the lights, confirming they were functional, and they did not “trip” the RCD. The electrical consumer unit, located in the hall, is fitted with modern RCDs and appeared to be operational with no evidence of earth leakage.

The tenant was unable to exhibit a “satisfactory” EICR (Electrical Installation Condition Report) and was unaware if one existed.

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

## **5.Hearing**

This case called for an inperson Hearing at Ayr at 13.00 on 14<sup>th</sup> February 2024.

The Tenant did not attend the hearing but was represented by Andrea Gibson.

Alison Maitland attended the hearing. Thomas Maitland did not attend the hearing.

As a preliminary matter Alison Maitland acknowledged that the title to the property is in the joint names of herself and Thomas Maitland. She confirmed that Thomas Maitland should be added as a joint Respondent and joint Landlord. Alison Maitland also confirmed that the Private Residential tenancy in favour of Adelle de Wet commenced on 4<sup>th</sup> July 2019 but she had resided in the Property before that date.

In connection with the matters detailed in the application the attendees advised as follows:

5.1 The boiler is not working. It needs to be investigated by a gas engineer and repairs carried out.

Alison Maitland advised that two separate contractors had recently attended to repair the boiler. There is a five year plan in place for maintenance of the boiler. She confirmed that the Gas Safety Certificate will be produced.

5.2 Leaking shower. This needs to be repaired by a qualified plumber.

Both Alison Maitland and Andrea Gibson acknowledged that the shower had been repaired.

5.3 Faulty Electrics. This needs to be investigated by a qualified electrician and repaired.

Alison Maitland advised that there is a valid EICR for the Property and she will provide a copy.

## **6. Direction.**

Following the hearing the Tribunal issued a Direction dated 14<sup>th</sup> February 2024, in the following terms:

*'The Landlords are directed to provide the Tribunal with:*

- 1. A valid and complaint Electrical Installation Condition Report and*
- 2. A valid and compliant Landlords' Gas Safety Certificate.'*

The Landlords were directed to provide the Tribunal with the information requested no later than close of business on 20<sup>th</sup> February 2024.

The required certificates were not produced.

## **7. Decision**

7.1 The Tribunal made the following determinations in relation to the following provisions of the Repairing Standard:-

7.1.1 The shower was in a reasonable state of repair and proper working order.

7.1.2 Section 13(1)(c) of the Housing (Scotland) Act 2006: the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order.

The boiler is leaking and is not in a reasonable state of repair and proper working order.

7.1.3 The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Sections 13(1)(c) of the Act, for the reasons stated.

7.1.4 The decision of the Tribunal was unanimous.

**8. 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 J Taylor

Chairperson

Date: 27 February 2024

**Schedule of Photographs**

**8 Milldown Place Irvine KA11 1EF**

**FTS/HPC/RP/23/3809**

**Schedule of Photographs taken at the inspection on 14 February 2024**



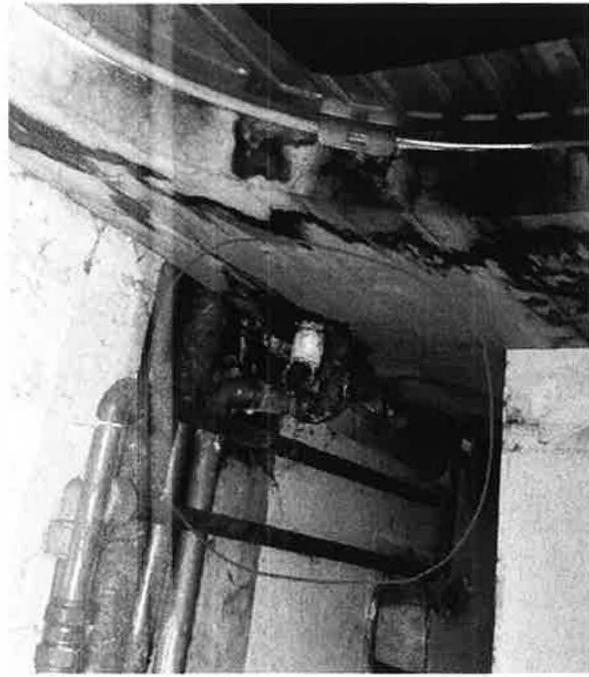
**1. Front elevation**



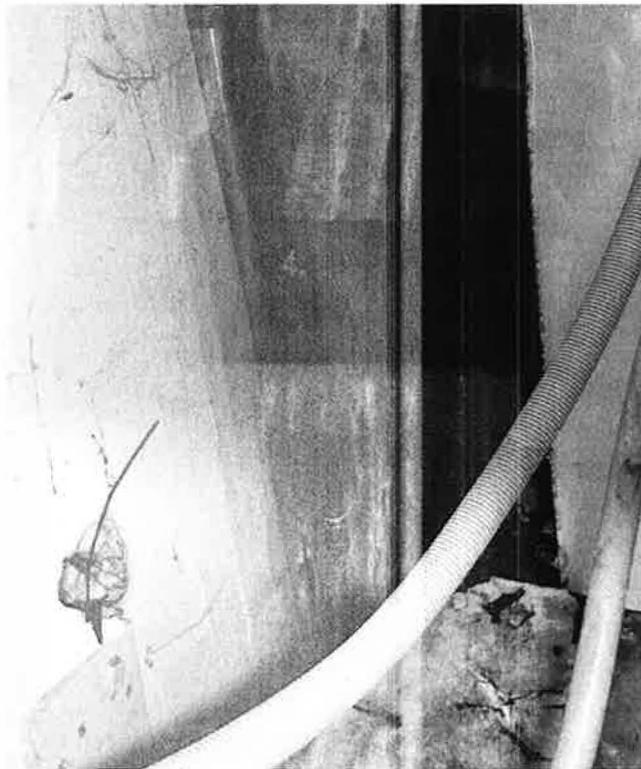
**2. Wall mounted boiler in kitchen**



3.



4.



5.

Photographs 3 and 4 identify recent damp below the kitchen sink worktop and specifically below and around the copper plumbing relating to the gas boiler. Photograph 5 highlights the positioning of an electrical power point also below the kitchen sink worktop area.

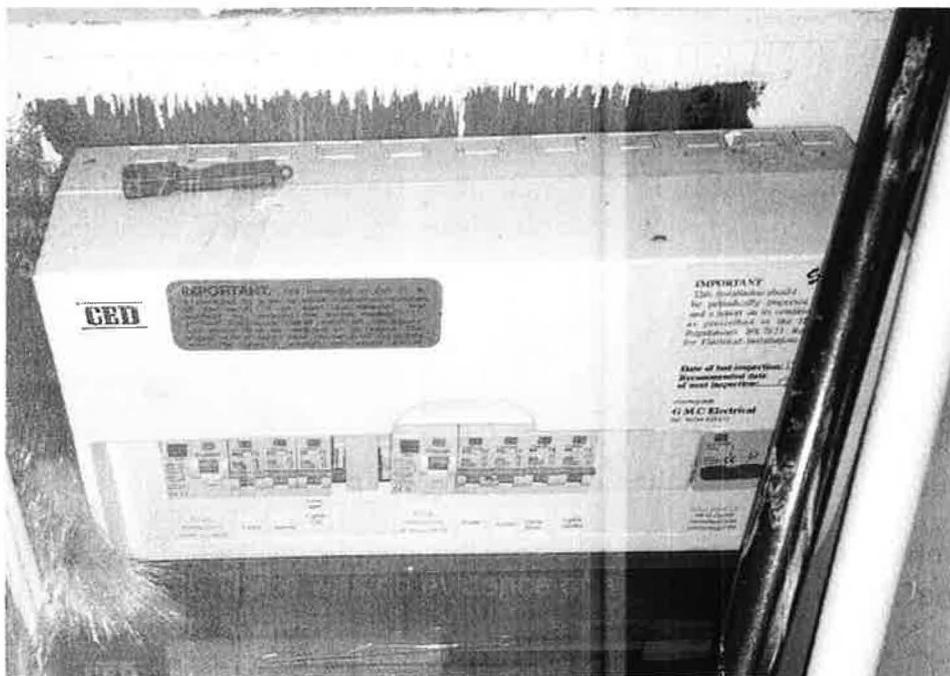


6.



7.

Photographs 6 and 7 illustrate a functional “seal” between the wall tiles, rim of the bath and shower fitting. There was no evidence of a “leak” or any significant water escape at or around the shower.



8.

There is a modern electrical consumer unit and the electrical circuits within the property are protected by Residual Circuit Devices (RCD) which, during the inspection, appeared functional displaying no evidence of “earth leakage”.

**This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Wednesday 14 February 2024 in connection with a Repairing Standard application under consideration.**

Donald Wooley MRICS

14 February 2024