

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/23/2773

Title no: PTH5737

**Property at 7 Lochinblair Gardens, Blairgowrie, Perthshire PH10 6GA
("The Property")**

The Parties:-

- **Mrs Fiona Downham, 7 Lochinblair Gardens, Blairgowrie, Perthshire PH10 6GA ("the Tenant")**
- **Mr Brian Haddow, The Cottage, 1 Ruisaurie, Beauly IV47 7AJ ("the Landlord")**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mr Robert Buchan - Ordinary Member

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) in relation to the Property and taking account of the representations the Tenant, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application which comprises of documents received on or between 14th August 2023 and 4th November 2023 ("the application"), the Tenant applied to the Housing and Property Chamber for a determination as to whether the

Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

3. The application by the Tenant stated that it was considered that the Landlord had failed to comply with his duty to ensure that the Property met the Repairing Standard. The application stated that the Repairing Standard had not been met, namely that the Landlord had not ensured that:
 - a) The House is wind and watertight and in all other respects reasonably fit for human habitation; and
 - b) The structure of the exterior of the House (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
4. In particular, the complaints consisted of:-
 - a) The front door does not work properly;
 - b) There is raw sewage under the floor following a leaking pipe;
 - c) The bathroom window does not shut;
 - d) The tiles are falling off the wall in the bathroom; and
 - e) The bathroom floor and wall is rotten

The Inspection

5. The Tribunal attended the Property on the morning of 22nd February 2024. The Tenant was present. The Landlord was not present. The Tribunal was let into the Property by the Tenant. It was clear, dry and of mild temperature on the day of the inspection.
6. The Property is a two storey end terrace house.
7. Once in the Property the Tribunal inspected the front door. The front door was found to be sticking and required such force to pull it open from the inside that the screws were missing from the door handle. The door could be seen to be warped and did not fit the frame well enough to render it wind and watertight.
8. The bathroom was inspected next. Some of the bathroom tiles are no longer fit for purpose having missing or porous grouting and requiring excessive amounts of silicone sealing to try to prevent water leakage. The linoleum was lifted at the corner by the bath to show that the floor underneath had become rotten. The Tenant said that she arranged for the shower to be fixed. She had taken the money from her rent payment to pay the plumber. The bathroom window fastener is broken and the handle is missing so that the window cannot be closed or locked.
9. The Tribunal looked into the hatch at the front door of the Property which leads under the house to try to understand the issue relating to raw sewage. It could be seen that the soil waste pipe under the floor has been repaired and any leakage would have led to sewage waste lying under the floor.

Inspection was limited, however, as the sub floor dips down below the pipe and it was not possible to see the extend of the leakage.

10. The Tenant indicated that she would not be attending the hearing due to work commitments.
11. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
12. The inspection was concluded and the Tribunal reconvened in the afternoon for the hearing.

The Hearing

13. The hearing was held on 22nd February 2024 at 12pm at Endeavour House, 1 Greenmarket, Dundee DD1 4QB. Neither the Tenant nor the Landlord were present. The Tribunal concluded the hearing without any further representations.

Summary of the issues

14. The issues to be determined are: -
 - a) Whether the front door is not wind and water tight, in a reasonable state of repair and in proper working order;
 - b) Whether the bathroom tiles were falling off the bathroom walls and what issues had arisen from that;
 - c) Whether the bathroom floor and wall were unsafe and what issues had arisen from whether the bathroom window was in a reasonable state of repair and in proper working order.
 - d) Whether the house was fit for human habitation following the leak from the defective soil waste pipe below the House.

Findings of fact

15. Having considered all the evidence, the Tribunal found the following facts to be established: -
 - a) The tenancy is a Short Assured Tenancy between the Landlord and the Tenant. The tenancy commenced on 31st October 2011;
 - b) The front door was not in a reasonable state of repair and in proper working order;
 - c) The bathroom tiles were not in a serviceable condition;
 - d) The bathroom window is not in a reasonable state of repair and in proper working order;
 - e) Part of the bathroom floor is rotten;
 - f) Further investigation of the sub floor area is required to determine whether or not there is two feet of sewage under the floor as claimed by the tenant.
 - g) The Repairing Standard has not been met.

Reasons for the decision

16. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection.
17. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
18. The Tribunal was in no doubt, from its inspection, that the property did not meet the Repairing Standard.
19. There was clear evidence that the front door was in a poor state of repair and needed to be replaced or repaired.
20. Further investigation of the sub floor area by a suitably qualified contractor is required to determine whether or not there is sewage lying below the floor.
21. No evidence was provided of the two feet of raw sewage below the House referred to by the Tenant. The Tenant is relying on the word of the plumber who went under the floor to repair the pipe. It can be seen that a repair of the soil waste pipe has been undertaken but it cannot be known how long it was leaking for. However, raw sewage will have been leaking under the floor to some unknown extent and so further investigation is essential to determine what action is required.
22. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord was in breach of the duty to comply with the Repairing Standard.
23. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal “must by order require the landlord to carry out such work”.
24. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order (“RSEO”) as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale

(c) The decision of the Tribunal was unanimous.

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.

G Miller, Chair
22nd March 2024