

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Property: Howe, Harray, Orkney KW17 2JR (“the Property”/ “the house”)

Chamber Reference: FTS/HPC/RP/19/2087

Parties:

Mr Graham Henry, Howe Farm, Harray, Orkney KW17 2JR (“the Landlord”)

**Tribunal Members – George Clark (Legal Member/Chairperson) and
Greig Adams (Ordinary Member/Surveyor)**

Decision

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) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should not be made.

Background

1. By application, received by the Tribunal on 4 July 2019, the then Tenant of the Property, Ms Marie-Claire Rackham-Mann applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 (“the Act”).
2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that 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, that the installations in the house for the supply of water, gas and electricity and for sanitation, space

heating and heating water are in a reasonable state of repair and in proper working order and that the house meets the tolerable standard.

3. The application was accompanied by a statement from Ms Rackham-Mann in which she stated that the Property was not in a habitable state. Structurally, it had moved around January 2017, resulting in large chunks of plaster being thrust out of the wall in the room she used as an office. There were tell-tale marks where water had seeped through the cracks in the exterior shingling layer. Below this, there was a very large crack running from one end of the concrete foundation slab to the base of the wall and straight up the wall. For some time, the crack going up the wall could be seen, but it had since moved again and was no longer visible. The central heating system had never functioned properly from the start of the tenancy. The timer did not work, making the use of the system prohibitively expensive. There was mould and damage to the walls in her daughter's bedroom and the bathroom.
4. On 16 September 2019, Ms Rackham-Mann emailed the Tribunal, listing further items requiring repair, in addition to the complaints about the central heating system and the structural movement. The airing cupboard had a hole in the ceiling where mice had set up home. The Property was "riddled with woodlice and sand mites". The door in the porch needed to be replaced as the wood had been damaged by the elements. The floor threshold had sunk, allowing water ingress into the porch and prior damage to the walls and floor due to the lead flashing not being replaced properly in 2016 had yet to be repaired. Mould was still present and there was a nest on the soil pipe.
5. On 14 October 2019, Ms Rackham-Mann advised the Tribunal that she had been evicted from the Property. Accordingly, in terms of Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006, she was treated as having withdrawn the application. The Tribunal decided, however, on 2 November 2019, to exercise the power vested in it by Section 23A of the Act to continue to determine the application, as the matters notified to the Landlord, namely mould in the bedroom, the faulty central heating system, the faulty soil pipe, water ingress and cracks and subsidence in the Property were health and safety concerns.
6. On 18 November 2019, the President of the Housing and Property Chamber intimated a decision to refer the Tenant's application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.
7. The Tribunal Members inspected the Property on the morning of 9 January 2020 and were admitted by the Landlord and his wife, Mrs Alexis Henry.

8. The Tribunal comprised George Clark (Legal Member/Chairperson) and Greig Adams (Ordinary Member/surveyor).
9. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

10. Following the inspection, the Tribunal held a Hearing at Kirkwall Community Centre, Broad Street, Kirkwall. The Landlord and his wife were present and were represented by Ms Serena Sutherland of D&H Law LLP, solicitors, Kirkwall. Ms Sutherland advised the Tribunal that the Landlord had no intention of re-letting the Property when the ongoing refurbishment works were completed.

Findings of fact

11. The Tribunal makes the following findings of fact:
 - The Property comprises a 2.5 storey detached farmhouse erected in 1952.
 - The Property is currently undergoing major renovation, including the provision of internal wall linings with insulated slab panels.
 - The central heating system within the Property has been removed with a view to replacement.
 - The results of testing by the Tribunal, using thermal imaging, a radio frequency moisture meter and a hygrometer, indicated that the relative humidity at the time of the inspection was 58% and the room temperature was 12.9 degrees Celsius. The dew point was calculated at 4.8 degrees and the surface temperature was variable between 0,7 degrees and 3 degrees.

Reasons for Decision

12. The Tribunal found that the items in the application have, in effect, been superseded by the decision of the Landlord to completely refurbish the building. There is at present insufficient insulation to prevent condensation in the Property, particularly in the coomb sections, but the indications are that the work being undertaken will increase the performance of the thermal envelope of the Property. In these circumstances, with the refurbishment work being so far progressed, the Tribunal did not feel that a Repairing Standard Enforcement Order would be appropriate. The wall insulation work is largely complete, with the plasterboard work remaining outstanding. There is at present no kitchen and no central heating system.
13. The view of the Tribunal is that there is no subsidence in the Property, as there is no evidence of vertical cracking. There is a hairline horizontal crack which has resulted in a very small amount of eaves movement.

Decision

14. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided that, as the Property is currently undergoing complete refurbishment, it would not be appropriate to make a Repairing Standard Enforcement Order in respect of the Property.
15. The decision of the tribunal was unanimous.

Right 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.

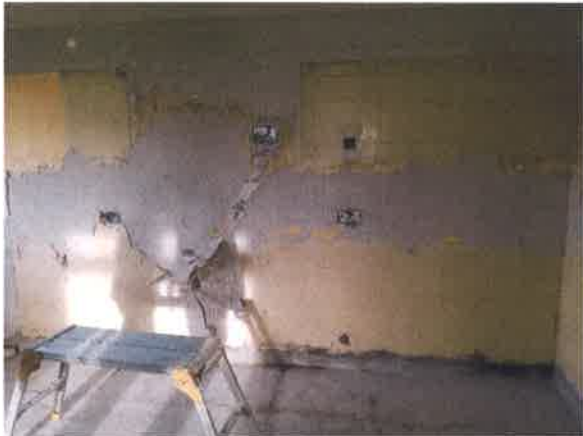
G Clark
Signed. Legal Member/Chairperson
Date: 28 January 2020



**Property at Howe Farm, Howe, Harray,
Orkney, KW17 2JR (“the Property”)**

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SCHEDULE OF PHOTOGRAPHS



1 General view of stripped out Kitchen.



2 View of mould growth to coombed ceiling.



3 Recording of environmental readings – below dewpoint.



4 Bathroom – no trickle ventilation of extract ventilation.



5 General mould growth within Bathroom.



6 General mould growth within Bathroom.



7 Elevated moisture readings within Bathroom.



8 Refurbishment works ongoing including additional insulation.



9 Area of elevated moisture readings within Bedroom.



10 Eaves void and existing insulation levels.



11 Front Elevation.



12 Skew abutment detail.



13 Half dormer projection.



14 Skew abutment detail.



15 Cracking to gable elevation at high level.



16 Bathroom window.



17 Section of damaged render.