

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/21/2697

Re: Property at West Lodge, Stobo, Peebles EH45 8NY (“the Property”)

Parties:

Miss Carol McMillan, West Lodge, Stobo, Peebles EH45 8NY (“the Tenant”)

Mr Hugh Leopold Seymour, Larkhill, Lauder TD2 6RS (“the Landlord”)

Tribunal Members:

George Clark (Legal Member/Chair) and Mike Links (Ordinary/surveyor Member)

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 failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

By application, received by the Tribunal on 2 November 2021, the Tenant 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’).

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

water tight, 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 does not meet the tolerable standard. The specific items of complaint are summarised as follows:

- (i) The water filter housing cannot be opened to change the filter.
- (ii) The only insulation in the loft areas was fitted c.1985 and is very thin and out of date.
- (iii) The water tank in the sitting room has been replaced, but its wood surround needs to be extended.
- (iv) The wood of the window in the sitting room is rotten and the catch is broken.
- (v) The window locks are jammed locked and unable to open. One window is not locking.
- (vi) The chimney is cracked, causing water to leak into the main bedroom wall.
- (vii) The gutters are overflowing at the porch beside the external door.
- (viii) Generally, the gutters and roof tiles need attention.
- (ix) Last winter, there was condensation running down the top front door and coming in under the door.
- (x) There is a dampness problem at the stair window and it is becoming worse.
- (xi) The kitchen windows have a condensation problem.
- (xii) A stretch of fence came down when trees from the adjoining wood fell down. It requires a permanent repair to keep the Tenant's livestock safe,
- (xiii) An electrician had cancelled two appointments to visit the Property to prepare an EICR and look at security lights. He was now scheduled to call on 5 November 2021.

In later correspondence, the Tenant raised an issue with the shower and advised that a chimney cowl had fallen off. She sought, on 14 January 2022, to add additional items, but these were not considered by the Tribunal as the Inspection was arranged for the following day and the Landlord had not been given sufficient notice and time to respond.

In written representations, received by the Tribunal on 12 January 2022, the Landlord's representatives, Walker Scott Ireland, Chartered Surveyors,

Peebles, stated that all electrical work had been attended to and they attached an updated Electrical Installation Condition Report (“EICR”). The water filter housing had been replaced and filters were being provided. The water supply had passed a recent Scottish Borders Council test. A roofer had been instructed for some time now to attend to the roofing list. As regards the chimney repairs, a contractor had been instructed in 2020 and had been scheduled to carry out the work in the spring of 2021, but in May 2021, following lockdowns and chasing by the Landlord, the contractor confirmed that he was no longer able to do the work. The Landlord had used his best endeavours to find a suitable local contractor, but had so far been unsuccessful, but a contractor had been instructed to carry out temporary repairs to prevent any further water penetration, until a suitable stonemason could be instructed. A joiner had been instructed to carry out the door and window repairs and lock replacement and the framing around the hot water tank.

The Landlord’s representatives stated that there was no resistance to having the works carried out. The Landlord wanted the work to be done as soon as possible, but the pandemic had resulted in many local trades having a backlog of work and being reluctant to commit to new work. This had resulted in much of the delay in dealing with the repairs identified by the Tenant.

The Inspection

The Tribunal inspected the Property on the morning of 18 January 2022. The Tenant was present, and the Landlord was represented by Mr Michael Ireland of Walker Scott Ireland, Peebles. An Inspection Report with a Schedule of Photographs was subsequently circulated to the Parties.

The Hearing

A Hearing was held by means of a telephone conference call on the morning of 25 January 2022. The Tenant was present, and the Landlord was again represented by Mr Michael Ireland. The Tribunal then asked the Parties to comment on the Inspection Report.

The Tenant confirmed that the water filter had been replaced, but there was water lying at the base of the sink unit in which it is housed. This had been noticed by the Tribunal at the inspection. It was confirmed that the plumber had been notified and was coming back to attend to it.

The Tribunal had noted at the inspection that cracks were evident in the chimney head. Mr Ireland accepted that this had been a long-standing issue and referred to the comments in the written representations regarding the

difficulty in finding a contractor to carry out the work. He said that there was no resistance to having the chimney, roof and guttering repairs carried out and suggested that the roofing contractor could carry out some filling of the roof cracks as a temporary repair when doing the roof and guttering work. He added that the chimney requires to be properly capped, as at present, it was a gas flue cap that was in place.

The Tenant told the Tribunal that the lock on the back door had jammed and that, as a result, she had had to break a window to gain access. She had taped up the lock to prevent it from closing and jamming shut again.

The Tenant confirmed that the window lock in the bathroom is permanently stuck locked. There were also problems with the window locks at the stair and in the sitting room These had been noted by the Tribunal at the inspection. Mr Ireland said that there had been an issue, as with the chimney repairs, regarding contractors, but the Landlord had now found someone who had the capacity to deal with a list of repairs, including all the window locks and window defects included in the application. The contractor would not, however, be able to do the work until March. Mr Ireland said that he would be happy to provide the Tribunal with a specification of all the work that has been instructed. The Tenant asked that the stair window lock be treated as a priority item, as it could at present be opened from the outside. Mr Ireland stated that he understood that the key in the stair window had snapped with part of the key now stuck inside the lock and that its repair might, therefore be the responsibility of the Tenant, due to the use of excessive force to turn the key.

Mr Ireland confirmed that a roofing contractor who was familiar with the roof of the Property had been instructed in September 2020 to carry out work to the slates and guttering. He had attended the Property in January 2021, but due to weather, the roof had been too slippery for him to work on it. The replacement of the missing chimney cowl was on the roofer's list of work to be done.

The Tenant told the Tribunal that when the wind is from a certain direction, black dust particles come in through the bathroom window, indicating that the seal has failed. Mr Ireland confirmed that this was on the list for the contractor to be dealt with. The bathroom sink, where the Tribunal had noted a plumbing leak, was on the plumber's list of work.

The Tribunal had noted that daylight was visible between the back entrance door and the door frame and that the draught excluder strip along the other side of the door frame was not properly attached. Again, Mr Ireland said that this was on the contractor's list.

The Tenant referred to the condensation problem at the kitchen window, which she said was worse in winter weather. Mr Ireland commented that it was a single glazed window on an element of the Property that does not get much sunlight.

The next issue was staining adjacent to the stair window. Mr Ireland made it clear that he was not an expert in building construction but suggested that one possible reason was that it was a solid stone west-facing wall, skimmed with cement render and that moisture penetrating the cement was unable to escape. The warmer air on the inside wall would collect at the top of the window and would condense on the cold and damp surface. He considered that it was an inherent problem in the building. A permanent solution would be difficult and would involve replacing the cement render with a lime-based render and strapping the window to create a gap between the inner and outer walls, but this would be a major reconfiguration. Regularly cleaning down the affected area would alleviate the problem.

Very high moisture readings had been obtained using a damp-meter on the wall of the bedroom. Mr Ireland recognised that this was a problem but stated that the root cause was related to the chimney and it would be necessary to wait until the chimney work was carried out and then monitor the drying out of the wall, before carrying out any remedial plaster work and redecoration.

The Tenant then commented on the broken fence at the bottom of the ground to the rear of the Property. It had been damaged by a falling tree and a temporary repair had been carried out, but she remained concerned that there was a risk that her goats would escape through the damaged portion of the fence. Mr Ireland told the Tribunal that the fence formed part of a paddock, not part of the garden ground included in the tenancy. The Tenant had increased it to double height for her agricultural use, not in connection with her residential use. The Tenant confirmed that it had been a single height fence when she moved in and that she had paid to increase its height, to contain her goats. The Tenant told the Tribunal that she rented another area for grazing, but Mr Ireland repeated that the double height fence was there solely to keep her goats in.

The Tribunal was not prepared to take down the ceiling hatch in the kitchen, which was screwed or nailed shut, so had been unable to inspect the roof insulation at the Property. The Tenant stated that it had been put in 34 years ago and was very thin compared to present day specifications. Mr Ireland suggested that, as occupant, the Tenant might be able to access funding to cover the cost of bringing insulation up to modern-day standards.

Mr Ireland confirmed that the framing of the new hot water tank and remedial plaster work next to the water pipe associated with the tank were on the general contractor's list of repair items.

Finally, the Tenant made reference to the fact that she could not safely open and close the ceiling hatch in the kitchen, the kitchen water tap and the hot water tap in the bathroom were leaking and that she had had to break two glass panes, one in a window and the other in the back door, in order to get back into the Property when the back door lock had jammed shut behind her. Mr Ireland commented that he was unsure whether the Tenant would have had any alternative means of getting back into the Property.

The Tenant confirmed that she had no further matters to raise. In his concluding remarks, Mr Ireland said that he hoped the Tribunal had a clear picture that there is a willingness on the part of the Landlord to carry out the work and asked whether the Tribunal might be content, rather than making an Order, to give the Landlord a timescale for completing the work.

The Parties then left the Hearing, and the Tribunal Members considered all the evidence written and oral, that had been presented to them.

Reasons for Decision

The Tribunal noted that the Landlord had instructed various contractors to carry out works and that, when completed, most of the issues raised in the application would be resolved. The Tribunal also recognised the difficulty that the Landlord would have experienced in finding contractors with capacity to take on new work after the COVID-19 lockdown came to an end. Nevertheless, the list of works was lengthy, and some had been outstanding for many months and the view of the Tribunal was that it was necessary, for the protection of the Tenant's interest, to make an Order, rather than simply continue the case in the hope that the Landlord would complete all the necessary work within a set timescale.

The Tribunal did not consider the issue of the broken glass in the rear entrance door, as it was not included in the application. The Tribunal also noted that the water filter at the kitchen sink had been replaced. There was a minor plumbing issue, but that was possibly unconnected and did not merit inclusion in an RSEO. It was minor, as was the leak below the wash hand basin in the bathroom. The Tribunal had also seen an Electrical Installation Condition report which did not contain any C1 or C2 items of disrepair.

The understanding of the Tribunal was that the rear garden fence had been of single height at the start of the tenancy and that it was the Tenant who had increased the height. Accordingly, its repair was not the responsibility of the Landlord. But the Tenant might have a separate claim against the Landlord as her neighbour for damage caused to her property, namely the heightened fence, when the Landlord's tree fell on it.

It was clear to the Tribunal that the windows and window locks are in need of attention and that the back door lock, which is integral to the door handle, is not functioning properly and needs to be repaired or replaced. The seal around the back door frame also needs to be repaired or replaced. The Tribunal did not accept the argument put forward on behalf of the Landlord that the repair to the lock on the stair window might be the responsibility of the Tenant. It appeared that the key had broken in the lock, but the Tribunal decided that it was accidental and not malicious. As regards the kitchen window, the Tribunal's view was that condensation was inevitable, as it was an original sash and case single-glazed window and its position meant that it did not benefit from sunlight for much of the day.

The Tribunal decided that an Order was necessary in relation to the works required to the chimneyhead, roof and slates and that both chimney pots required to be suitably capped. It was hoped that the remedial work to the chimneyhead would allow the moisture in the wall of the bedroom to dry out and the area could then be redecorated as necessary.

The Tribunal noted the comments made by Mr Ireland regarding the possible cause of the moisture readings on the wall adjacent to the stair window. The Tribunal recognised that it might be difficult to find a permanent solution but decided that the Landlord should make whatever arrangements were necessary to mitigate the situation, including considering strapping the internal linings surrounding the window and a planned programme of regular washing down and suitable fungicidal treatment.

The Tribunal had not inspected the insulation in the roof space but noted the Tenant's comment that it is very thin. As it seems unlikely that the insulation would meet present-day standards and as it is an issue which might result in the Property not meeting the tolerable standard, the Tribunal decided that a report from a suitably qualified professional contractor is necessary, to be followed by such remedial work as the contractor regards as necessary within all accessible roof voids, to ensure the Property meets the tolerable standard. The ceiling hatch in the kitchen, giving access to the roof space above also requires remedial work to ensure that it could be safely opened and closed.

The Tribunal considered that a period of four months should be allowed for the Landlord to carry out all the works required by the Order.

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

Date: 8 February 2022

George Clark (Legal Member/Chairman)