

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



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

**STATEMENT OF DECISION: Section 24(1) Housing (Scotland) Act 2006**

**Chamber Reference: FTS/HPC/RT/19/4020**

**Sasines Description: Castle Lodge, Castle Street, Banff, which subjects form part and portion of ALL and WHOLE the subjects known as Castle of Banff being the subjects described in Disposition to the Trustees of Banff War Commemoration Fund recorded in the Division of the General Register of Sasines for the County of Banff on 24<sup>th</sup> May 1948.**

**House address: Castle Lodge, Castle Street, Banff, AB45 1 DL ('the House')**

### **The Parties**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA ('the Third Party Applicant')**

**Banff Castle Community Association, Banff Castle, Castle Street, Banff, AB45 1DL ('the Landlords')**

### **Tribunal Members**

**Ms H Forbes (Legal Member)**

**Mr A Anderson (Ordinary 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 Landlords have complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act') in relation to the House, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

### **Background**

1. By application dated 19<sup>th</sup> December 2019, made under section 22 of the Act, the Third Party Applicant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') for a determination as to

whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Act.

2. The Third Party Applicant considered that the Landlords have failed to comply with their duty to ensure that the House meets the repairing standard, in that the House is not 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 not in a reasonable state of repair and in proper working order; the installations in the house 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 in proper working order; any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order; and the house does not meet the tolerable standard.

3. The Third Party Applicant listed the issues as follows:

3.1. *No EICR*

3.2. *Doors and windows draughty and not watertight*

3.3. *Water damage mark on kitchen ceiling; swollen laminate on kitchen floor*

3.4. *Water damage marks on upper and lower hallway ceilings*

3.5. *Ceilings cracked and water marks in upper right bedroom*

3.6. *Cellar/cupboard under stairs flooded*

3.7. *Gutters/downpipes not fully operational*

3.8. *Roof tiles missing/slipped*

4. The Third Party Applicant notified the Landlords of the defects by letter dated 5<sup>th</sup> November 2019. As part of the Application, the Third Party Applicant enclosed copy tenancy agreement and photographs.

5. By email dated 20<sup>th</sup> March 2020, the Landlords responded as follows:

***Doors and Windows***

*The is no daylight visible around windows and doors.*

*The daylight on the living room was not to the outside, but to the window parting bead within the room.*

*The external pointing on the kitchen window was loose and has been repointed, but this was external and did not affect the interior.*

***Kitchen Ceiling***

*The ceiling is dry. This has been inspected again. Previously a builder had the floors up and could find not leak. This was further inspected by a plumber and again no leak could be found. It then was mentioned that somebody had been staying, and that was when the leak occurred, and has not happened again.*

*The shower above, as a precaution has been resealed by the plumber.*

*The ceiling would have been painted but due to the Covid 19 the tenant did not want workmen in the house.*

### **Upper and lower hallway ceilings**

*The damage to the hallway ceiling occurred when the outlet for the flat lead roof was blocked, this has been cleaned out numerous times and is now checked twice a year. The last water to come in was during the exceptional downpours of rain in September 2019 which washed away 4 bridges in King Edward. Lifetime residents could not remember such heavy rain. The lead roof was replaced in 2000 and is in good order.*

### **Bedroom Ceiling**

*The ceiling has cracks would have been filled if we could have had access. The ceiling is a lath and plaster ceiling, and the key to the laths has been inspected found firm. Movements in old ceiling would be expected. The ceiling is dry. There has at no time been any water ingress. Some slates were missing but the roof was replaced in 2000, and thus has an under layer of roof felt to stop any water getting into the building.*

### **Kitchen floor**

*The laminate floor primarily was damaged by water from a fridge. It was also claimed water had come in from outside under the floor from a drain. The cement around the drain was sealed as a precaution. The laminate floor has been lifted, The floor below was dry with no water trapped beneath the boards. This has been replaced by a vinyl floor.*

### **Cupboard under stairs**

*This area did flood. The cause of the incoming water has been found to be water ponding at the front drive and leaking into the lower level under stairs cupboard. An outside drain to the left of the front door has been connected which removes this water leaving only a puddle. We understand the cupboard has not flooded since this work was done. As a precaution this area in the cupboard has been will be sealed when we have access.*

### **Gutters and Downpipes**

*These have been overhauled and cleared. This is now done regularly.*

### **Roof Tiles**

*There were a number of roof slates missing. These have been replaced. However there was never at any time water ingress as the roof was replaced in 2000 and is fitted with a secondary layer of roof felt.*

### **Gas Safety Certificate**

*Up to date*

### **EICR**

*Up to date*

6. An inspection and hearing set down for 21<sup>st</sup> February 2020 was postponed due to the lockdown in response to the COVID-19 pandemic.
7. A Case Management Discussion (“CMD”) took place by telephone conference on 18<sup>th</sup> January 2021. Mrs Emma Bain was in attendance on behalf of the

Third Party Applicant. The Landlords were not in attendance. Mrs Bain gave the following update:

### **7.1. No EICR**

There is now an EICR.

### **7.2. Doors and windows draughty and not watertight**

All the windows are in poor conditions, with gaps and missing beading. They are draughty and there is water ingress during heavy rain. The bathroom window has been painted shut. Although the kitchen window has been repointed, it has not helped matters.

Both external doors are draughty and they leak. The threshold at the front door is coming away and it is difficult to open and close the door.

### **7.3. Water damage mark on kitchen ceiling; swollen laminate on kitchen floor**

There is still a damp patch on the kitchen ceiling. Patches appear and disappear. There are cracks in the ceiling which appear to be bigger than they were during the initial inspection by the Third Party Applicant in October 2019.

The replacement linoleum in the kitchen is poor quality. It is thin, it ripples, causing a trip hazard, and an inch-wide gap has been left around the edge, with no beading fitted. The kitchen is very cold. There is water ingress under the back door, which seeps under the linoleum in the utility room and kitchen.

There is a bedroom and a shower-room above the kitchen and utility room

### **7.4. Water damage marks on upper and lower hallway ceilings**

This problem remains. Patches come and go and the ceilings appear damp. Any work that has been carried out has not been successful.

### **7.5. Ceilings cracked and water marks in upper right bedroom**

The cracks remain and have worsened. There is now condensation dampness in the bedroom.

### **7.6. Cellar/cupboard under stairs flooded**

There is little or no improvement in this area. There is a puddle within the cellar of about an inch and a half in depth. The tenants are using buckets to remove the water. There appears to be water seepage down the walls. It is a small area accessed by steps.

### **7.7. Gutters/downpipes not fully operational**

The gutters require attention. There is a plant growing in the gutter above the front door. The gutter tends to flood in this area, and it ices over during bad weather.

### **7.8. Roof tiles missing/slipped**

Several tiles are missing or slipped, including one above the front door and several at the back of the House. This may have occurred since the work was carried out previously by the Landlords.

8. The Tribunal considered matters and decided that an inspection of the House would be required.

### **The Inspection**

9. An inspection took place on 17<sup>th</sup> August 2021. The Tribunal Members were in attendance. Mrs Bain was in attendance on behalf of the Third Party Applicant. Mr Julian Watson was in attendance on behalf of the Landlord. The Tenant, Ms Tyler was in attendance.
10. The property is a two storey detached house built upwards of 100 years ago. The walls are solid stone, harled externally; the roof has two main sections that are pitched and slated with a small area of flat roof over the central staircase and landing. The ground floor accommodation comprises entrance hall, lounge, kitchen, cloakroom and utility room. On the first floor there is a landing, two bedrooms and a bathroom. The windows are mainly period, timber sash and case type and are single glazed. There is a gas fired boiler with water filled radiators throughout the house.
11. The following areas were inspected:

#### **External Doors and Windows**

Front door: Ms Tyler explained that rainwater previously flooded this area and penetrated the house beneath the front door threshold. There was a drainage channel visible to the left hand side of the door, with gulleys present on both sides in line with the downpipes. There is some weathered paintwork and slight opening of joints on the front door. Draught strips are in place. The threshold is loose. Drainage holes appeared clear.

Rear door: Ms Tyler explained that water pooled here and penetrated the utility room from below the door threshold and that the drain on the left hand side was blocked. Decay was seen to the right hand side of the door post.

South facing kitchen window: There is cracked and worn paint to the interior. The lower sash pane is cracked.

Rear facing lounge window. Cracked and worn paint to the interior. There is a broken sash cord on the right hand side. Ms Tyler explained that the other lounge window is draughty and cigarette smoke penetrates the lounge from people smoking outside on the street.

East bedroom: Cracked and worn paint to the interior. There is rot to the outer sill.

West bedroom, west window: Cracked and worn paint to the interior. There is a broken sash cord on the left hand side. Ms Tyler explained that rainwater penetrates the window and emerges from the timber panelling below.

West bedroom, south window: Cracked and worn paint to the interior. There is some shrinkage and cracks to the internal putty.

### **Kitchen**

Flooring: Ms Tyler explained that the present vinyl floorcovering replaced laminate which had a layer of insulation beneath it. As a result, the floor surface and kitchen were colder and there is now a gap between the skirting and vinyl. The gap was seen to be around 8mm.

Ceiling: There is a large stain in the centre of the ceiling. When tested, the central area (c 500mm diameter) showed moisture readings of 95%. There is another stain, nearer to the kitchen sink which showed moisture readings below 15%. Ms Tyler said the second area was the result of a previous leak that had been attended to.

### **Upper and lower hallway**

Ground floor front hall: The décor on the ceiling is uneven. Ms Tyler explained that there had been a leak from the flat roof previously that had permeated to the ground floor ceiling and caused the damage.

First floor landing: There is a stain on the first floor landing ceiling.

Moisture meter readings taken at the uneven and stained areas of the ceilings were below 15% and below 20% respectively.

### **Bedroom (upstairs right)**

Ceiling: There are cracks to the ceiling plaster orientated diagonally from the door to the opposite corner. Ms Tyler explained that there was water penetration to the area due to a roof leak. Moisture meter readings taken along the crack were below 15%.

### **Cellar/Cupboard under stairs**

Ms Tyler explained that water collects in this area, up to the first step, during periods of rainfall. The Tribunal observed the floor to be wet but there was no standing water.

### **Gutters/downpipes**

The gutters appeared to be clear of vegetation. There were no significant defects to the rainwater goods as observed from ground level. There was staining to the underside of the gutter joint above the window on the north and west elevations, indicating previous leakage.

Ms Tyler explained that water penetrates the boundary wall and flows down towards the back door of the house. The pavement level was seen to be around 300mm below garden level on the other side of the boundary.

Ms Tyler explained that during periods of rainfall water collects outside the utility room, and the white pipe to the washing machine backs up as a result.

### **Roof Tiles**

There is a missing slate to the centre of the roof pitch on the south elevation. No other significant defects to roof covering were observed from ground level. The flat roof is not visible from ground level.

## **The hearing**

12. A hearing took place by telephone conference on 24th August 2021. Mrs Bain was in attendance on behalf of the Third Party Applicant. Mr Julian Watson was in attendance on behalf of the Landlord.

13. The following issues were discussed:

### **External Doors and Windows**

Mrs Bain said the tenants feel that none of the windows are wind and watertight. This was not observable on the day of the inspection as it was calm and dry. There are some broken sash cords throughout, and a broken pane in the kitchen. The front sitting room window is missing beading. All the windows need attention.

Mr Watson said that the Landlord agrees internal and external works were required but it has only been possible to carry out external works because the tenants will not allow access, for medical reasons. The Landlord intends to carrying out works to repair the windows.

Mrs Bain said the doors are not wind and watertight. The threshold bars are not fixed and there is water ingress. The draught excluder is falling off the

front door. She said the front door drain is in the wrong position and is not helping the flooding. There are holes in the cement at the front door.

Mrs Bain said water collects at the back door and enters the House. The doors need painted and draughtproofed. The drain at the back door was blocked and the tenants had tried to rod it, and had hit something hard. Responding to questions from the Tribunal, Mrs Bain said she was not aware of when the last flooding from the drain occurred. Water backs up into the sink in the utility room when it rains.

Mr Watson said works had been carried out to put in a drain at the front door around a year ago to avoid pooling of water. The drains had flooded during extremely heavy rain two years ago. The drain at the back door was U-shaped and could not be rodded as the rod would not get round the corner. It was his position that the drain into which the washing machine drains does not block. Responding to questions from the Tribunal, he said this drain was cleared regularly, although not recently. He undertook to check the drain.

Responding to questions from the Tribunal as to whether the tenants have notified the Landlord of issues such as flooding at the time that the issues arise, Mr Watson said he had been notified of issues but not at the time that they arose. Mrs Bain said the tenants have notified the Landlord on occasion but they may have tried to manage issues themselves due to Covid.

### **Kitchen**

Mrs Bain said the mark on the ceiling is getting bigger. The laminate flooring was replaced with vinyl flooring and it has not been well laid. Ms Tyler has problems walking on the vinyl. There is no underlay. There is a join in the vinyl. There is a gap between the skirting board and the vinyl that causes draughts. There is woodworm in the skirting. The vinyl in the utility floor is wrinkling and wet underneath.

Mr Watson said the problem with water ingress to the ceiling will be investigated. Past investigations have not uncovered the source of the problem. As for the floor, the fitters can come back and rectify any issues. It may be possible to install a trim around the edge to deal with the gap. Access is required to look at these issues.

### **Upper and lower hallway**

Mrs Bain said there is water ingress in these areas when it rains and this may be due to the flat roof. This happened a few weeks and there was water dripping onto the third step from the top of the stairs.

Mr Watson said the roof was replaced in 2000 and underfelt was installed. The flats roof is made of lead. There was a blocked outflow at least a year ago that was dealt with. To the Landlord's knowledge this has not happened again. There has been no water ingress to the downstairs landing, and no recent notification of water ingress. The area is checked twice yearly.



### **Bedroom (upstairs right)**

Mrs Bain said there is a damp patch on the ceiling and she has been informed by the tenants that it is still leaking on occasion. This may be due to the missing tile.

Mr Watson said the roof is made of Victorian lath and plaster. There cannot be water ingress due to the roof under felt. The lath was examined by a contractor around a year ago and found to be satisfactory.

### **Cellar/Cupboard under stairs**

Ms Bain said that this area is still wet. Ms Tyler had said that there was  $\frac{1}{4}$  to  $\frac{1}{2}$  inch of water visible on the day of the inspection. Two years ago, the tenants had to remove bucketsful of water from the cellar.

Mr Watson said the Landlord will address this issue by filling in the cellar and installing a damp course.

### **Gutters/downpipes**

Mrs Bain said the gutters need to be looked at again. They are overflowing and blocking. There are no downpipes at the front of the House and the rainwater splashes over and reaches the street. The back gutters are overflowing constantly.

Mr Watson said that the gutters were all clear as seen at inspection. The system is working and downpipes are not required at the front. The gutters are cleared twice yearly.

### **Roof Tiles**

Mrs Bain mentioned the missing tile and said it should be refitted.

Mr Watson said this will be addressed and reiterated that no water can penetrate through the roof felt.

14. The Tribunal asked Mrs Bain whether access would be granted for internal repairs if an order was made by the Tribunal. Mrs Bain said access would not be a problem.

### **Tribunal discussion**

15. The Tribunal determined that:

- (a) **The House is wind and watertight and in all other respects reasonably fit for human habitation.**

At the time of inspection, the House appeared to be wind and watertight. The Tribunal appreciates that this may be due to the inspection being carried out on a dry, calm day; however, there was no compelling evidence provided to the Tribunal to indicate that the House is not wind and watertight.

The Tribunal made no findings in relation to the alleged dampness in the upper and lower hallways or the upstairs bedroom. While there were signs of previous problems, particularly in the hallways, there was no evidence at the time of inspection of any dampness or current leakage.

The Tribunal considered that one missing slate on the roof was unlikely to cause water ingress and did not constitute a failure to meet the Repairing Standard.

**(b) The structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order.**

The Tribunal found that the windows of the House were not in a reasonable state of repair and in proper working order. The windows throughout the House require attention.

The exterior door thresholds require attention, as does the doorpost at the back door.

The Tribunal made no findings in relation to the drains, gutters and external pipes, as there was no evidence of any disrepair at the time of inspection.

**(c) The installations in the house 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 in proper working order.**

The stain and dampness to the kitchen ceiling indicate leakage from the bathroom fittings or pipework from above. This is a failure in terms of this section of the Act.

**(d) The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.**

The skirting boards within the kitchen are not in proper working order, given the gap between the flooring and the skirting boards.

**(e) The house does not meet the tolerable standard.**

The problems with flooding in the cellar indicate that the House does not meet the tolerable standard in that the House is not substantially free from rising or penetrating damp.

## Observations

16. The Tribunal observed that it was unfortunate that the Landlord has been unable to gain access to the House to carry out repairs due to understandable concerns of the tenants around Covid-19.
17. The Tribunal observed that the tenants may have been disadvantaged in that the replacement kitchen flooring may not be of the same standard or give the same level of comfort and insulation as the previous laminate flooring; however, this does not constitute a breach of the repairing standard.
18. The Tribunal observed that it would be advisable for the tenants to notify the Landlords immediately upon discovery of any flooding or water ingress as this may assist with discovery of the cause of any such problem.

## Decision

19. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
20. The decision of the Tribunal was unanimous.

## Right of Appeal

21. **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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# H FORBES

Legal Member and Chairperson  
Date: 26<sup>th</sup> August 2021

