

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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/23/1343**

**Title no: ANGUS 94006**

**First Floor Left, 45 Lyon Street, Dundee DD4 6RA (“The Property”)**

**The Parties:-**

- **Dundee City Council - Private Sector Services, 5 City Square, Floor 3, Dundee DD1 3BA (“The Third Party Applicant”)**
- **Mr Zakir Latif Karim, 13 Luke Place, Broughty Ferry, Dundee DD5 3BN (Owner of the Property “the Landlord”)**
- **Ms Angela Baird, 3 Isla Gardens, Carnoustie, Angus DD7 6GJ**

**The Tribunal comprised:-**

Ms Gabrielle Miller	-	Legal Member
Ms Geraldine Wooley	-	Ordinary Member (Surveyor)

### **Background**

1. By application received 27<sup>th</sup> April 2023, the Third Party Applicant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the Third Party Applicant stated that it was considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard. In the application the Third Party Applicant stated that the following were not being met: -

- a) The House is wind and watertight and in all other respects reasonably fit for human habitation;
  - b) The installations in the Property for the supply of the 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;
  - c) Any fixtures, fittings and appliances provide by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
  - d) The House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspecting fire; and
  - e) The House does not meet the tolerable standard.
3. In particular, the complaints consisted of the following issues: -
- a) There is only one smoke detector in the House;
  - b) There has been a leak previously from the flat above that has affected the plaster to the ceiling and a large section has fallen off with the remaining ceiling looking precarious and dangerous (heavy plaster and Artex);
  - c) Various sockets in the main room/kitchen are not working;
  - d) There has been a leak from above in the bathroom affecting the plaster work;
  - e) The front door is not wind tight and is insecure, the tenant is using a television bracket screwed to the post to keep the door locked and secure;
  - f) There has been no sight of the current Electrical Installation Condition Report;
  - g) There has been no sight of a current Gas Safety Certificate;
  - h) There has been no sight of a current Portable Appliance Test Certificate;
  - i) There has been no sight of a current Landlord Insurance certificate;
  - j) There has not been sight of any evidence that there has been a Legionella Risk Assessment.
4. On 30<sup>th</sup> March 2023, the Third Party Applicant wrote to the Landlord (detailed as Ms Angela Baird) with the list of the complaints. A copy of this letter has been provided to the Property and Housing Chamber. The correspondence related to the matters within the application. The Third Party Applicant sent the letter by recorded delivery.

### **The Inspection**

- 5. The Tribunal attended the House on the morning of 19<sup>th</sup> July 2023. It was a clear bright day. The Third Party Applicant and the Tenant were present.
- 6. The inspection was undertaken by the Ordinary Member (Surveyor Member) and the Legal Member.
- 7. The Property comprises a four-storey traditional tenement block of flats constructed of brick with a stone facade. The Property has a pitched slate roof. The House was furnished and there were no floor coverings in place.

8. Each point on the list submitted by the Tenant was inspected in turn.
9. The electricity was on during the inspection.
10. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.

### **The Hearing**

11. The hearing took place on 19<sup>th</sup> July 2023 at 11.45am at the Carers Centre, Seagate, Dundee. Mrs Terri Kean was present for the Third Party Applicant. The Tenant was present.
12. The Ordinary Member discussed the points room by room.
13. There is only one smoke detector in the House. The Tribunal found that there was an old battery smoke detector and a hard wired smoke detector in the hall. Only the hardwired smoke detector was operational. The Tenant said that this had been installed over 5 years ago. The Ordinary Member said that there should be a heat detector in the kitchen area which should be interconnected with the smoke detector. This is a breach of the regulations not to have this in place.
14. There has been a leak previously from the flat above that has affected the lath and plaster ceiling in the kitchen/living room. A section approximately 750mm x 500mm has fallen off exposing the lathes with the remaining ceiling showing signs of water damage and looking precarious and dangerous (heavy plaster and Artex). The Tenant said that the flat above has their front door exactly above the hole in the plaster and when they slam their door shut it causes the plasterwork around the hole to flake off. The Tenant has also observed some movement/bulging in the ceiling which may indicate that the ceiling plaster has "keyed off" from the lathes in places. Further investigations may have shown this more clearly but it would have been dangerous for the Tribunal to examine the ceiling further. The Tribunal was very concerned about the condition of this ceiling as not only could the plaster, which is very thick, fall but also due to the age of the building there could be asbestos in the Artex coating to the ceiling. The Tribunal considered this to be very dangerous and this did not meet either the Repairing Standard or the Tolerable Standard. The Artex should be tested for asbestos content and may need to be treated by specialist contractors if the ceiling were to be removed.
15. There has been a leak from above in the bathroom affecting the plaster work on the wall and ceiling. This needs to be redecorated.
16. There are signs of water damage in the bedroom where the cornice was cracked.
17. The front door is now wind and watertight and secure, with two working locks and reinforcement to the doorframe. It was accepted that the Tenant had

made alterations to the door. It was clear that the Repairing Standard has been met as a result of the Tenant undertaking such work himself.

18. Various sockets in the main room/kitchen are not working. This has resulted in the Tenant using trailing extension plugs to allow him to have his appliances work, including his microwave and washing machine. This is clearly dangerous and presents as both an electrical and a trip hazard to anyone in the House. There has been no sight of the Electrical Installation and Condition Report. There has been no evidence of this provided to either the Third Party Applicant or the Tribunal. It was noted that there were exposed wires to the ceiling light in the hall.
19. There has been no sight of a current Gas Safety Certificate. There is no gas actually in the House. There is no requirement for a Gas Safety Certificate.
20. There has been no sight of a current Portable Appliance Test Certificate. The only appliances supplied by the Landlord are the plug in heater in the bedroom and the fridge-freezer. Neither have been assessed. This does not meet the Repairing Standard. The Tenant noted that the storage heater had come off the wall and the only other heating was the plug in heater provided by the Landlord.
21. There has been no sight of a current Landlord Insurance certificate. There has been no further evidence of this provided to either the Third Party Applicant or the Tribunal.
22. There has not been sight of any evidence that there has been a Legionella Risk Assessment. There has been no further evidence of this provided to either the Third Party Applicant or the Tribunal. It was discussed that there is no requirement for someone professionally qualified to undertake the assessment.
23. The Third Party Applicant said that she had evidence of the House being repossessed. She had evidence of a court decree extract. This is dated back two years. The Tribunal was very concerned at this point that the named Landlord, Angela Baird, was not in fact the landlord as she has no legal rights over the House. The Tribunal is minded that an RSEO is required over the House but first the landlord needs to be determined. The mortgage company who took possession of the House is Rooftop Mortgages Limited. The Tribunal was concerned that they have not had notification of the inspection and hearing. The Tribunal would need to determine the landlord before issuing an RSEO.
24. The Tenant said that he has received notification that he was to be evicted. He had a letter from Rooftop Mortgages Limited's solicitor, TLT Solicitors, in the form of a Notice to Quit on 25<sup>th</sup> October 2022. Mrs Kean said that it was confirmed that an application had been submitted to the Housing and Property Chamber on 16<sup>th</sup> February 2023. The Tenant said that he had phoned Dundee Law Centre on the morning of this hearing and left a message for his solicitor. Mrs Kean said that she would forward a copy of

the Notice to Quit when she emails in the extract decree for the repossession order.

25. The Tribunal was very concerned about the dangerous state of the House. In particular with the hole in the kitchen/living room ceiling and the electrical sockets. The Third Party Applicant is part of Dundee City Council. It has been identified in the application that the House does not meet the Tolerable Standard. Given the dangerous nature of the House it will now be with Dundee City Council whether a closure order should be pursued.
26. The Tribunal considered that it could not issue an RSEO as the landlord has not been notified and there was dubiety about who the landlord was precisely. A Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 was granted at Dundee Sheriff Court on 2<sup>nd</sup> September 2021 in favour of Rooftop Mortgages Limited against Angela Jane Baird for possession of the House. Only Angela Baird was notified of the hearing and inspection. She has no rights over the House and is no longer on the Landlord Register. There is no party other than Rooftop Mortgages Limited that can access the property to hold title or access the rights to the Property. It would be clear to the “reasonable man” that Rooftop Mortgages has become ‘the landlord’s successors in title’. There has been nothing submitted to indicate that any other party exists to be a ‘successor in title’ until such time as the Property is sold. Rooftop Mortgages have acted as the ‘successor in title’ by raising an application for eviction against the Tenant. This was granted on 16<sup>th</sup> February 2023 under reference EV/23/0496. Clearly the person detailed as the landlord, Angela Baird, is not the landlord as she holds no rights over the House. The effective landlord is Rooftop Mortgages. This paperwork will be served now upon Rooftop Mortgagees solicitor to allow the contents to be considered. A new hearing date will be fixed which shall be by teleconferencing.
27. On 18<sup>th</sup> September 2023, Mr Mark Oswald, Associate Solicitor, TLT LLP emailed the Housing and Property Chamber advising that he represented Rooftop Mortgages. He lodged a submission stating that the mortgage company did not hold title and therefore could not be the landlord.
28. The Tribunal considered the representations made by Rooftop Mortgages’ solicitor. Under these circumstances it deems Rooftop Mortgages to be an interested party and that Ms Angela Baird remains to be the Landlord. The Tribunal consider this to be the correct position as it saw it at this time. The Tribunal decided the RESO will be issued with this decision upon the Landlord and a copy sent to Rooftop Mortgages.
29. On 24<sup>th</sup> November 2023, the solicitors acting for Rooftop Mortgages emailed the Housing and Property Chamber advising that the Property has been sold. They noted that Rooftop Mortgages Limited were no longer able to be considered to be a party to this case.

## Decision

30. The Tribunal considered the representations of Rooftop Mortgages solicitor on 24<sup>th</sup> November 2023 and noted that there is a new owner. The Tribunal decided *ex proprio motu* to issue the RSEO upon the new owner without the need for a hearing due to the health and safety risks contained in the RSEO.

**NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to Tribunal members in relation to any future proceedings on unresolved issues.**

G Miller

G Miller, Chair

6<sup>th</sup> December 2023