

# Housing and Property Chamber First-tier Tribunal for Scotland

---



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

**STATEMENT OF DECISION:** in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

Chamber Ref: FTS/HPC/RP/23/3753

**Re:** Property at 5/102 Elfin Square, Edinburgh EH11 3BF registered in the Registers of Scotland under Title Number MID214715 (“the Property”)

**The Parties:**

**Ms. Emma Mulgrew and Mr. Callum Miller both residing at the Property (“the Tenants”)**

**And**

**Spindlehawk limited, having a place of business at Block D, Universal Square, Manchester, M12 6JH (“the Landlord”)**

**Tribunal Members:**

Karen Moore (Chairperson) and Robert Buchan (Ordinary and Surveyor Member)

## **Decision of the Tribunal**

The Tribunal determined that:

The Landlord has failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a) and 13(1) (b)

and

has not failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property meets the Repairing Standard in respect of Section 13(1) (h) of the Act.

## **Background**

1. By application received between 25 October 2023 and 7 December 2023 (“the Application”), the first-named Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), and 13(1) (h) of the Act. The Application comprised a copy of the tenancy agreement between the Tenants and the Landlord, copy correspondence between the Tenants and the Landlords regarding repairs to the Property and copy photographs of the condition of the Property.
2. The Application noted that there is an issue with water ingress at the Property which has caused water damage and mould within the Property. The Application explained that there had been a previous tribunal case and a temporary repair had been carried out but that this had not resolved the water ingress.
3. The Application was referred to the Tribunal. An Inspection of the Property and a Hearing were fixed for 22 March 2024 and intimated to the Parties.
4. Prior to the Inspection and Hearing, the Landlords’ in-house solicitor submitted written representations. The first-named Tenant also submitted further written representations.

### **Inspection and Hearing**

5. The Inspection of the matters complained of in the Application took place at the Property on 22 March 2024 at 10.00 am. The first-named Tenant was present. The Landlords were not present or represented. A Schedule of Photographs was taken at the Inspection and is annexed hereto.
6. The Hearing took place on 22 March 2024 at 14.00 by telephone conference call. The first-named Tenant, Ms. Mulgrew, took part and was not represented. The Landlords were represented by Ms. Hilditch, one of their employees.
7. The Tribunal discussed the Inspection with Ms. Hilditch who agreed that there had been water ingress issues at the Property. She explained that gutter cleaning had appeared to resolve the issues in the past but accepted that this approach did not remedy the issues fully and there would have to be a process of eliminating likely causes to determine where the problem lay. As an overview of the development, Ms. Hilditch explained that the Property is part of a conversion of a large office building into more than a hundred flats and that the Landlords owned the majority of the flats. The development had been carried out in 2019 and managed by LAR. She explained that the developer had used as a sub-contractor for the roofing and balcony works. She stated that the Landlords had reported back to both the developer and the sub-contractor and that works to the upstand of the balustrade above the water ingress area had been carried out. She accepted that these works had not been successful and stated that the developer and sub-contractor had

been approached in terms of the warranty given for the work and that the Landlords were awaiting the sub-contractor response.

8. Ms. Hilditch advised that the Tenants had been given a rent reduction in compensation and had been offered relocation to another flat in the development. Ms. Mulgrew confirmed that the rent had been discounted and that an offer of another flat had been made and explained that she and Mr. Miller did not want to be relocated. She explained that the water ingress had continued for over a year without any resolution and that the attempts at repair had simply not worked. Her strong preference was that the Landlords remedy the issue without the need for the Tenants to move out.
9. Ms. Hilditch advised the Tribunal that water ingress in other flats in the development had occurred but that these had all been resolved as they related to leaks from soil pipes and the sprinkler system and that the Property appeared to be the only flat affected by water ingress from the external part of the building.

**Tribunal's assessment of the evidence.**

10. The Tribunal found the Parties to be credible, straightforward and fair in their evidence and had no reason to doubt the evidence.

**Findings of Fact**

11. The Tribunal's findings in fact were made from the Application, the Inspection and the Hearing.
12. The Property is a seventh floor flat in a large complex of flats converted from an office block. The floor above the Property is the top floor which has been added to the construction of the original office block. The flat above the Property has a flat roofed balcony which sits above the Property.
13. The Property comprises an entrance hallway, one bedroom, bathroom and a large open plan living, dining and kitchen area.
14. There is a private residential tenancy of the Property between the Parties.
15. Electronic damp meter testing carried out at the upper part of one of the windows in the living area showed higher than normal readings. These readings were generally consistent on areas of the plaster work which appeared darker in colour. The general pattern of dampness is consistent with penetrating dampness at this window.
16. The height of the building and the seventh floor location of the Property made it impossible to carry out an external examination of the source of the penetrating dampness.

**Issues for the Tribunal**

17. In these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of the matters notified to the Landlord by the Tenant, namely Sections 13 (1) (a), 13 (1) (b), 13(1) (d), 13(1) (e) and 13(1) (h) of the Act at the date of the Inspection.

#### **Decision of the Tribunal and reasons for the decision.**

18. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that there is dampness in the main living area and that the Property is clearly not wind and watertight. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

19. In respect of the complaint in terms of Section 13(1)(b) that 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 penetrating dampness in the living area is such that the that 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. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

20. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the Tolerable Standard, as the Tribunal has found that the dampness in the Property is contained to a small area at one of the front windows, the Tribunal finds that the Property is substantially free from penetrating dampness and so meets the Tolerable Standard.

21. The decision is unanimous.

#### **Repairing Standard Enforcement Order**

22. Having determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

#### **Appeal**

23. 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.

# K Moore

Signed

Karen Moore, Chairperson

3 April 2024