

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**Reference number: FTS/HPC/RP/23/4288**

**Re: Property at 14G Keptie Street, Arbroath, DD11 1RG (“the Property”)**

**Title Number: ANG61429**

**The Parties:**

**Miss Leigh Hamilton, residing at 14G Keptie Street, Arbroath, DD11 1RG (“The applicant”)**

**Discovery Estates No2 Limited (formerly known as FTP Angus Ltd), a company incorporated under the Companies Acts and having their registered office at 165 Brook Street, Broughty Ferry, Dundee, Scotland, DD5 1DJ (“The Respondent”)**

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**David Godfrey (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) in relation to the house concerned, and taking account of the evidence submitted by the applicant, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. On 6 November 2023 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the both the Repairing Standard and the Tolerable Standard.

2. The applicant says that the respondent has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act;
- (b) The structure and exterior of the house (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order in terms of Section 13(1)(b) of the 2006 Act;
- (c) 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 are in proper working order in terms of Section 13(1)(c) of the 2006 Act;
- (d) The fixtures and fittings provided by the respondent under the tenancy are in a reasonable state of repair and are in proper working order in terms of Section 13(1)(d) of the 2006 Act;
- (e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

And

- (f) The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

3. On 12 January 2024 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Applicant and the Respondent on 22 February 2024.

5. On 12 and 15 March 2024 the applicant made further written submissions. On 13 March the respondent made written submissions.

5. Tribunal members inspected the Property at 10am on 18 April 2024. The applicant was present. The respondent was represented by Ms C Herd, property manager, and Mr J Lawson, solicitor. During the inspection on 21 March 2024, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

6. Following the inspection of the Property the Tribunal held a hearing at Endeavor House, Greenmarket, Dundee at 11.45 on 18 April 2024. The applicant was present. The Respondent was represented by Mr J Lawson, solicitor, who was accompanied by Ms C Herd, property manager.

### **Summary of the issues**

7. The issues to be determined are

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006?)

Does the property meet the tolerable standard (as defined in s.13 of the Housing (Scotland) Act 2006?)

### **Findings of fact**

8. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 14 Keptie Street, Arbroath, DD11 1RG (“the larger property”). 14G Keptie Street, Arbroath, DD11 1RG (“the property”) is a double upper flatted dwelling house within the larger property. The landlord let the property to the tenant on 25 January 2023.

(b) The property is a two storeyed (second floor and attic) flatted dwellinghouse, entering by the common passage and stair known as 14 Keptie Street, Arbroath. The stair door has an entry phone system. The property is heated by storage and panel radiators. The front door opens onto a central hallway providing access to the kitchen, living room, internal bathroom, and one bedroom. Stairs lead to a landing providing access to two further bedrooms.

(c) A large front door provides access from the street to the common stair. An intercom entry system is fitted. The intercom works, but the stair door does not close because it has swollen. The door needs to be adjusted and rehung. The landlord’s agents have fixed a temporary sign on the door which says “*Intercom out of order*”

(d) The stair door is not secure and needs to be adjusted and rehung.

(e) During the inspection, damp meter readings were taken by the surveyor member. The readings were all within the normal range.

(f) Since the application was submitted, the landlord has carried out repairs to the kitchen window, to some of the kitchen cupboards, and has already purchased a replacement Velux window (for a bedroom on the upper floor), which his joiner is ready to fit.

(g) The window in the kitchen to the property has been fitted with a safety lock and a window restrictor. It opens and closes without difficulty. There is no fault in the kitchen window.

(h) Above the stairs which lead to the upper floor there is a Velux window. It is painted shut. There is no obvious method of opening and closing that Velux window.

(i) In the first bedroom on the upper level of the property there is a Velux window which lies open. The opening/closing mechanism does not work. The seal in the glazed unit is defective. That window needs to be replaced.

(j) In the second bedroom on the upper level, the window sits loose in frame. The window needs to be secured and adjusted. Although there are no signs of water penetration, the window is not housed properly and might be letting water in.

(k) The carpets throughout the property are loose. In some rooms, the smooth edge is incomplete. The carpets throughout the property are not properly laid. They are wrinkled and raised at the edges.

(l) The kitchen units have several defects. They are of poor quality and may be past their useful life. One of the drawers has no drawer front. Several of the kitchen drawers are stiff, and difficult to open and close. Some of the kitchen cupboard doors are loose and ill-fitting.

(m) In the bedroom on the lower floor of the property there is a fitted wardrobe. The doors of the wardrobe have come off their runner and now sit behind a curtain, resting on the wall. The wardrobe no longer has functioning doors.

(n) The internal bathroom has a white three piece sanitary unit. Above the bath there is a mechanical extractor fan. It does not work.

(o) In the bathroom there is a leak from the pipe connecting the cistern to the toilet pan.

(p) There are two Dimplex quantum storage heaters in the property. Tribunal members saw them power up. They had not been charged overnight, so no heat came from them during the inspection.

(q) In a cupboard off the master bedroom there are two immersion heaters fitted to the hot water tank. Hot water flows from the hot water taps when they are turned on.

(r) In the kitchen there is an extractor fan. It does not work.

(s) There is a crack in the skirting adjacent to the front door (in the hallway). That crack is a cosmetic defect.

## Reasons for the decision

9. (a) Tribunal members inspected this property at 10:00am on 18 April 2024. It was a cold, damp, early spring morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) From the street, tribunal members could see that the stair door does not close. Tribunal members used the intercom to alert the tenant that they had arrived. The intercom worked. The problem with the stair door is that it no longer fits into the door frame. It needs to be adjusted and rehung properly by a joiner.

(c) Tribunal members inspected the windows in the property. It is clear from parties' submissions that the respondent agrees that the window in the first bedroom on the upper floor needs to be replaced. That replacement window has been supplied and is ready to be fitted.

(d) There is a Velux window above the stairs within the property. That window is painted shut. There is no obvious method of safely opening and closing the window.

(e) In the second bedroom on the upper floor of the property, the window is loose in its casement. The window needs to be adjusted and secured.

(f) The applicant complains of damp and condensation mould. The respondent relies on a specialist report which says condensation mould is caused by the applicants use of the property, and a combination of adequate ventilation and heating will resolve the problem.

(g) During the inspection, tribunal members did not see signs of mould (or fungus). The surveyor member took damp meter readings throughout the property, and they were all within the normal range. The property is not affected by damp.

(h) There is, however, a problem with ventilation. Both the internal bathroom and the kitchen have mechanical extractor fans, neither of which work. Repairs are required to make those extractor fans work reliably.

(i) The applicant says that the storage radiators in the hallway and living room do not work. Tribunal members could see that the radiators powered up when switched on at the mains. The two heaters the applicant says are defective are Dimplex quantum storage heaters. They are new. There is no reliable evidence that they do not work. Because they had not been charged the night before, they did not give off any heat.

(j) When tribunal members ran the kitchen tap, hot water poured from the tap. There are two immersion heaters. The applicant says that only a tiny amount of hot water is provided, but within the time restraints of an inspection tribunal

members can only judge whether there is or is not hot water, not how much hot water is provided by the immersion heaters.

(k) The landlord must have an EICR. The unresolved complaints about the immersion heaters and the storage radiators will be resolved when the landlord exhibits the current EICR. The respondent's solicitor candidly agrees that there are defects in the property which require a repairing standard enforcement order, so the RSEO will include a requirement to exhibit the current EICR.

(l) The carpet throughout the property are loose. They need to be fitted properly. They are a furnishing provided by the landlord, so an RSEO is required to have the carpets stretched and the edges properly secured.

(m) The kitchen units have many defects. There are stiff drawers which are difficult to open and close. One drawer has a facing missing. There are loose cupboard doors. The kitchen units are a fixture and fitting provided by the landlord. They are not in a reasonable state of repair.

(n) The same is said of the wardrobe doors in the master bedroom. They need to be refitted securely to the wardrobe unit.

(o) The WC has a dripping leak from a pipe to the rear of the toilet pan. It is an installation for sanitation which is not in a reasonable state of repair.

(p) Neither of the extractor fans in the property work, they are appliances which are not in proper working order.

(q) The common stair door should be secured and is not. It is a fixture and fitting which is not in a reasonable state of repair.

(r) The application simply says that the house does not meet the tolerable standard, but does not specify why. The tolerable standard is set out in section 86 of the Housing (Scotland) Act 1987 (as amended) as follows.

a house meets the tolerable standard for the purposes of this Act if the house—

- (a) is structurally stable;
- (b) is substantially free from rising or penetrating damp;
- (c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;
- (ca) has satisfactory thermal insulation;
- (d) has an adequate piped supply of wholesome water available within the house;
- (e) has a sink provided with a satisfactory supply of both hot and cold water within the house;
- (f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;

(fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;

“the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances;

“the relevant requirements” are that the electrical installation is adequate and safe to use;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;

(k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health,

and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly.

(s) Tribunal members observations tell the tribunal that the property fails to meet the repairing standard, but the defects found in the house do not breach the tolerable standard.

(t) The respondent says they want to carry out repairs but the applicant refuses access. The applicant says that is not true. At the hearing, the respondent’s solicitor told us that there were a number of defects the landlord was not aware of, but conceded that they exist and, having taken instructions, told us that the landlord was keen to remedy the defects.

(u) The applicant told us that she wants the work completed and will cooperate with the respondent’s tradesmen to ensure the work is carried out swiftly.

(v) We therefore make a Repairing Standard Enforcement Order requiring the landlord to

1. Repair or replace all the defective windows on the upper floor of the property.
2. Refit the carpets throughout the property, securing them adequately..
3. Repair or replace the kitchen units.
4. Repair or replace the mechanical extractor fans in both the kitchen and the bathroom.

5. Repair the leak at the rear of the toilet in the bathroom.
6. Refit and rehang the entrance close door so that it fits securely, ensuring the locking mechanism is properly engaged
7. Provide the First-tier Tribunal for Scotland (HPC) with an up to date and clear EICR and PAT prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

All within 35 days.

### **Decision**

10. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
11. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
12. The decision of the tribunal was unanimous.

### **Right of Appeal**

**13. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

14. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed *Paul Doyle*  
Legal Member

22 April 2024