



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006**

**Reference number: FTS/HPC/RP/24/0535**

**Re: Property at 32 Kirriemuir Avenue, Glasgow G52 3DF (registered under title number GLA206617) (“Property”)**

**The Parties:**

**Franklin Didymus, 32 Kirriemuir Avenue, Glasgow G52 3DF (“Tenant”)**

**Harun Akhtar, 53 Dumbreck Road, Glasgow G41 5NU (“Landlord”)**

**Tribunal Members :**

**Joan Devine (Legal Member); Andrew Murray (Ordinary Member)**

**DECISION**

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(b) and (d) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

**Background**

1. By application dated 2 February 2024, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that they believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (a), (b), (d), (e) and (h) of the Act. The Application stated that the Landlord had failed to ensure that:
  - The Property is wind and watertight and in all other respects reasonably fit for human habitation.
  - The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

- Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
  - The Property met the tolerable standard.
3. The Tenant made the following complaints in the application and in the notification communications to the Landlord :
- Damp in the Property.
  - Mould in the Property.
  - Latches missing and seals defective on windows.
  - Hole in the bath.
  - Hole behind kitchen sink.
4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 14 May 2024.

### The Inspection

5. The Tribunal inspected the Property on the morning of 14 May 2024. The weather conditions at the time of the inspection were overcast and wet. The Tenant was present at the Property during the inspection as was Andrew Johnstone. The Landlord was present at the inspection along with Sharon McKnight from Rentahome. The Property is a first floor flat in a block of four with 1 bedroom, bathroom, kitchen living room a study to the rear of the Property and a study to the front. A schedule of photographs taken at the inspection is provided with this Decision.

### The Hearing

6. The Hearing took place on 14 May 2024 at Glasgow Tribunals Centre. The Tenant and the Landlord were in attendance. Andrew Johnstone was also in attendance. The Tenant told the Tribunal that they had lived in the Property since July 2020.
7. The Tribunal considered the issues raised in the Application. As regards the dampness in the Property the Tribunal asked if there had been any obvious water ingress into the Property. The Tenant said there had been no leaks. The Tribunal asked about the works carried out in recent months. The Landlord said that the works listed in his email dated 16 April 2024 had been carried out around 6 weeks ago. He said that the works included clearing the gutters (which was arranged by the neighbour) and inspecting the loft space where no leaks were found. The works also included filling the hole in the bath. He said that Advance Preservation Specialists had attended the Property on 13 May 2024 to provide an overall report about damp in the Property. He said that their report was awaited. The Tenant told the Tribunal that John Beaton from Glasgow City Council (Neighbourhoods, Regeneration and Sustainability) carried out an inspection of the Property and said there was damp in the kitchen. A notice regarding that was then served on the Landlord and the neighbour's landlord. The Tenant said that John Beaton re-inspected the Property at the end of the previous week and saw damp in the living

room. The Tenant confirmed that the gutters were cleared in the period between the two inspections.

8. As regards the mould in the Property the Tribunal noted that the photographs lodged by the Tenant showed the mould to be significantly worse than it was at the inspection. The Tenant said that the mould had been cleaned on 16 and 17 February 2024 which was after the pictures had been taken.
9. As regards the windows the Tribunal noted that the seal appeared to have failed on some of the windows and this was particularly apparent in the study to the rear of the Property. It was also noted that a handle was missing from the window in the study to the front of the Property and that a number of latch pads were missing from the windows throughout the Property.
10. As regards the hole in the bath the Tenant said they did not know if the bath hole allowed water to leak through as they had not felt comfortable to use the bath other than for showering. The Tenant said that the neighbour downstairs has damp in their bathroom.
11. As regards the hole behind the kitchen sink the Tenant confirmed that a PVC strip had been placed over the hole.

### The Evidence

12. The evidence before the Tribunal consisted of:
  - 12.1 The Application completed by the Tenant
  - 12.2 Land Register report relating to the Property
  - 12.3 Communication from the Tenant to the Landlord dated 31 January 2024 notifying them of the issues complained about in the Application.
  - 12.4 Screenshots of messages between the Parties.
  - 12.5 Copy emails between the Tenant and Rentahome Scotland Ltd.
  - 12.6 Copy emails between the Tenant and Glasgow City Council.
  - 12.7 Photographs of the Property.
  - 12.8 Tenancy agreement between the Parties.
  - 12.9 Inspection Reports dated 24 June 2020, 26 May 2021, 1 September 2021, 19 January 2022, 9 August 2023 and 12 March 2024.
  - 12.10 Email from Annmarie Crowe dated 30 April 2024.

12.11 Written submission from the Landlord dated 16 April 2024 with documents annexed.

12.12 Email from the Tenant dated 10 May 2024 attaching letter from John Beaton of Glasgow City Council (Neighbourhoods, Regeneration and Sustainability) dated 8 May 2024.

12.13 The Tribunal's inspection of the Property

12.14 The oral representations of the Tenant and the Landlord.

### Summary of the Issues

13. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on him by Section 14(1)(b).

### Findings in Fact

14. Tribunal made the following findings in fact:

1. The Tenant has lived in the Property since July 2020.
2. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
3. The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
  - 3.1.1 There was no evidence of recent or current water ingress into the Property.
  - 3.1.2 There was evidence of historic damp in the Property.
  - 3.1.3 The mould in the Property was cleaned in February 2024.
  - 3.1.4 The double glazing units of the windows in the kitchen, living room and study to the rear of the Property have failed.
  - 3.1.5 A handle is missing from the window in the study to the front of the Property.
  - 3.1.6 There are latch pads missing from some windows.
  - 3.1.7 The hole in the bath has been filled.
  - 3.1.8 The hole behind the kitchen sink has been covered by a PVC strip

### Reasons for Decision

15. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (b) and (d) of the Act.

16. The Property is wind and watertight. There was no evidence of recent or current water ingress in the Property. There was evidence of historic dampness in that there was some staining on the wall in the kitchen and living room and in the cupboard in the living room. The Tribunal considers it likely that the kitchen and living room surfaces still held moisture when inspected by John Beaton, but that the surfaces have since dried out post-gutter cleaning. It can take several weeks for damp plaster surfaces to dry out post water damage. The mould shown in pictures lodged by the Tenant had been removed in February 2024 and had not returned. The residual mould spots still visible on the window frames are likely to be as a result of a combination of historic leaks and condensation.
17. The structure of the Property is not in a reasonable state of repair as the double glazing units in the windows in the kitchen, living room and study to the rear of the Property have failed.
18. The fixtures and fittings in the Property are not in a reasonable state of repair as a handle is missing from the window in the study to the front of the Property and there are latch pads missing from some windows.
19. The Tribunal found nothing to support the suggestion that the Property does not meet the tolerable standard.

### Decision

20. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in respect of Section 13(1)(b) and (d) of the Act.
21. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

# J Devine

**Legal Member  
15 May 2024**