

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



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 27 and Section 60 of the Housing (Scotland) Act 2006 (“the 2006 Act”)**

**Chamber Ref: FTS/HPC/RP/22/4346**

**Property at Flat 5/L, 84 Commercial Street, Dundee, DD1 2AP (“the Property”)**

**Property Description:- Flat 5/L, 84 Commercial Street, Dundee, DD1 2AP situated on the attic floor and forming part of ALL and WHOLE the three houses entering by 84 Commercial Street, Dundee lying in the County of Angus described in the Disposition granted by The Scottish Metropolitan Property PLC to Sale Developments Limited dated Twenty second April and recorded in the Division of the General Register of Sasines for the County of Angus on 20 June both months Nineteen Hundred and Ninety One. (“the Property”)**

**The Parties:-**

**Mr Conor McConville, Flat 5/L, 84 Commercial Street, Dundee, DD1 2AP (“the Tenant”)**

**Sale Developments Limited, Westburn House, North Dunning, Perthshire, PH2 0QY (“the Landlord”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and David Godfrey (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), with reference to the Repairing Standard Enforcement Order (“RSEO”) dated 14 March 2023 and, having considered the application by the Landlord for a Certificate of Completion of Works and the outcome of the Tribunal’s subsequent further enquiries in this regard, the Tribunal determined that a Certificate of Completion of Works should be issued in terms of Section 60(4) of the 2006 Act. The Tribunal further determined to revoke the rent relief order in terms of section 27(4) of the 2006 Act.**

**Background**

1. Reference is made to the decision of the Tribunal dated 14 March 2023 which concluded that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in that

it had failed to ensure that the Property met the Repairing Standard. On the same date the Tribunal issued a RSEO in respect of the Property. The works required by the RSEO were:-

- i. To repair or replace the kitchen and bedroom windows to ensure that they are wind and watertight, in a reasonable state of repair and in proper working order and open and close correctly.
- ii. To engage a suitably qualified contractor to investigate the extent and cause of the water ingress into the sloping ceiling and adjacent wall near to the north west dormer projection in the kitchen and to provide to the tribunal for approval a report detailing the cause of and any works required to eradicate any such ingress of water to ensure the sloping ceiling and adjacent walls are wind and watertight and in a reasonable state of repair and, following approval of the report and works stated to be required, to execute any repairs identified as being necessary and to provide evidence thereof to the tribunal.
- iii. On completion of the works referred to in 2 above to provide to the tribunal written confirmation that the source of the dampness has been eradicated.

The RSEO required the Landlord to complete the works within two months of the date of service of the order.

2. On 19 July 2023 the Tribunal re-inspected the Property. The re-inspection revealed that repairs had been carried out to the roof covering in the vicinity of the sloping ceiling and adjacent wall near to the north west dormer projection in the kitchen. All other works remained outstanding. In respect that the outstanding repairs were due to commence on 24 July 2023 the tribunal agreed to adjourn the re-inspection to a later date to allow those works to be completed. The re-inspection was adjourned to 9 August 2023.
3. On 9 August 2023 the Tribunal re-inspected the Property. The re-inspection revealed that subsequent to the previous re-inspection on 19 July 2023 the north gable wall of the kitchen has been redecorated. However, the repair/replacement of the kitchen and bedroom windows was still outstanding and damp staining was evident to the north gable wall of the kitchen. The Tribunal determined that the Landlord has failed to comply with the RSEO. The Tribunal also issued a Rent Relief Order.
4. The Tribunal received the following additional documents from the parties:-
  - i. Email from the Tenant dated 19 October 2023 with photographs attached.
  - ii. Email from Landlord's representative, Ms Hazel Young of Rockford Properties, dated 12 December 2023 stating the works required by the RSEO were complete.
  - iii. Emails from Tenant dated 4 and 23 January 2024.
  - iv. Email from Ms Young dated 8 February 2024.
  - v. Emails from Ms Young dated 12 March 2024 with invoice of Leys Slaters.
5. The Tribunal reinspected the Property on 12 March 2024. The Tenant was present. The Landlord was not present but was represented by Ms Young. The Tribunal understood repairs had recently been carried out to the chimney-head on the north gable of the building

adjacent to where the water penetration was observed within the kitchen. The windows in the kitchen and bedroom had been replaced. Damp staining was evident to the north gable wall of the kitchen. Damp meter readings were taken and the readings were noted to be unacceptably high. The Tribunal issued a Re-inspection Report.

6. By email dated 3 April 2024 Ms Young responded to the Re-inspection Report. The Tenant responded by email dated 4 April 2024.
7. On 30 May 2024 the Tribunal issued a Direction to the Tenant to lodge with the Tribunal dated photographs showing the current condition of the sloping ceiling and adjacent wall near to the north west dormer projection in the kitchen of the Property where, previously, water was penetrating.
8. The Tenant produced photographs by email dated 10 June 2024.
9. Ms Young sent further representations for the Landlord by email dated 12 June 2024 and her colleague, Ms Natalie Robertson, also sent representations by email dated 19 June 2024 with photographs attached.
10. The Tribunal held a hearing at Endeavour House, Endeavour House, 1 Greenmarket, Dundee, DD1 4QB on 19 June 2024. At the hearing the Tenant was present. The Landlord was not in attendance but was represented by Ms Young and Ms Robertson.
11. The Tenant referred to the wall where water penetration had previously been observed in the kitchen having been redecorated by the Landlord's contractor immediately prior to the Hearing. He said he was not convinced that the water penetration issues had been resolved. He expressed concern that the dampness might return. He stated that the dehumidifier was still running in the kitchen. He accepted the dampness had not got noticeable worse since the Tribunal's inspection on 12 March 2024 despite substantial rain from time to time.
12. Ms Young for the Landlord submitted that when she dropped off the dehumidifier at the Property on 23 May 2024 the wall felt dry. She noticed dust on her hands. On 11 June the painter and decorator attended and removed the wallpaper from the wall. He confirmed the wall was dry. He redecorated the wall on 18 June 2024. It remained dry. The Landlord sought that the RSEO be removed and the Rent Relief Order revoked.

### **Reasons for Decision**

13. The Tribunal was satisfied based on the findings of the re-inspection on 12 March and having considered additional photographic evidence provided by the Tenant in particular, that the RSEO had been complied with. The staining on the wall on 12 March 2024 and in the photographs provided on 10 June looked largely the same which would tend to reflect the wall having dried out in the intervening period. There had been very substantial rainfall from time to time and particularly in the days prior to the Hearing. There had been no water penetration.

14. The Tribunal therefore determined to issue a Certificate of Completion and revoke the Rent Relief Order.
15. The decision of the Tribunal was unanimous.

### **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.**

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or 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 is abandoned or determined.

# G Buchanan

**Date:- 01 July 2024**