

# 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: Sections 26 and 27 of the Housing (Scotland) Act 2006, as amended**

**Chamber Ref: FTS/HPC/RT/23/3949**

**Title no: ANG39428**

**49 Meadowside, Dundee DD1 1EQ (“The Property”)**

**The Parties:-**

**Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee DD1 3BA (“the Third Party Applicant”)**

**Miss Moonstarlyn Enweremadu, 49 Meadowside, Dundee DD1 1EQ (“the Tenant”)**

**Mr Sean Lewis, SGL Investment Limited, Registered Office, Top Floor, India Buildings, 86 Bell Street, Dundee DD1 1HN (“the Landlord”)**

**Tribunal Members: Richard Mill (Legal Member) and Donald Wooley (Ordinary Member)**

### **Decision**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made enquiries for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the property concerned, and taking account of all representations received, unanimously determined that the Landlord has failed to comply with the RSEO; Further, the Tribunal determined to make a Rent Relief Order.

### **Background**

2. Reference is made to the determination of the Tribunal dated 5 March 2024 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) and to the Repairing Standard Enforcement Order (“the RSEO”) also dated 5 March 2024 confirming that the Landlord had failed to ensure that the property meets the repairing standard.

3. The RSEO required the Landlord to undertake works as is necessary for the purposes of ensuring that the property concerned does meet the repairing standard and that any damage caused by the carrying out of work in terms of the said Order is made good.

4. In particular, the RSEO required the Landlord :

“1. To provide a copy of a satisfactory Gas Safety Certificate from a registered Gas Safe engineer for the property.

2. To instruct a suitably qualified contractor to make investigations and carry out works required to ensure that the property is wind and watertight and, in particular, to repair or replace all roof materials, fixtures and fittings as necessary and to make the roof watertight and to ensure that there is no likelihood of water ingress to the property. The work undertaken, together with a report from the relevant contractor, requires to be evidenced in the Tribunal.

3. To make good the internal condition and decoration of the property damaged by water ingress, to include repairing or replacing all necessary ceilings, walls and floor coverings and to, thereafter, redecorate to ensure that there is no water staining.

4. To repair or renew the defective electrical ventilator in the bathroom and remove and treat all areas of mould (and any fungi) on all surfaces and finishes, including all carpets and other furnishings.

The Tribunal orders that the requirements specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice and evidenced to the Tribunal.”

### **Reasons for Decision**

5. The Tribunal carried out a reinspection of the property on 30 August 2024 at 10.00 am. All parties were notified. The Tenant was on holiday and was unable to allow entry but had arranged for a friend to do so. Only the Tribunal Members were in attendance. There was no appearance for the Third Party Applicant and it is understood that its representative was on holiday. The Landlord had been invited but did not attend and was not represented.

6. After the reinspection the Tribunal convened a hearing at 11.30 am at Endeavour House, Dundee. None of the parties participated.

7. No vouching, documentation or other evidence, has been provided by or on behalf of the Landlord in implementation of the RSEO. The RSEO required a copy of a satisfactory Gas Safety Certificate from a registered gas safe engineer. No such Certificate has been produced. Whilst a previous Gas Safety Certificate for the property had been provided by the Landlord dated 6 December 2023, this contains defects. No report on the condition of the roof, nor work undertaken on the roof has been provided. Those were requirements of the RSEO.
8. On 19 August 2024 the Tenant provided an update to the Tribunal advising that little work had been undertaken in the implementation of the RSEO. The defective electrical ventilator in the bathroom had been replaced, but otherwise no work had been undertaken. She specifically referred to ongoing water leaks into the property.
9. Reference is made to the Tribunal's reinspection report prepared by Mr Wooley the Ordinary Member. Said reinspection report is attached to this Statement of Decision.
10. The reinspection of the property revealed:-

Damp staining remains in the property in the bathroom, living room, living room cupboard, kitchen and the mezzanine. This is consistent with that noted at the time of the property's original inspection in February 2024. Damp meter readings taken showed a range of damp with some areas noted to have high water content. This evidences active water ingress.

The defective electrical ventilator in the bathroom has been replaced, but areas of mould remain on the ceiling.

11. In all of the circumstances, the Tribunal concluded that the Landlord has failed to comply with all four of the requirements of the RSEO:-
  1. No satisfactory Gas Safety Certificate has been produced.
  2. There is evidence of active water ingress. No roofing report has been produced as required by the RSEO. The Tenant continues to report water ingress in the property which is credible given the damp meter readings noted at the time of the reinspection.
  3. The extensive damp staining and areas of mould throughout the property remain and it has not been redecorated.
  4. Whilst the electrical ventilator in the bathroom has been replaced, areas of mould remain most notably in the shower.

12. No information was available which would justify affording the Landlord a further opportunity to carry out the works, and the outstanding issues originally identified remain outstanding. There has been no compliance. The Landlord has failed to comply with the Repairing Standard Enforcement Order.
13. The Tribunal also decided to make a Rent Relief Order in terms of Section 27 of the Act. Having taken into account all the circumstances of which it was aware, the Tribunal decided that a Rent Relief Order for 30% of the rent was just, equitable and proportionate. The tenant's enjoyment of the property is materially interfered with as a consequence of the defects in the property which the landlord has failed to address. The property is not wind and watertight.
14. Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. Accordingly, the Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

### **Right of Appeal**

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.

R Mill

Legal Member :

Date : 2 September 2024

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### First-Tier Tribunal for Scotland (Housing and Property Chamber) Re-inspection report



**Property** Flat 4, 49 Meadowside, Dundee, DD1 4QB

**Ref No:** FTS/HPC/RT/23/3949

**Surveyor:** Donald Wooley MRICS

#### **Previous inspection**

The subject property was previously inspected on 27 February 2024 by the First-tier Tribunal for Scotland (Housing Property Chamber). Following the inspection, and subsequent hearing a Repairing Standard Enforcement Order (RSEO) was issued by both email and by post.

### **Access:**

A re-inspection of the subject property was arranged for Friday 30 August 2024 at 10.00 am. I arrived at the property at 09.45 am and met Mr. Richard Mill the legal member of the Tribunal.

Access to the property was provided by a colleague of the current tenant as she was unable to attend due to a previous commitment. The landlord was neither present nor represented at the inspection.

Weather conditions at the time of the inspection were dry and sunny. Both Tribunal members left the property at 10.20 am

### **Purpose of re-inspection**

The purpose of this re-inspection was to determine if the required works as detailed under the Repairing Standard Enforcement Order had been completed.

### **Work required under the Repairing Standard Enforcement Order (RSEO):**

1. To provide a copy of a satisfactory Gas Safety Certificate from a registered Gas Safe engineer for the property.
2. To instruct a suitably qualified contractor to make investigations and carry out works required to ensure that the property is wind and watertight and, in particular, to repair or replace all roof materials, fixtures and fittings as necessary and to make the roof watertight and to ensure that there is no likelihood of water ingress to the property. The work undertaken, together with a report from the relevant contractor, requires to be evidenced in the Tribunal.
3. To make good the internal condition and decoration of the property damaged by water ingress, to include repairing or replacing all necessary ceilings, walls and floor coverings and to, thereafter, redecorate to ensure that there is no water staining.
4. To repair or renew the defective electrical ventilator in the bathroom and remove and treat all areas of mould (and any fungi) on all surfaces and finishes, including all carpets and other furnishings.

### **Site Observations**

Other than the Gas safety certificate dated 6<sup>th</sup> December 2023, provided to the Tribunal by email immediately after the original hearing highlighting that the protective equipotential bonding was unsatisfactory, no further report has been exhibited to the Tribunal and none was made available during the re-inspection.



**27 February 2024**



**30 August 2024**



**30 August 2024**

The vegetation previously noted at the eaves and valley areas remains and appears to have increased.



**27 February 2024**



**30 August 2024**

The damp staining clearly visible at the entrance to the living room remains. Dry at the time of inspection there has been no redecoration or repair completed to the plasterwork.





**27 February 2024**



**30 August 2024**

The damp staining and mould, visible in the cupboard next to the entrance to the living room remains. Dry at the time of inspection, there has been no redecoration, mould removal or repair completed to the plasterwork.



**27 February 2024**



**30 August 2024**

The damp staining clearly visible on the kitchen ceiling remains. Damp readings at a level likely to cause further deterioration were obtained and there has been no redecoration or repair completed to the plasterwork.



**27 February 2024**



**30 August 2024**

The damp staining clearly visible below the mezzanine cupola remains. Dry at the time of inspection there has been no removal of the mould, redecoration or repair completed to the plasterwork.



**27 February 2024**



**30 August 2024**

The damp staining above the shower area remains. Dry at the re-inspection there has been no removal of the mould, redecoration or repair to the plasterwork.



**27 February 2024 - Bathroom vent**



**30 August 2024 – Bathroom vent**



**27 February 2024 – Damp readings**



**30 August 2024 – Damp readings**

The ceiling mounted electrical ventilator in the bathroom has been repaired and was functioning satisfactorily during the re-inspection. The surrounding damp staining on the ceiling remains, there are isolated areas of damp and the ceiling has not been redecorated.



**30 August 2024**

The damp readings on the bathroom ceiling were localised and no significant levels were noted at several areas close to the ventilator despite highly visible staining.



**27 February 2024 – Mutual wall bathroom/living room**



### **30 August 2024 – Mutual wall bathroom/living room**

Moisture readings taken in the bathroom at the mutual wall with the living room/kitchen area remain positive at an area immediately above the lower wall cladding.

#### **Outstanding Repairs and items in RSEO:**

No satisfactory Gas Safety Certificate for the property from a registered Gas Safe engineer has been provided.

No evidence of any work having been completed to the roof or any supporting contractor's report on the general condition and recommended remedial action have been provided. Localised evidence of internal damp remains.

Residual damp staining and mould remains in the bathroom, the living room, the living room cupboard, the kitchen area and below the mezzanine cupola roof light. No internal redecoration or repair to plasterwork have been completed

The previously defective electrical ventilator in the bathroom has now been repaired.

#### **Comments:**

This report should be considered as an appendix to the Decision of the Tribunal following the re-inspection of the property and subsequent hearing at Endeavour House, Dundee on 30 August 2024.

Donald Wooley MRICS  
Ordinary Member  
First-Tier Tribunal for Scotland  
2 September 2024