



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/23/3241**

**Re: Property at 3 Alma Terrace, Laurencekirk, AB30 1FL (“the Property”)**

**Parties:**

**Marjorie Stewart, 4 Garvocklea Gardens, Laurencekirk, AB30 1BG (“the Landlord”); and**

**Mrs Julie May, 3 Alma Terrace, Laurencekirk, AB30 1FL (“the Tenant”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) unanimously determined to vary the Repairing Standard Enforcement Order (“RSEO”) by instructing the Landlord to carry out further works, and extending the period of completion of the works by 6 months from the date of this decision.**

**Background**

- 1 By application to the Tribunal, the Tenant sought an order against the Landlord on the basis that they had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”). The Tribunal carried out an inspection of the property on 1<sup>st</sup> March 2024 and held a hearing that same day. The Landlord was represented at the hearing by Ms Catriona Truscott and Mrs Deirdre Latimer. The Tenant was present and accompanied by her son. Following the hearing the Tribunal made a repairing standard enforcement order (“RSEO”) under section 24 of the 2006 Act requiring the Landlord to:-
  - (i) Instruct a damp and condensation specialist, but not the specialist who attended previously, to investigate the damp and mould within the property and produce said report to the Tribunal for further consideration. The said

damp and condensation specialist should be provided with a copy of the Tribunal's decision for reference;

- (ii) Instruct a drain specialist, but not the specialist who attended previously, to clear the blocked drain and further, to inspect the drains pertaining to the property and produce said report to the Tribunal for further consideration; and
- (iii) Instruct a roofing contractor to inspect the roofs and chimneys and carry out such repairs as are necessary to ensure the property is wind and watertight. The said roofing contractor should be provided with a copy of the Tribunal's decision for reference

The Tribunal ordered that the works specified in the RSEO be carried out and completed within a period of eight weeks. Reference is made to the decision of the Tribunal dated 8<sup>th</sup> April 2024 in this regard.

2 The Tribunal subsequently received written representations from both parties as follows:-

- (i) On 22 April 2024 the Landlord's representatives emailed the Tribunal with invoices from Drain Surgeon (North East) Ltd and D&D Slating Ltd pertaining to the clearance of the drains and works to the roof. The Landlord's representatives advised the full drain survey would be instructed in due course following the making of the RSEO.
- (ii) On 1 May 2024 the Tenant emailed the Tribunal. She explained the circumstances which she believed had led to the blocked drain. She listed a number of costs that she had incurred as a result of the Landlord's failure to address the repairs.
- (iii) On 27 May 2024 the Landlord's representatives emailed the Tribunal with a survey report from McKay Preservation dated 9 March 2022, a survey report and estimate from Wise Property Care dated 29 April 2024, invoices from D&D Slating dated 15 March 2024, a CCTV Survey report from No.1 Drains Aberdeen dated 19 April 2024, and invoices from Drain Surgeon (North East) Ltd dated 15 March 2024.
- (iv) On 31 May 2024 the Tenant emailed the Tribunal. She advised that the house was heated and ventilated continuously and her household was not responsible for the damp and mould in the property.
- (v) On 16 July 2024 the Tenant emailed the Tribunal. She explained that rain water was still coming through the roof in the utility room, as well as the living room and upstairs hallway. She provided photographs in support of her representations.
- (vi) On 25 July 2024 the Landlord's representatives emailed the Tribunal. They confirmed that repairs to the roof had been completed by D&D

Slating in March 2024. D&D Slating had returned to the property on 20 May 2024 and the Tenant had not identified any ongoing issues. The new reports were a concern and D&D Slating had been asked to go back to the property. They were arranging a suitable date with the Tenant and had been asked to do so as a matter of urgency. The Landlord's representative provided copy email correspondence in support of their representations.

- (vii) On 12 August 2024 the Landlord's representative emailed the Tribunal. They provided an email from the Director of D&D Slating who had attended the property. D&D Slating had found that the leak was coming from the polycarbonate conservatory roof seal which had now been fixed. The other areas were historic stains and there was no other evidence of water ingress.
- (viii) On 15 August 2024 the Tenant emailed the Tribunal with a list of outstanding repairs including a blockage in the downstairs bathroom, a leak from the utility room roof, ongoing water ingress in the living room and upstairs hall, a temperamental light switch in the kitchen, unsafe decking and unsafe gate and fencing. The Tenant further advised that she was working with the local authority to obtain alternative accommodation.
- (ix) On 18 August 2024 the Tenant emailed the Tribunal with a copy of a Legionnaires Disease Risk Assessment dated 27 May 2024.
- (x) On 20 August 2024 the Landlord's representatives emailed the Tribunal to confirm the actions that were being taken in response to the Tenant's list of outstanding repairs. They provided photographs and copy correspondence in support of their representations.
- (xi) On 29 August 2024 the Landlord's representative emailed the Tribunal with a copy report from Drain Surgeon (North East) Limited dated 20 August 2024 and a copy email from Aberdeen Considine outlining the progress with the outstanding repairs.
- (xii) On 2 September 2024 the Tenant emailed the Tribunal with photographs of the leaking utility room roof. The Tenant advised that the roof had leaked on the 8<sup>th</sup>, 15<sup>th</sup>, 24<sup>th</sup> and 2<sup>nd</sup> September.
- (xiii) On 6 September 2024 the Landlord's representative emailed the Tribunal. In summary, they advised that there had been some confusion over whether the roof was leaking, or not. However D&D Slating were due to return to the property the week commencing 9 September 2024. An electrician was also due to attend to inspect the ceiling lights.
- (xiv) On 9 September 2024 the Tenant emailed the Tribunal to advise that the information from the Landlord's representative was misconstrued.

The roof would leak when it was raining, and the time it took for the water to filter through would depend on how heavy the rain was. The Tenant confirmed that she would keep reporting the leaks, as and when they happened.

- 3 The Tribunal considered whether to carry out a re-inspection of the Property. However, having regard to the nature of the RSEO, the Tribunal considered it would be more appropriate to hold a hearing in the first instance, prior to determining further procedure. A hearing was therefore scheduled for 13 September 2024. Parties were given notification of the hearing on 12 August 2024.

### **The Hearing**

- 4 The hearing took place in the Employment Tribunal centre on Huntly Street on The Landlord was represented by Ms Latimer and Ms Truscott. The Tenant was present and accompanied by her friend Nikola Gray as a supporter.
- 5 The Tribunal explained the purpose of the hearing and proceeded to address each of the elements of the RSEO with the parties. For the avoidance of doubt the following is a summary of the evidence relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.

#### Damp and condensation

- 6 Ms Latimer confirmed that the damp and condensation report had been submitted to the Tribunal within the timescale required. It was their intention to proceed with the works. They had put money aside with the Landlord's agent Aberdein Considine for this purpose. The latest damp survey had recommended similar actions to what had previously been suggested back in 2022. The Landlord's representatives didn't see any point in doing the work again, and were instead keen to carry out the more extensive works that had been recommended, in order to deal with the root cause. Ms Latimer pointed out that the damp surveys had all indicated that the ventilation in the Property was a problem.
- 7 Ms May, the Tenant, stated that the comments about heating and ventilation were wrong, regardless of how many surveys had been done. The property was ventilated all day, with various windows opened. The heating was on to suit her daughter's needs. Ms May wished to highlight that the recent survey had been carried out on a warm day, where doors had been opened. Ms May stressed that she constantly ventilated the house and the heating was put on, as and when needed. Ms May acknowledged that the Landlord wished to proceed with works to the property, however those works would be extensive and she had concerns regarding her daughter who was autistic and had FND. The commotion surrounding any works would have a significant impact on her daughter. Ms May had approached the Landlord's agent Aberdein Considine with a view to obtaining alternative accommodation however they had refused. She had then asked if the landlord's insurance would meet the costs, but they

could only offer a months cover. This was not possible as the minimum term for a tenancy was 6 months. Ms May advised that she couldn't afford to pay for another property, as well as the Property, whilst the works were being done. Ms May reiterated that she was making attempts to move out of the Property but had been unable to do so. She understood that the works needed to be done, but there should also be a duty of care to her daughter.

- 8 Ms Latimer confirmed that her understanding from the quotation she had received for the works was that they could be undertaken whilst the tenants were still living there.

### Drains

- 9 Ms Latimer and Ms Truscott confirmed that the drain specialist had been back out to the property in response to complaints from the tenant. However the Landlord would need to instruct another drain survey to be undertaken due to the recent reports of stones in the drain. Following receipt of that survey it was their intention to seek estimates for any work that may be required.
- 10 Ms May explained, in response to allegations of fat in the drain, that this was a result of various other people having to come in to the Property and cook for her daughter. Somebody may have put fat down the drain unintentionally. Ms May stated that, with regard to stones being placed in the drain, various other surveys had been done and had concluded that the system was old and could not cope. The bends would create blockages and due to the incline and decline of the pipes it was inevitable that blockages would occur. Ms May pointed out that the drains did not have sufficient cover to prevent stones and leaves from entering the drains. At this point the Tribunal viewed the photographs taken of the drains and noted that the covers did not fully cover the entrance point.

### Roof

- 11 Ms Truscott explained that D&D Slating had attended the Property in March 2024 to carry out repairs to the roof. They had gone back to the Property in May 2024 to take photos, and at that point the Tenant had said there were no problems. D&D Slating had then returned on 2 August 2024 following reports of water ingress from the Tenant and had carried out another small repair to the sealant of the conservatory roof, and had since been back to the Property to check that there were no further issues. The Tenant had stated during a telephone call with D&D Slating on 22 August 2024 that there were no leaks. However the Tenant had since been back in touch to advise that there were leaks. It was confusing. D&D Slating had faced some issues in getting access to the property. Ms Truscott also pointed out that the Landlord's agent had indicated that the Tenant had submitted duplicate photos of the water ingress. In response to the recent reports from the Tenant, D&D Slating and OneStop Maintenance had both returned to the Property shortly prior to the hearing to inspect the roof and had stated that it was watertight. She advised that Aberdeen Considine had recently sent confirmation of these visits, together with photographs, which could be sent on to the Tribunal if required.

- 12 The Tenant advised that some communications had been misconstrued. She advised that she had been in East Kilbride taking care of her mother. Her daughter had been in the house dealing with the contractors. On 5<sup>th</sup> August the Tenant's daughter had seen water on the floor after a period of heavy rain. Rain was coming through the spotlights in the utility room. She had reported this to Aberdeen Considine. The Tenant pointed out that the leaks were coming from the same place as before, so the photos may look similar. She had photos dated both 5<sup>th</sup> August, and 15<sup>th</sup> August when the problem re-occurred. D&D Slating had said they would come out and inspect the roof. They had spoken with her daughter who felt uncomfortable, and had said that there were no leaks at that particular point in time, not generally speaking. It could take up to 24 hours after a period of heavy rain for the water to come through. D&D Slating thought this was bizarre and had asked the Tenant to video call them the next time the roof leaked. The Tenant explained that it had been raining really heavily on the 2<sup>nd</sup> September, with water coming through the spotlights in the utility room. The Tenant had taken photos and submitted these to Aberdeen Considine. D&D Slating didn't attend the property, however another company OneStop Maintenance had come out to look at the decking and the fence, and took a look at the roof whilst they were at the Property. They put a drone up to see where the leaks were coming from. The Tenant didn't know whether they had inspected the property internally. D&D Slating had not been back out to the property since completing the minor repair in August 2024.
- 13 Ms Gray interjected at this point to advise that she had also seen water coming through the light fixings in the utility room approximately one week prior to the hearing. She had seen where the water was coming through, with markings on the roof, but there was no leak at the time she was at the Property.
- 14 The Tenant advised that she would continue to report any leaks to Aberdeen Considine. It was entirely up to them as to whether the problem was fixed.
- 15 Ms Latimer explained that Aberdeen Considine had asked the Tenant to provide video evidence of the water leaks when they happened. From the Landlord's point of view, they had instructed works to the roof and had been told it was repaired. They had no reason to believe otherwise at this stage. Two contractors had told them that the roof was watertight.
- 16 The Tribunal gave both parties an opportunity to make any final statements. Ms Latimer stated that the Landlord had done everything that was required of them under the RSEO. She and Ms Truscott had to take into consideration that they were powers of attorney for the Landlord, their mother, and they were acting on her behalf. They therefore had to be absolutely accurate on any expenditure and they had other financial responsibilities, particularly the cost of their mother's care.

- 17 The Tenant advised that she had been working tirelessly to get out of the property as soon as possible. She had been looking for another house since before the application was made to the Tribunal. She was unable to move into another private rented property and was looking for accommodation with the local authority. She was working with a local Councillor and the local authority to ensure that this happened sooner rather than later.
- 18 The hearing concluded and the Tribunal determined to issue its decision in writing, following consideration of the additional information from the Landlord regarding the roof.
- 19 Following the hearing the Landlord's representative submitted correspondence from Aberdeen Considine regarding the roof together with photographs. The Tenant also submitted medical information regarding her daughter's condition, photographs of the utility room ceiling, copy invoices for the supply of kerosene and photographs of alleged rising damp. The Tribunal was clear however at the hearing that rising damp had not been included in the application and therefore the Tribunal could not consider it as part of the current proceedings. This would not however prevent the Tenant from pursuing a further application to the Tribunal if she wished to do so.

### **Reasons for decision**

- 20 The Tribunal determined the application having regard to the terms of the application, the written representations and the evidence heard at the hearing, along with the findings from the Tribunal's previous inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 21 The Tribunal therefore had regard to Section 25 (1) of the Act which states *"the first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it."*
- 22 With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal noted that the RSEO had primarily instructed the Landlord to obtain specialist reports and submit these to the Tribunal for further consideration as to what works may be required. The Tribunal therefore considered it would be premature to revoke the RSEO at this stage in the proceedings as it was clear from the evidence that further action was required in order to meet compliance with the Repairing Standard.
- 23 The Tribunal then considered Section 25(1)(a), and whether it should vary the RSEO.
- 24 The Tribunal accepted that the Landlord had complied with the RSEO insofar as obtaining specialist reports regarding the damp and condensation, and the

drains, and therefore that the Landlord had made satisfactory progress in complying with the RSEO. The Tribunal therefore concluded that it would be appropriate to now vary the RSEO to require the Landlord to carry out the works identified in said reports in order to ensure the property was wind and watertight, and the drains were in proper working order. The Landlord's representative had indicated a willingness at the hearing to progress the works required, with money set aside for the damp and condensation schedule.

- 25 With regard to the drains, the Tribunal noted the recommendations in the latest survey report from No.1 Drains Aberdeen which indicated that the poor structure of the drains was the cause of the operational issues, as opposed to any detritus getting into the pipes. The Tribunal would therefore expect the Landlord to take steps to rectify the issues with the structure of the drains in order to ensure that they are in proper working order.
- 26 With regard to the roof, the Tribunal accepted that the Landlord had already carried out extensive works at significant cost. There appeared however to be a dispute between the parties as to whether there remained problems with water ingress. Whilst the Tribunal had some difficulty in finding that there were ongoing leaks due to a lack of sufficient evidence, the Tribunal did not believe that the Tenant would fabricate such reports. The Tribunal could see no benefit to her in doing so. The Tribunal therefore concluded it could reasonably assume that the roof was not presently wind and watertight, particularly in the utility area, and it would therefore be reasonable to vary the RSEO to instruct the roofing contractor to return to the property and carry out a thorough inspection to identify whether there are any ongoing defects that may explain the reports of water ingress.
- 27 The Tribunal was mindful of the mental health of the Tenant's daughter, which may delay the progress of works and require adjustments to be put in place whilst said works are ongoing. The Tribunal therefore determined to vary the RSEO to allow a period of six months for the works to be completed. The Tribunal would however expect parties to cooperate in ensuring that the works can be completed as soon as reasonably practicable, and would request the Landlord notifies the Tribunal in the event that the repairs are completed in advance of the expiry of the six month period.
- 28 The Tribunal therefore determined to vary the RSEO to require the Landlord to undertake further works as specified therein and to extend the period for completion of the works by six months from the date of this decision.
- 29 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 appeal is abandoned or determined.

Ruth O'Hare

**Legal Member/Chair**

**Date 24 September 2024**