

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 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/24/2055

Re: Property at 94 Bedford Place, Aberdeen, AB24 3NX (“the Property”)

Parties:

William Harvey and Veronica Harvey, Burnview, Old Ballater Road, Aboyne, AB34 5HN (“the Landlord”)

Winchesters Lettings Limited, 7 Albert Street, Aberdeen, AB25 1XX (“the Landlord’s representative”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Tribunal accordingly made a Repairing Standard Enforcement Order (“RSEO”) as required by Section 24(2) of the Act.

Background

- 1 On 7th May 2024 the Tribunal received an application from Louison Keppene, Raaya Thanki, Stella Ioannou and Margarita Radeva (“the former Tenants”) alleging that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the former Tenants considered the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard and in particular that the Landlord had failed to ensure:-
 - (i) The house is wind and watertight and in all other respects reasonably fit for human habitation;

- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (iii) 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 in proper working order;
- (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (v) The house met the tolerable standard.

3 In summary the former Tenants alleged that there was damp caused by a water leak in one of the bedrooms, a leaking window in the dining room, the kitchen ceiling was crumbling, the bathroom wallpaper was peeling with mould appearing underneath, there was a fault with the electrics which had not been fixed, and there were tree branches in the garden which had not been cleared.

4 By Notice of Acceptance of Application dated 24th May 2024 a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the Landlord under Schedule 2, Paragraph 1 of the Act. An inspection was scheduled for the 4th October 2024 with a hearing set for later that day within Aberdeen Sheriff Court.

5 On 15th August 2024 the Tribunal received written representations from the Landlord's representative in response to the application. In summary the Landlord's representative advised that the former Tenants had vacated the property on 30th June 2024 and new tenants had taken up occupation. The Landlord's representative confirmed that works had been carried out to the roof to resolve the leaks and the bedroom wall had been replastered and redecorated. The branches in the garden had been removed. The dining room window had been replaced. The kitchen ceiling and the bathroom wall had both been repaired. With regard to the electrics the Landlord's representative advised that there had been a fault whereby an RCD had continuously tripped. This had been investigated by electricians but the fault could not be identified. Accordingly the main switches had been replaced with individual RCBOs which offered a greater level of protection. The Landlord's representatives provided copy invoices and photographs in relation to the repairs in support of their response.

6 On 29th August 2024 the Tribunal received an email from the former Tenants confirming that they had left the property on 30th June 2024 and the tenancy had been terminated. The Tribunal therefore considered whether to continue or abandon the application under paragraph 7(3) of Schedule 2 of the Act. By Minute of Continuation dated 9th September 2024 the Tribunal determined to

continue with the application as there were matters highlighted therein in relation to water ingress, damp and mould that could potentially cause harm to future occupants and it was therefore in the public interest to proceed.

The Inspection

- 7 The Tribunal inspected the property at 10.00am on 4th October, 2024. The Landlord's representative was in attendance and permitted access. The property had been let to new tenants from August, 2024. A number of the new tenants were present, but did not participate in the inspection.
- 8 The property is situated in a mixed residential and commercial area within Aberdeen City centre. It was cool, overcast and dry during the inspection with mainly dry weather over the preceding few days.
- 9 The property is a detached two storey house which was constructed around 1900. The walls are solid stone and the roof is pitched and slated. There is a gas fired system of central heating with radiators in most rooms. The windows are mainly PVC framed and a double glazed.
- 10 The accommodation comprises on the ground floor an entrance vestibule and hallway, lounge (used as bedroom) dining room (used as bedroom) and kitchen with utility room off (used as sitting area). On the first floor there is a landing, bathroom with wc, rear bedroom, front bedroom and boxroom/bedroom.
- 11 The inspection commenced within the kitchen in relation to the condition of the ceiling. An uneven area of ceiling was visible nearer the centre of the room. A small area of peeling paper was visible at the window soffit. These areas were tested for damp using a Protimeter Surveymaster moisture meter. Where tested, normal readings were observed (amber, below 20%).
- 12 The rear sitting area or utility room was then inspected. The velux roof window appeared modern with no visible defects. The room appeared to have been redecorated in recent months. The outer walls and ceiling were tested for damp. Where tested, normal readings were observed.
- 13 Within the lounge, slight mould spotting was noted to the front corner walls and ceiling. Where tested, normal readings were observed to the walls.
- 14 The dining room was inspected in relation to damp in mould. Slight to moderate mould spotting was observed to the ceiling. Peeling wallpaper was observed at the outer, gable wall near the lounge partition. When tested, moisture meter readings ranged between 65% and 99% to the upper corner of the wall. Elsewhere, normal readings were observed.
- 15 Within the vestibule, the electrical installation was observed. There is a modern, metal consumer unit fitted with RCBOs to the individual circuits. A label indicated that the installation was tested on 14/08/2021.

- 16 The bathroom was inspected in relation to damp in mould. No obvious damp or mould was present to the walls or ceiling. Where tested, normal readings were observed to the walls and coombed ceiling.
- 17 The first floor rear bedroom was inspected in relation to damp in mould. There was no visible sign of damp or mould. However, when tested, moisture meter readings ranged between 65% and 99% to the area of outer gable wall near the partition with the front bedroom. This area is more or less directly above the damp area in the room below. Elsewhere, normal readings were observed.
- 18 The first floor front bedroom was inspected. There was no visible sign of damp or mould. Where tested, moisture meter readings normal readings were observed.
- 19 The first floor box/bedroom was inspected. There was no visible sign of damp or mould. Where tested, moisture meter readings normal readings were observed.
- 20 Externally, the building was inspected from ground level. The chimneyhead was not visible. The parts of the roof covering that could be seen appeared largely intact, although there are a few chipped slates. The cement flashing to the east rear skew (masonry at wallhead) and chimney appeared weathered. The cementwork to the east front skew appeared to have been renewed in recent times. The rear roof over the dining area was observed from the first floor rear bedroom window. The cement work to the wallhead appeared to have been renewed in recent times. The slater work appeared intact.
- 21 An accumulation of small twigs was present in the rear garden. There were no large branches.
- 22 Photographs were taken during the inspection and are included in the attached schedule.

The Hearing

- 23 The hearing took place following the inspection at Aberdeen Sheriff Court. The Landlord was represented by Gareth Winchester and Billie Redgate of Winchester Lettings. The Landlord himself was not present.
- 24 The Tribunal explained the purpose of the hearing and proceeded to outline the findings from the inspection. The Tribunal then invited the Landlord's representative to make any further submissions regarding the application.
- 25 Ms Redgate made reference to the Landlord's written response to the application which detailed the works that had been completed to the property in relation to the matters raised in the application. With regard to the bedroom, Ms Redgate believed this was a reference to the upstairs bedroom. The room

had been redecorated to address the peeling paint and this was no longer an issue. Ms Redgate advised that there had been some delays to the completion of this work as they had to wait for the roof repairs to be completed before the redecoration could be carried out.

- 26 Ms Redgate confirmed that the branches had been removed from the garden and the dining room window had been replaced, and the room redecorated. The kitchen ceiling had been replastered and redecorated following the roof repairs to avoid this issue recurring again. The bathroom wall had been repaired and redecorated with no further issues reported by the current tenants.
- 27 With regard to the electrical issues, Ms Redgate advised that there appeared to be some confusion on the part of the former Tenants. When the fault was raised by the former Tenants in February 2024 the RCD was replaced with a RCBO as a temporary measure whilst the fault was investigated as it was believed it could be related to the water ingress. Ms Redgate stressed that the temporary measure was entirely safe, and the decision was ultimately taken to replace all of the RCDs with RCBOs as these provided greater protection. There had been no further issues reported by the current tenants regarding the electrics. Ms Redgate further advised that the current tenants would be given advice on how to heat and ventilate the property to reduce any risk of recurring mould.
- 28 The Tribunal queried the invoice the Landlord's representative had produced in relation to the roof repairs as it was not clear what works had been carried out. Mr Winchester confirmed that they could seek further clarification from the contractor on that point and send the information on to the Tribunal following the hearing.
- 29 The hearing concluded and the Tribunal determined to issue its decision in writing.
- 30 Following the hearing the Tribunal received an email from the Landlord's representative that same day with further information from the roofing contractor regarding the repairs that had been carried out.

31 **Findings in Fact**

The Tribunal found the following facts to be established:-

- 32 The Landlord and the former Tenants entered into a tenancy agreement for the property which commenced on 1 May 2023. The tenancy between the parties terminated on 30th June 2024.
- 33 There is water ingress to the gable wall in the rear ground floor and rear first floor bedrooms evidenced by high damp readings in an area close to the chimney breast.

34 The property is not wind and watertight.

Reasons for Decision

35 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties and the findings of the Tribunal's 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.

36 Based on its findings in fact the Tribunal concluded that the property does not presently meet the repairing standard. The Tribunal welcomed the steps that had been taken by the Landlord to address many of the issues raised by the former Tenants in the application. However the property is not yet wind and watertight, as evidenced by the water ingress in the two bedrooms. The Landlord will therefore require to undertake further investigations to identify the source of the damp and take appropriate remedial action.

37 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:

- (i) In respect of 13(1)(a), the house is not wind and watertight and in all other respects reasonably fit for human habitation.

38 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal "must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard". The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is one month.

39 As an observation the Tribunal would wish to highlight that the age and construction of the property may render it particularly susceptible to damp and mould, particularly when occupied by multiple adults on as a house in multiple occupation. The Tribunal notes the Landlord's representative's intentions to provide advice to the current tenants regarding heating and ventilation which is a welcome step to ensure the occupants do not experience similar issues in future.

40 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.

R O'Hare

11 October 2024

✓ **Legal Member/Chair**

Date