

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/24/0230

Property at 15D Baffin Street, Dundee, DD4 6HB ("the Property")

Land Register Number: ANG61383

The Parties:-

**Mr Yaser Dweik, 15D Baffin Street, Dundee, DD4 6HB
("the Tenant")**

**Mr Mohammed Dweik, 87/2 Albert Street, Dundee, DD4 6PB
("the Tenant's representative")**

**Amountview Limited, 56 Torridon Road, Broughty Ferry, Dundee,
("the Landlord")**

**Pavillion Properties, India Buildings, 86 Bell Street, Dundee, DD1 1HN
(the Landlord's representative)**

Tribunal Members:

Gillian Buchanan (Chair) and David Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) in relation to the Property, and taking account of the documentary and oral evidence given by the parties, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application comprising various documents received 15 January and 3 February 2024 the Tenant applied to the tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.
 - (b) 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.
 - (c) The house meets the tolerable standard.
3. By letter dated 13 February 2024 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant and the Landlord.
5. Following service of the Notice of Referral the tribunal received the following additional substantive written representations from the Landlord's representative:-
 - Email dated 6 May 2024 with attachments.
6. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr David Godfrey, Ordinary Member, inspected the Property on the morning of 30 May 2024. The Tenant and the Tenant's representative (the Tenant's son) were in attendance. Mr Paul Letley of the Landlord's representative was also in attendance.. Photographs were taken and are contained in the attached Pre-hearing inspection summary and schedule of photographs ("the Schedule of Photographs").
7. At the time of the inspection it was warm and dry. The weather had been particularly wet the previous day.

Hearing

8. Following the inspection of the Property the tribunal held a hearing at Endeavour House, 1 Greenmarket, Dundee, DD1 4QB on 30 May 2024. At the hearing the Tenant's representative and Mr Letley of the Landlord's representative were in attendance. The parties were not present.
9. Mr Letley for the Landlord made the following oral representations:-
 - i. In 2020 the roof of the tenement of which the Property forms part had a substantial overhaul.
 - ii. There are ongoing issues of water entering the Property.
 - iii. Several roofers have attended and investigated.
 - iv. There is no obvious entry point for the water.
 - v. Most recently, Mr Sean Rice of Roofline attended the Property on 29 May 2024.
 - vi. The living room of the Property is directly below the living room of the flat above.
 - vii. Mr Letley has been inside the flat above.

- viii. A cherry picker is needed for Mr Rice to inspect.
- ix. Mr Letley considers the water may be entering the living room behind the flashings and skews on the roof.
- x. With regard to the water ingress into the bedroom to the rear of the Property Mr Rice will clear out the gutters to the front and rear of the Property.
- xi. The gutter at the front is not on an incline and water tends to pool there.
- xii. The Landlord will meet the cost of these works and recover a proportionate share of those costs from the other owners in the tenement block.
- xiii. Mr Letley has instructed Mr Rice to do the works in question. Mr Rice will report to him as to the cause of the water ingress.
- xiv. There are 2 separate issues affecting the living room and bedroom respectively.

10. The Tenant's representative made the following oral representations:-

- i. The water ingress into the bedroom is nowhere near as severe as that entering the living room.
- ii. Prior to the inspection and hearing the previous ingress of water was a month ago.
- iii. The bedroom ceiling has been patched previously.
- iv. The mould around the bedroom window is recent and post-dates the previous repair.
- v. In the living room water was coming in the ceiling during the heavy rain of the two days prior to the inspection and hearing.
- vi. Buckets had been put in place to catch the water.
- vii. The buckets needed emptied every 30 mins.
- viii. The water comes through close to the light fitting which is a concern.
- ix. The water leak into the lounge has never been addressed by the Landlord.
- x. Within the application the photographs submitted are from December 2023.
- xi. It is accepted that the Landlord has tried to fix the water ingress.
- xii. Any repairs that have been done externally have not been effective.
- xiii. The detail of any repairs undertaken is not known.
- xiv. Mr Baxter of Pavilion Properties was not very communicative.
- xv. Other repairs intimated were dealt with

11. Mr Letley made the following further representations:-

- i. The previous bedroom repairs took place around 2-3 years ago.
- ii. It is accepted that Mr Baxter was not as communicative as he should have been.
- iii. He appreciates the difficult situation the Tenant is in.
- iv. One way or the other the ingress of water will be resolved.
- v. Mr Letley has taken ownership of the situation.
- vi. Dundee City Council has been involved but could not resolve the position either.

Summary of the issues

12. The issues to be determined are:-

- (a) Whether the Property – and in particular the living room and rear bedroom thereof - is wind and watertight and in a reasonable state of repair.
- (b) Whether the roof of the Property - including the gutters and downpipes - is wind and watertight and in a reasonable state of repair such that water cannot permeate the Property.

Findings of fact

13. The tribunal finds the following facts to be established:-

- (a) The Landlord is the heritable proprietor of the Property.
- (b) That the Property is leased by the Landlord to the Tenant in terms of a Private Residential tenancy Agreement.
- (c) That it is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.
- (d) In the living room water is leaking into the Property through the ceiling causing substantial damage to the plaster and decoration.
- (e) In heavy rain the ingress of water into the living room is severe such that buckets placed beneath the leaking water require emptied regularly and sometimes during the night preventing the Tenant from sleeping.
- (f) In the rear bedroom there is evidence of water staining on the ceiling and mould caused by dampness around the window.
- (g) The Property does not meet the Repairing Standard.

Reasons for the Decision

- 14. The tenement of which the Property forms part has shops at ground floor level with 4 floors of flats above. The Property is situated on the 3rd floor. An attic flat is situated directly above the Property. The Property has 3 bedrooms.
- 15. In considering this application the tribunal has had regard to the age and character of the Property and the locality in which the Property is located all in accordance with Section 13(3) of the Housing (Scotland) Act 2006.
- 16. On the day of the inspection of the Property by the tribunal, the Tenant and his representative took the tribunal around the Property identifying the issues highlighted in the application.
- 17. On inspecting the tribunal noted substantial water damage to the living room ceiling plaster and decoration. Damp staining was also obvious on an upper part of a wall. The Tenant told the tribunal the water ingress had been particularly heavy on the day prior to the inspection such that he had to empty the buckets placed strategically within the room to catch the leaking water every half hour or so. He said he could not sleep as he had to keep emptying the buckets.
- 18. In the rear bedroom there was also damp staining on the ceiling and walls and mould adjacent to the top left corner of the window which, when tested with a damp meter, was found to be very damp. The Tenant said water last came into the bedroom around a month previously.
- 19. Externally to the rear the tribunal noted the rhones to be choked with vegetation. Externally to the front again some vegetation was noted to the left of the dormer but there was no damp staining on the walls.

Decision

- 20. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

21. The tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
22. The decision of the tribunal was unanimous.

Right of Appeal

- 23. 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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Effect of section 63

- 24. 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.**

Signed

G Buchanan
_Legal member

Date : 30 May 2024

Legal Member and Chairperson