



**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/24/3702

**Re: Property at Flat 18, Albert Den, Albert Lane, Aberdeen, AB25 1SY (“the
Property”)**

Parties:

**Aberdeen Leasing Investments Ltd, 162 Anderson Drive, Aberdeen, AB15 6FR
 (“the Landlord”)**

**CW Property Leasing Ltd, 100 Forest Avenue, Aberdeen, AB15 4TL (“the
Landlord’s representative”)**

**Mr Michael McLeod, Ms Ailsa Fyfe, Flat 18, Albert Den, Albert Lane, Aberdeen,
AB25 1SY (“the Tenants”)**

Tribunal Members:

Ruth O’Hare (Legal Member) and David Godfrey (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 By application dated 10 August 2024 the Tenants applied to the Tribunal for a determination 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 Tenants considered the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard. The Tenants listed a number of historic issues, which had been addressed,

with the outstanding matters being mould and inadequate ventilation, a malfunctioning fridge door and lack of garden maintenance.

- 3 By Notice of Acceptance of Application dated 26th August 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 13th January 2025 with a hearing set for later that day. Parties were invited to make written representations in advance of the hearing.
- 4 On 9th and 10th December 2024 the Tribunal received written representations from the Landlord's representative on behalf of the Landlord. In summary the Landlord advised that the garden was maintained by the property factor. The Tenants had not consented to the gardener attending on a specified date and the gardener was latterly unable to carry out their duties as a result of dog faeces in the garden. The Landlord's representative provided a copy of the tenancy agreement together with email correspondence from the property factor. Both the Landlord and the Landlord's representative confirmed that they wished to attend the hearing.
- 5 On 17th December 2024 the Tribunal received written representations from the Tenants. In summary, and insofar as those matters relevant to this application, the Tenants advised that a bathroom was unusable due to mould growth and the Landlord's representative had provided inadequate advice to the Tenants on how to address this. The fridge door had been defective since the start of the tenancy and had a temporary metal screw fix, which meant it continued to fall off causing injury, damage and loss of refrigerated items. The Tenants had refused access to the gardener as they disagreed with the decision to cut down a tree in the garden, due to the impact on wildlife. The Tenants would always ensure that the garden was free of items and dog faeces but the gardener had refused to fulfil his duties. The garden maintenance was the responsibility of the Landlord's representative and there was no storage space available for garden tools.

The Inspection

- 6 The Tribunal inspected the property at 10.00am on 13th January 2025. The Landlord was represented by directors Mr George Yule and Mrs Alison Yule. Ms Caroline Walker and Ms Katie Hutcheon of the Landlord's representative were also present. The Tenants both allowed access to the property.
- 7 The property is situated in a mixed residential and commercial area within Aberdeen City centre. The weather was icy, cold and dry on the morning of the inspection.
- 8 The property is a ground floor flat within a housing development. The accommodation comprises of two bedrooms, one with an ensuite shower room, bathroom, and a combined lounge and dining area with the kitchen

attached. There is a garden area accessed from sliding patio doors to the rear of the property with a mixture of paving and grass.

- 9 The inspection commenced within the kitchen in relation to the fridge. The fridge door had a defective hinge, which was held in place with a metal screw.
- 10 The Tribunal proceeded to inspect the ensuite shower room. Condensation mould spotting and staining was evident on the ceiling, coving and tiling. There was no window in the room. A ventilation fan was attached to the wall which operated when the light was switched on.
- 11 The Tribunal inspected the garden. The grass was patchy and worn in parts. There was a large tree extending to the properties above. There was soil and twigs on the paving.
- 12 Photographs were taken during the inspection and are included in the attached schedule.

The Hearing

- 13 The hearing took place following the inspection at the Aberdeen Tribunal Hearing Centre, Huntly Street, Aberdeen. The Landlord was again represented by directors Mr George Yule and Mrs Alison Yule. Ms Caroline Walker and Ms Katie Hutcheon of the Landlord's representative were also present. The Tenants were both in attendance.
- 14 The Tribunal explained the purpose of the hearing and invited the parties to make submissions on the outstanding matters in the application. 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 proceedings.

Mould and lack of ventilation in ensuite shower room

- 15 The Tenants confirmed that the mould in the shower room had reached a point where they were uncomfortable using the room and tried to avoid it where possible. The Landlord's representative had attempted to clean the filter on the ventilation fan when the issue was reported, using scissors to remove the dust. There had been a lot of clogged dust. There had been a small improvement but the mould still persisted. The Tenants had also attempted to clean the mould with baking soda and vinegar. The Landlord's representative had advised them to use bleach which was inappropriate. In response to questions from the Tribunal the Tenants advised that they would have expected the Landlord to have removed the mould, and removed and replaced the grouting. They also believed that more ventilation was required ideally by installing a window although they understood this may be unrealistic. A professional would need to carry out an assessment.

- 16 Ms Walker and Ms Hutcheon both spoke on behalf of the Landlord. They had both attended the property to carry out an inspection and had found the mould in the shower room. Ms Hutcheon stressed that the Tenants had not reported this. During previous inspections, they had prevented access to the room. Ms Hutcheon had cleared out as much dust as possible using a pair of scissors. She had also instructed a contractor to attend. The contractor had taken the facing off the fan and had thoroughly cleaned the inside. The Landlord understood that this had addressed the issue however having seen the mould at the Tribunal's inspection Ms Hutcheon accepted that it remained an issue. The Tenants had been given advice on how to deal with the condensation, such as using mould remover and ensuring the door was left open to allow moisture to escape. It was Ms Hutcheon's personal view that the room was not being ventilated correctly leading to a build up of condensation. Ms Walker confirmed that the property was let previously and there had never been an issue with the shower room in terms of mould. She confirmed that the ingoing inventory did not identify any problems.
- 17 The Tenants confirmed that an engineer had been out to look at the ventilation fan. His advice was that it should remain operational whilst the light was off, which was not the case. In response to questions from the Tribunal, the Tenants confirmed that the heating would ordinarily be on in the morning from around 7am till noon, and again in the evening from around 5pm until 10pm.

Fridge door

- 18 The Tenants advised that there used to be a plastic screw holding the hinge in place on the fridge door however this would frequently become loose from its socket and fall out. The Tenants had therefore replaced it with a metal screw which had improved the functionality somewhat but had not fully fixed the issue. The metal screw would still fall out on occasion leading to the fridge door falling off. This would lead to spoiled food and damage to the fridge and worktop. The Tenants had stopped using the fridge a couple of weeks ago however it had been a problem since June when it was reported to the Landlord. They had however continued to use the fridge until recently despite the defect as they didn't have any other option.
- 19 Ms Hutcheon and Ms Walker spoke again on behalf of the Landlord. Ms Hutcheon advised that she had joined the company after the tenancy commenced. During the first inspection she was not made aware of the issue with the fridge door, despite the Tenants having stated in the application that it been ongoing since the commencement of the tenancy. It was not brought to her attention until a rent increase notice was served on the Tenants. A contractor had attended the property on 24 May 2024 following the report from the Tenants and secured the door. There was no further mention of the issue from the Tenants. In September 2024, Ms Hutcheon and Ms Walker had attended the property to speak with the Tenants and had asked if there was anything they could do to help sort out the outstanding issues. The Tenants had declined this offer, stating that they did not wish to interfere with the Tribunal proceedings.

Garden maintenance

- 20 The Tenants explained that the garden had been maintained during the initial months of the tenancy however they latterly noted the grass getting long. Neighbours had advised that a gardener maintained the gardens. The Tenants had spoken with the gardener to arrange this but he had been dismissive, stating that he "didn't do dog mess". The gardener had since avoided the Tenants. There was no storage space for garden tools to enable the Tenants to maintain the garden. In response to questions from the Tribunal the Tenants conceded that the tenancy agreement stated that it was the Tenant's obligation to maintain the garden.
- 21 Ms Walker spoke on behalf of the Landlord. She advised that there was a factor that was paid by the Landlord to maintain the garden. However the gardener had refused to cut the Tenants' grass due to dog faeces. There were also a number of items in the garden that impeded access. The Tenants had advised that they had a strimmer and would just use that to cut the grass. The Landlord had arranged for another gardener to attend the property but the Tenants had refused to allow him access. At the start of the tenancy the Tenants had been given permission to create raised beds on one side of the garden which was why that area was muddy.
- 22 The Tenants confirmed that they had been given permission to create raised beds and had dug up a small section. However, it transpired that there was sand mixed with the soil and it was unsuitable for planting. The Tenants had then attempted to apply grass seed which had taken in some sections but not others. The Tenants confirmed that a second gardener had attended the property, however the Tenants had only been given two days notice to remove items from the area. They had also been told that the gardener was going to cut down the tree, which they did not agree with due to the impact on wildlife.

Closing submissions

- 23 Both parties were given the opportunity to make submissions. The Tenants confirmed that they had covered everything in their evidence.
- 24 Mr Yule spoke on behalf of the Landlord. He confirmed that the inspection was the first time he had met the Tenants. He and Mrs Yule were puzzled as to why the application had been brought to the Tribunal. They were responsible landlords and had never had an issue. They had always accommodated the Tenants' requests to carry out repairs. Mr Yule explained that his health had recently declined and this was having a significant impact on his family.
- 25 The hearing concluded and the Tribunal determined to issue its decision in writing.

26 **Findings in Fact**

The Tribunal found the following facts to be established:-

- 27 The Landlord and the Tenants entered into a tenancy agreement for the property which commenced on 14 October 2022.
- 28 There is condensation mould in the ensuite shower room. The cause of the mould cannot be identified at the present time.
- 29 The hinge of the fridge door is held in place by a metal screw. The fridge is not in proper working order.
- 30 In terms of Clause 31 of the said tenancy agreement the Tenants have an obligation to maintain the garden.

Reasons for Decision

- 31 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, the submissions at the hearing 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.
- 32 Section 24(1) of the Act provides that where an application is received from a Tenant under section 22(1), the Tribunal must consider whether the landlord has complied with the repairing standard duty as outlined in section 13 of the Act. If the Tribunal finds that the property does not meet the standard it must make a repairing standard enforcement order. There is no discretion available to the Tribunal in this regard.
- 33 Section 16(1) of the Act provides that the repairing standard duty does not apply to any work to be carried out which the tenant is required by the terms of the tenancy to carry out. The tenancy agreement provides that the maintenance of the garden is the responsibility of the Tenants. Garden maintenance is therefore exempt from the Landlord's duty in this case.
- 34 Insofar as the condensation mould and the fridge door, the Tribunal concluded that the property does not presently meet the repairing standard. The Tribunal was satisfied based on the findings from the inspection that the fridge door does not operate correctly due to the defect with the door hinge. There is also evidence of condensation mould in the ensuite shower room, as was accepted by Ms Hutcheon during the hearing. The Tribunal could not make any findings based on the inspection and the submissions at the hearing as to the root cause of this and will require the Landlord to carry out further investigations in order to ensure the issue can be fully addressed.

- 35 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; and
 - (ii) In respect of 13(1)(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- 36 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.
- 37 As an observation the Tribunal would wish to highlight that it did not consider there to be any negligence on the Landlord’s part or deliberate intent to avoid their duties under the Act. It was clear that reported repairs had generally been addressed promptly through their representative. The Tribunal would also highlight that regardless of any proceedings that may be ongoing before the Tribunal the Tenants continue to have obligations under the terms of the tenancy agreement to ensure that repairs are reported and that access is permitted where works are required. The Tribunal would therefore expect their full cooperation in allowing the Landlord to complete the works required under the Repairing Standard Enforcement Order.
- 38 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.

23 January 2025

R.O'Hare
Legal Member/Chair

Date