

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/24/1314

Land Register Title Number: ANG38685

**Property at 45 High Street, Montrose, DD10 8LR
("the Property")**

The Parties:-

Mrs Svetlana Strode, formerly 45 High Street, Montrose, DD10 8LR ("the Former Tenant")

Mr Alan Bruce, 144 East Woodmains Road, Glasgow, G76 7HF ("the Landlord")

Tribunal Members – Gillian Buchanan (Legal Member) and David Godfrey (Ordinary Member)

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 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 19 March and 8 April 2024 the now Former 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 installations in the house for the supply of water, gas, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order.
 - (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.
 - (e) The house meets the tolerable standard, in particular:-
 - i. It is substantially free from rising or penetrating damp;
 - ii. It has satisfactory thermal insulation; and
 - iii. It is structurally stable.
3. By letter dated 18 April 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. By email dated 14 August 2024 the Applicant advised the tribunal that due to the "*very bad condition*" of the Property she had "*give up the flat and moved into a council flat in Arbroath*".
6. By letter dated 16 August 2024 the tribunal asked the Landlord to confirm that access to the Property would be provided for the inspection on 20 August 2024. The Landlord failed to respond.
7. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr David Godfrey, Ordinary Member, attended at the Property to carry out an inspection on the morning of 20 August 2024. The tribunal was unable to gain access to the Property. Neither the Former Tenant nor the Landlord were in attendance.
8. By Minute of Continuation dated 20 August 2024 the tribunal resolved to continue with the application in terms of Schedule 2, Paragraph 7(3) of the Housing (Scotland) Act 2006.
9. The Tribunal subsequently issued to the Landlord a Direction dated 30 December 2024 in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in terms of which the Landlord was required to provide the following evidence to facilitate the determination of the application:-

- i. Evidence from a suitably qualified roofing contractor that the roof of the Property is wind and watertight with no water ingress into the Property.
 - ii. Evidence from a suitably qualified damp specialist that the Property is substantially free of rising or penetrating or other form of dampness such that it is reasonably fit for human habitation and meets the tolerable standard.
 - iii. Evidence from a suitably qualified building contractor –
 - (a) That the floors throughout the Property are level and in a reasonable state of repair and meet the tolerable standard.
 - (b) That the windows within the Property are in a reasonable state of repair and in proper working order such that they open, close and lock correctly.
 - (c) That the steps serving the Property are in a reasonable state of repair and in proper working order.
 - iv. Evidence from a suitably qualified surveyor that the Property has adequate thermal insulation and meets the tolerable standard.
 - v. Evidence from a suitably qualified plumbing contractor that the installations within the Property for the supply of water and sanitation, and for heating water, drainage and disposal of foul and surface water area in a reasonable state or repair and in proper working order and meet the tolerable standard.
10. In terms of the Direction the said documentation referred to in 9 above required to be lodged with the tribunal no later than 5pm on Friday 28 February 2025.

11. The Direction also stated:-

"FAILURE TO COMPLY WITH THIS DIRECTION MAY RESULT IN THE TRIBUNAL DRAWING AN INFERENCE THAT THE PROPERTY DOES NOT MEET THE REPAIRING STANDARD AND THAT THE LANDLORD HAS FAILED TO COMPLY WITH THE DUTY IMPOSED BY SECTION 14(1)(b) OF THE HOUSING (SCOTLAND) ACT 2006 SUCH THAT A REPAIRING STANDARD ENFORCEMENT ORDER MAY BE ISSUED."

12. The Landlord did not respond to the Direction.

Reasons for the Decision

13. The tenement of which the Property forms part has shops at ground floor level. The Property is accessed by a door from a common close.
14. In considering this application the tribunal has had regard to the Landlord's failure to engage with the entire process. He submitted no written representations prior to the scheduled inspection on 20 August 2024. He did not attend the inspection. He has not complied with the Direction.
15. The complaints made by the Former Tenant relative to the Property are extensive and serious such that the tribunal determined to continue with the application notwithstanding the termination of the Former Tenant's tenancy.
16. The Landlord cannot avoid these proceedings by simply failing to engage. To do so would make a nonsense of the entire process.

17. The Direction issued by the tribunal forewarned the Landlord that his failure to comply with the Direction may result in the tribunal drawing an inference that the Property does not meet the Repairing Standard and that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of 2006 Act such that a Repairing Standard Enforcement Order may be issued.

Decision

18. The tribunal has no evidence that the Property complies with the Repairing Standard.
19. Having particular regard to the terms of the Direction and the Landlord's failure to respond the tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
20. The tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
21. The decision of the tribunal was unanimous.

Right of Appeal

- 22. 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

- 23. 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.**

G Buchanan

Signed

Date : 24 March 2025

Legal Member and Chairperson