



**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**

**Reference number: FTS/HPC/RP/24/4739**

**Re: Property at 23a Rosemount Viaduct, Aberdeen, AB25 1NE ("the Property")**

**The Parties:**

**Mr Osama Mochli, 22 Fraser House, Market Street, Aberdeen, AB11 5PD ("the Landlord")**

**The Tribunal:**

**Ruth O'Hare, Legal Member  
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 This is an application under section 22(1A) of the Housing (Scotland) Act 2006 ("the Act") by Miss Sabah Hamamou ("the former tenant") for a determination that the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the Landlord had failed to comply with sections 13(1)(b), (c), (h), (i), (j) and (k) of the Housing (Scotland) Act 2006 for the following reasons:-
  - (i) No gas safety certificate had been provided to the former tenant at the commencement of the tenancy;
  - (ii) The windows were in poor repair; and
  - (iii) The faucets required maintenance.
- 3 Following submission of the application the former tenant emailed the Tribunal to confirm that she had vacated the property. By Minute of Continuation dated

19 December 2024 a Legal Member of the Tribunal with delegated powers from the Chamber President decided to continue to determine the application as the repair issues, if found to be existing, could potentially have health and safety implications for future tenants of the property.

- 4 The application was referred to a Tribunal for determination. On 29 March 2025 the Tribunal gave notification to the Landlord that an inspection and hearing would take place on 20 May 2025. The Tribunal served said notification upon the Landlord by sheriff officers after a failed attempt by recorded delivery mail. The Tribunal invited the Landlord to make written representations in response to the application.
- 5 On 7 May 2025 the Landlord emailed the Tribunal with a gas safety certificate dated 23 November 2024, an electrical installation condition report dated 23 November 2024, a legionnaires risk assessment dated 26 October 2024, and a portable appliance testing ("PAT") certificate dated 26 October 2024.

### **The inspection**

- 6 The Tribunal inspected the property at 10.00am on 20<sup>th</sup> May, 2025. The new tenant was in attendance and permitted access. The Landlord was present.
- 7 The property is situated in a mixed residential and commercial area within Aberdeen City centre. It was dry and bright during the inspection with mainly dry weather over the preceding days.
- 8 The property is a first floor flat within a five storey tenement containing a total of eight flats on the upper floors and two retail premises at ground floor. The building was constructed around 1900. The walls are solid granite and the roof is pitched and slated. The front windows are timber framed and single glazed with internal secondary glazing; the rear window is PVC framed and double glazed. There is a gas fired central heating system.
- 9 The accommodation comprises: entrance hallway, lounge, kitchen, bathroom and bedroom.
- 10 The inspection commenced within the lounge. There is a sash and case bay window with six sashes and internal secondary glazing. The lower right hand sash (as viewed from within the flat, facing the front of the building) was stuck fast with caulk or other sealant. Sealant had been used to fill a gap between the glass and the lower rail of the sash. The upper sash was stuck fast with paint. Externally, the lower rail of the lower sash was seen to be affected by decay. The centre lower sash could be opened. The sash cord on the right side was broken. The upper sash was stuck fast with paint. The left pair of sashes could not be accessed, as the secondary glazing was stuck in the closed position. Inspection of the external parts from the interior was impeded by furnishings, the secondary glazing, the depth of the internal sill and the dirt and debris on the glass. A small patch of mould growth was visible to the soffit of the bay window. There is a smoke alarm fitted to the ceiling of the lounge; it

was not possible to test the alarm system on account of the height of the ceilings within the property.

- 11 The bedroom was inspected in relation to the window. There is a sash and case window with two sashes and internal secondary glazing. Only a limited inspection was possible, as the internal secondary glazing could not be fully opened due to the position of furniture. From the internal inspection, it could be seen that the external timber sill was affected by decay.
- 12 The electrical consumer unit is in a cupboard within the entrance hall. The unit is located over two metres above floor level and therefore could not be closely inspected or opened. The unit is a relatively modern metal cased item. A label indicated that the installation had been inspected on 23/11/2024. There is a smoke alarm fitted to the ceiling of the hall.
- 13 The bathroom was next inspected. There is a white suite comprising bath with shower over, wash hand basin and WC. The basin and tap were different to those photographed within the application paperwork. The mixer tap was found to be firmly attached and operated as designed, when tested. The bath taps were both found to be slightly loose and rotated slightly in their mounting holes when operated. There is an extractor fan mounted to the upper section of the wall. The fan operated when the bathroom light switch was switched on.
- 14 Within the kitchen, there is a wall mounted, gas fired central heating boiler. The boiler appeared relatively new and is different to the boiler within the application paperwork. The kitchen hot tap was opened, the boiler ignited and the water became warm and hot. There is a "Lifesaver" carbon monoxide alarm fitted to the underside of the pipe box for the bathroom extractor. The alarm appeared to be of some age and was discoloured. This model of alarm has removable batteries. A heat alarm is fitted to the kitchen ceiling.
- 15 Externally, the front elevation was inspected. The ground level inspection of the windows was restricted due to overhanging masonry. From a relatively distant view point across Rosemount Viaduct, decay was visible to the right (as viewed from within the flat) lower sash of the lounge.
- 16 Photographs were taken during the inspection and are included in the attached schedule.

### **The hearing**

- 17 The hearing took place at Aberdeen Sheriff Court at 11.45am on 20 May 2025. The Landlord attended.
- 18 The Tribunal summarised the findings from the inspection and invited submissions from the Landlord. The following is a summary of the key elements of his submissions and does not constitute a verbatim account.

- 19 The Landlord expressed his frustration with the application, and the length of time it had taken before he was notified of the inspection and hearing. He was of the view that the former tenant had not been truthful in her application. He explained that she had failed to pay rent. He believed that the discussions that had taken place during the inspection in the presence of the new tenant constituted a breach of confidentiality. The Landlord indicated his intention to lodge complaints against the Tribunal members for what he perceived to be aggressive behaviour during the inspection.
- 20 The Landlord went on to confirm that he had provided the Tribunal with the necessary certification for the gas and electrical installations within the property. A legionella risk assessment had also been carried out and produced to the Tribunal.
- 21 With regard to the windows, the Landlord accepted that the side windows in the living room could not be opened. However, the largest one in the middle could. There was therefore adequate ventilation in the room and plenty of natural light. The previous allegations of mould had been due to the former tenant failing to adequately ventilate the property whilst keeping the heating on. It did not affect the conditions of the windows. There were no water leaks. Whilst there may be some decay on the external window frames, this was very minor. The Landlord pointed out that the property was located in a listed building. Such decay was to be expected with sash and case windows of this age and type. There were many properties in Aberdeen that were in similar condition. It was expected. The Landlord confirmed that the current tenant had not mentioned any issues with the windows.
- 22 With regard to the taps in the bathroom, the Landlord was of the view that these were in proper working order. The fact that the bath taps appeared slightly loose did not mean that they were in a state of disrepair.
- 23 The Landlord confirmed that a new boiler had been installed in November 2024. The old boiler was 20 years old. The Landlord confirmed that the smoke alarms in the property were all interlinked and in proper working order, as was the carbon monoxide alarm, albeit the latter was an older model. The Landlord pointed out that his obligations were to meet the minimum standards for the property, not provide a gold standard.

### **Findings in fact**

- 24 The Applicant entered into a tenancy agreement with the former tenant, which commenced on 9 February 2023.
- 25 The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The repairing standard duty applies to the tenancy under section 12 of the Housing (Scotland) Act 2006.

- 26 The living room and bedroom windows are not in a reasonable state of repair, having regard to their age and character. There is evidence of decay to the external window frames. The living room window has a broken sash cord and the secondary glazing in the room cannot be opened.

### **Reasons for decision**

- 27 The Tribunal determined the application having regard to the terms of the application, the written representations from the Landlord, 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.
- 28 Section 24(1) of the Act provides that where an application is received 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.
- 29 The Tribunal was satisfied that the majority of the items raised in the application had been addressed by the Landlord following the former tenant's departure. It was clear that the Landlord had carried out extensive works to the property prior to re-letting to the current tenant.
- 30 The Tribunal considered the evidence regarding the condition of the windows. It had regard to section 13(3) of the 2006 Act which obliges the Tribunal "*in determining whether a house meets the standard of repair mentioned in subsection 1(b), regard is to be had to (a) the age, character and prospective life of the house*". The Tribunal accepted that the property was located in a listed building with sash and case windows. It accepted that due to the age and character of those window types there will inevitably be challenges in maintaining them in the same condition that would be expected of more modern window frames. The Tribunal fully accepts that there may be issues with the operation of sash and case windows that are difficult to address, as well as challenges with draft proofing. Those findings would not necessarily amount to a breach of the repairing standard.
- 31 Nonetheless, the Tribunal could not satisfy itself on the evidence before it that the windows are in a reasonable state of repair, taking into account their age and character. It was clear from the findings of the inspection that although the Landlord had attempted repairs to the lounge window, decay remained apparent to both the bedroom and living room external window frames. The living room window has a broken sash cord and the secondary windows in the room cannot be opened. The Tribunal could not fully assess the extent of the disrepair due to the limitations of the inspection and concluded that it would require to see a report from a specialist with knowledge and expertise of traditional windows. In particular, the Tribunal had concerns that were the decay to worsen there would be a risk of water ingress, either to the property

itself or to those below. The Tribunal therefore concluded that the windows do not in their current condition comply with section 13(b) of the Act.

- 32 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)(b), the structure and exterior of the housing is not in a reasonable state of repair and in proper working order.
- 33 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 six weeks.
- 34 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

24 June 2025

**Legal Member/Chair**

**Date**