

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RT/24/4200

Title no: Sasine search sheet, County of Forfar. (I) 62 Poles 20 yards of ground, bounded on south by BROOK STREET, BROUGHTY FERRY, being part of lot No 15 and whole of Lot No 16 of Feuing Plan of part of Estate of Broughty Ferry, entitled Feuing Plan of Part of BROUGHTY FERRY LINKS and (IL) Piece or Pieces of ground measuring 42 Poles 7 ½ yards, comprehending 2 Lots of ground marked 31 and 32 on the Feuing Plan of part of East of Broughty Ferry, bounded on east or south east by Castle Street, all in Parish of Monifieth.

Property at 1/1 Albion Place, 19 Castle Street, Broughty Ferry, Dundee DD5 2EH (“The Property”)

The Parties:-

- **Dundee City Council - Private Sector Services, 5 City Square, Floor 3, Dundee DD1 3BA (“The Third Party Applicant”)**
- **The Trustees of the Late Patricia Stuart 2017 Will Liferent Trust, Whitehall House, 33 Yeaman Shore, Dundee DD1 4BJ (“the Landlord”)**
- **Ms Keri Boland, 1/1 Albion Place, 19 Castle Street, Broughty Ferry, Dundee DD5 2EH (“the Tenant”)**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Robert Buchan	-	Ordinary Member

Decision

1. 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 evidence led by the Tenant and the Third Party Applicant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application dated and email sent on 8th September 2024, the Third Party Applicant applied to the Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
3. The application by the Tenant stated that it was considered that the Landlord had failed to comply with his duty to ensure that the Property met the Repairing Standard. The application stated that the Repairing Standard had not been met, namely that the Landlord had not ensured that:
 - a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - b) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
4. In particular, the complaints consisted of:-
 - a) The Tenant did not have a copy of an Electrical Installation Condition Report ("EICR");
 - b) The Tenant did not have an up to date Gas Safety Certificate;
 - c) The Tenant did not have an up to date copy of any Portable Appliance Test ("PAT") Certificate;
 - d) The Tenant did not have a copy of the current Landlord Rental Insurance;
 - e) Evidence had not been lodged with regard to a Legionella Risk Assessment;
 - f) There was evidence of water penetration on the east wall and ceiling of the upper bedroom, left hand side;
 - g) There is evidence of water penetration of the south wall and ceiling of the lower bedroom;
 - h) The south window in the upper bedroom, left hand side, is not wind tight and cannot be opened;
 - i) All the windows on the lower floor except the living room window cannot be opened and are not wind tight;
 - j) The living room window is not wind tight and is very difficult to open; and
 - k) All the window frames (except the Velux) require maintenance both internally and externally.

The Inspection

5. The Tribunal attended the Property at 10am on 29th May 2025. Mr Stuart Cuthill was present on behalf of the Third Party Applicant. The Tenant was present but took no part in the inspection. The Landlord was not present but was represented by Mr Calvin Gordon, Senior Solicitor, Thorntons. The Tribunal was let into the Property by the Tenant. It was of mild temperature with light drizzle rain on the day of the inspection.
6. The Property is a first and top floor maisonette of traditional stone and slate construction, thought to be about 135 years old. Access is around the rear of the block to a shared external stair serving the top two flats.
7. Accommodation comprises a hall, lounge, kitchen, bathroom and bedroom on the first floor; and two bedrooms on the top floor.
8. Once in the Property the Tribunal inspected the items listed in the application. Parties agreed at the beginning of the inspection that all documentation had now been lodged.
9. The Tribunal took moisture readings. The moisture meter readings showed extensive and apparently longstanding dampness in the party wall of the top floor north-east bedroom and more localised dampness was noted in the front south-east corner of the first floor bedroom.
10. The Tribunal found that the skylight window of the top floor bedroom could not be opened and the double glazed unit appeared to be defective as evidenced by condensation between the panes of the glass.
11. The Tribunal inspected the windows detailed in the application. The windows of the first floor bedroom, lounge and kitchen are understood to have been replaced within the last 7 months.
12. On inspecting the Property from outside. The Tribunal found that externally, water staining could be seen on the front wall, co-inciding with the dampness within the first floor bedroom.
13. The Tribunal also found that part of the fascia of the dormer window serving the north east bedroom was noted to be rotten.
14. The Tenant indicated that she would not be attending the hearing.
15. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal reconvened at 11.45am for the hearing by teleconferencing.

The Hearing

17. The hearing was held by teleconferencing on 29th May 2025 at 11.45am. Mr Cuthill appeared on behalf of the Third Party Applicant. The Landlord was not present but was represented by Mr Calvin Gordon, Senior Solicitor, Thorntons.
18. The Tribunal listed all of the points
19. Mr Cuthill accepted that since the application the Landlord has provided the up to date EICR, Gas Safety Certificate, Landlord Rental insurance and Legionella Risk Assessment. There is no requirement for a PAT Certificate as there have been no items let with the Property which require a PAT Certificate. These points have been now removed from the application.
20. The first floor bedroom window, lounge and kitchen windows have all been replaced within the last 7 months. These windows met the repairing standard.
21. Mr Gordon said that the Landlord accepted that there were various items which needed to be addressed. He accepted that the points relevant to this application were listed by Mr Buchan and did need repairs to be undertaken. He said that the Trustees own 4 properties in that block of flats which consist of two separate units. The Landlord is willing to address the repairs but some derive from common repairs. The other owners will need to be canvassed with regard to their views in terms of paying for the common repairs. Once these investigations have been completed then it will take 10 weeks for the work to be completed. It will be an issue for the Trustees if the other owners are not willing to undertake the repairs.

Findings of fact

22. Having considered all the evidence, the Tribunal found the following facts to be established: -
 - a) The tenancy is a Short Assured Tenancy between the Landlord and the Tenant. The tenancy commenced on 28th May 2010;
 - b) There is extensive and longstanding dampness in the party wall of the top floor north-east bedroom.
 - c) There is localised dampness in the front south east corner of the first floor bedroom.
 - d) Part of the fascia of the dormer window serving the north east bedroom was noted to be rotten.
 - e) Water staining could be seen externally on the front wall, co-inciding with the dampness within the first floor bedroom.
 - f) The Repairing Standard has not been met in that the property, clearly, is not wind and water-tight" and that some elements of two of the windows are not in a reasonable state of repair or in proper working order.

Reasons for the decision

23. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection.
24. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
25. The Tribunal was in no doubt, from its inspection, that the Property did not meet the Repairing Standard.
26. There was clear evidence that there are substantial dampness issues which require to be addressed by the Landlord and the window in the north east bedroom needs to be repaired or replaced.
27. Accordingly, in view of its findings the Tribunal concluded that the Landlord was in breach of the duty to comply with the Repairing Standard.
28. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal “must by order require the landlord to carry out such work”.
29. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

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 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 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 Miller

G Miller, Chair
27th June 2025