

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

(Hereinafter referred to as “the Tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

**Case Reference Number: FTS/HPC/RP/24/5599**

**Re: 2/1, 17 Glasgow Street, Glasgow G12 8JW (“the house”)**

**Ms Charlene Hewitt, residing at the house (“The Tenant”)**

**Mr Alexander Russell-Smith, 10 Friars Brae, Linlithgow EH49 6BQ (“The Landlord”)**

**Tribunal Members – Sarah O'Neill (Legal Member) and Lorraine Charles (Ordinary (Surveyor) Member)**

### **Decision**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has failed to comply with the said duty. The Tribunal therefore issues a Repairing Standard Enforcement Order. The Tribunal’s decision is unanimous.

### **Background**

1. By application received on 4 December 2024, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with his duty under Section 14(1) of the Act.
2. In her application, the Tenant stated that she believed the Landlord had failed to comply with his duty to ensure that the house met the repairing standard as set out in section 13(1) (a), (b) and (h) of the Act. Her application stated that the Landlord had failed to ensure that:

- the house is wind and watertight and in all other respects reasonably fit for human habitation
- 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
- the house meets the tolerable standard.

3. The Tenant included the following complaints in her application form:

1. Leaking roof
2. Rodent infestation
3. Inoperable windows in two rooms
4. Cracked internal door function
5. No working light in shared vestibule
6. Reimbursement for paint work and mould remediation work carried out by tenant

4. The application was accompanied by copies of a significant volume of email correspondence between the Tenant and Clyde Property, the Landlord's letting agent, dated between 8 August 2024 and 3 December 2024.

5. Following a request from the Tribunal administration, a copy of the private residential tenancy agreement between the parties was received from the Tenant on 6 December 2024.

6. On 16 January 2025, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. An inspection and hearing were arranged for 27 May 2025.

7. On 17 January 2025, an email was received from the Tenant advising that items 2-6 of her application had now been resolved. She stated that item 1 i.e. the leaking roof/water ingress into the living room remained outstanding, however.

8. The parties were invited to submit written representations no later than 26 April 2025. Written representations were received from the Tenant on 10, 17 and 22 April 2025. Detailed written representations were received from the Landlord on 25 April 2025.

9. On 6 May 2025, the Tribunal issued a direction to the Landlord, further to the Tenant's email of 17 April 2025. This email referred to mould spreading and paint falling off the walls on the opposite side of the house from the water ingress and collapsed ceiling. The Tenant requested that this information be included for consideration at the hearing.

10. In the direction, the Tribunal noted that this appeared to relate to the bathroom in the house. As this complaint was not included in the Tenant's initial application, it was a new issue. The Landlord appeared to have been previously notified of this complaint by the Tenant, and had referred to it in his written representations of 25 April 2025, including the fact that he had instructed a dampness survey in respect of the matter. A copy of the dampness survey was included in those written representations.
11. The Tribunal considered that the Tenant's email of 17 April 2025 constituted a request to amend her application to include the complaint about mould in the bathroom and paint falling off the walls. The Tribunal invited the Landlord to make written representations in response to the amendment request before deciding whether to consent to the Tenant's request.
12. A response was received from the Landlord on 6 May 2025. Further written representations were received from the Landlord on 13 and 20 May 2025.
13. Further written representations were received from the Tenant on 6, 13, 19, 20 and 21 May 2025.
14. The Tribunal administration sent an email to both parties on 22 May 2025, advising them that the Tribunal's role was primarily to determine whether the landlord has ensured that the property meets the repairing standard, as at the date of its inspection. The parties were advised that the Tribunal did not intend to consider in detail any historical information relating to the repairing standard complaints which pre-dated the Tenant's tenancy. The parties were also notified that other issues including compensation and work carried out by the tenant would not be considered by the Tribunal as part of the application.
15. The email also stated that it was the Tribunal's understanding that the only complaint in the Tenant's original application which was still at issue was item 1 i.e. the leaking roof. As the Tenant had notified the Tribunal on 17 January 2025 that the remaining issues in the application (items 2,3,4,5 and 6) had now been addressed, it did not intend to consider these. The Tribunal would also consider at the hearing whether to allow the amendment requested by the Tenant to add a complaint to the application about the mould in the bathroom and paint falling off the walls, and if so, what the scope of that amendment should be.
16. The parties were also notified that in terms of the Tribunal's rules, any documents which they wished to rely on must be sent to the Tribunal no later than 7 days before the hearing. As both the Tribunal and the other party must be given fair notice of any written submissions, the Tribunal did not therefore intend to allow any documents received from either party after 20 May to be lodged.

## **The inspection**

17. The Tribunal inspected the house on the morning of 27 May 2025. The weather conditions at the time of the Tribunal's inspection were sunny with showers. The Tenant and her partner and co-tenant, Ms Celia Morgan, were present at the inspection. The Landlord's father, Dr Edward Russell-Smith, was also present at the inspection.
18. Photographs were taken during the inspection. These are attached as a schedule to this decision.

## **The house**

19. The house is a second floor flat with attic flat above, within a traditional tenement block. The house comprises three bedrooms, living room, kitchen, bathroom and hallway.

## **The hearing**

20. Following the inspection, the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT.
21. The Tenant was present at the hearing and represented herself. She was accompanied by Ms Morgan as a supporter.
22. The Landlord had, in his written representations of 25 April 2025, requested permission from the Tribunal to participate in the hearing remotely because he lives outwith the UK. Unfortunately, this was not possible because the government of the country where he lives has not consented to the leading of oral witness evidence from within that jurisdiction. The Tribunal would therefore have been required to seek permission from that government on an individual basis. Given the timescales involved in doing so, there was insufficient time to seek such permission prior to the inspection and hearing.
23. The Landlord was therefore represented at the hearing by his father, Dr Russell-Smith. The Landlord joined the hearing by video link as an observer. Mr Levi Mitchell was also present by video link as an observer.

## **Preliminary issue**

24. The Tribunal sought the parties' views on whether to allow the Tenant's amendment request to add the issue of dampness and paint falling off the walls in the bathroom, and what the scope of that amendment should be. Having previously consented to the amendment, the Landlord had suggested in his

written submissions of 13 May 2025 that the issue of paint falling off the walls was a new issue.

25. Dr Russell-Smith said that the Landlord had instructed a professional dampness survey in March 2025. This had found no evidence of penetrating damp but had identified an issue with ventilation in the bathroom due to a lack of appropriate extraction. Following this professional advice, the extractor fan was cleaned and tested by a qualified electrician on 3 April 2025, who confirmed that it met the necessary extraction requirements. With regard to the paint falling off the walls, the Landlord had instructed a decorator to address this. The decorator was due to attend the property on 29 May.
26. The Tenant said that the effectiveness of the ventilation in the property had not changed since the start of her tenancy. She suggested that the alleged dampness and ventilation issues in the bathroom were connected to the mould and paint falling off the walls in that room.
27. Having listened to both parties, and having noted that there appeared to be no clear opposition by the Landlord, who had instructed a decorator to address the paint issue, the Tribunal decided to allow the amendment to the Tenant's application.

### **The Tenant's submissions**

28. The Tenant said that there had been staining on the wallpaper on the living room ceiling when she and Ms Morgan had moved into the property. It was the Landlord's duty to ensure that the property met the repairing standard at the start of her tenancy. The inventory of 6 August 2024 from Clyde Property showed historic water staining, and this should have been investigated before they allowed Ms Morgan and herself to move into the property.
29. There had been no signs of mould at the time they had moved in. There had been a crack in the corner at that time, however. Then in mid-April the corner of the ceiling had collapsed, resulting in the hole which was now visible. While there had been a recent dry spell of several weeks, rain was coming in intermittently. She could hear dripping above the ceiling over the previous few days, although no water had come through into the living room.
30. It had taken three months after her initial complaints to Clyde Property in September 2024 before the matter was escalated to the property factor. She had raised concerns that the plaster along the cornicing could fall on someone.
31. It had been very difficult for Ms Morgan and herself living in the property since the initial roof leak. They had been asking for an abatement of their rent, which was £1500 per month, for some time. The Landlord had now agreed to an

abatement of £500 per month, but only from May 2025 onwards. They had also paid a £3000 deposit when they moved in and felt that they were paying a lot of money for a flat which was not in tenable condition. She pointed out that the entire cost of the common repair (at around £4325) was not significant in comparison to their monthly rent.

32. With regard to the bathroom issues, the Tenant said that when she and Ms Morgan moved into the property, the entire bathroom was covered with mould. She had sterilised and cleaned it, and painted it with mould inhibiting paint, with the Landlord's agreement, because he had been let down by his decorator. She said that the mould which was currently present had gathered in just a few months. She and Ms Morgan made sure they opened the window after taking a shower. If it was a ventilation issue, things had not changed since they moved in. The electrician who had cleaned the extractor fan had told her that it had been working previously, and had just cleaned some dust from it.
33. The paint had now begun peeling off the ceiling and walls, despite the fact that the room had only been painted in around September 2024. The Tenant believed that this was due to dampness and poor ventilation.

### **Submissions on behalf of the Landlord**

34. Dr Russell-Smith told the Tribunal that the Landlord acknowledged that there was an issue with the ceiling, and with the common roof. He pointed out that the building is a historic one, and that some deterioration is therefore inevitable. The Landlord is a responsible landlord who takes great pride in the property, and has been in close and regular contact with Clyde Property over the matter. He very much regrets the time it is taking to resolve the matter. The difficulty is that the roof repair is a common repair. This is being managed by the property factor for the building, Ross and Liddell.
35. The work requires the approval of a majority of the 17 co-owners who are responsible for the common repair. As at the date of the hearing, only 9 of the 17 owners had agreed to the works being carried out. Only around one-third of the cost had been received so far from owners by the property factor.
36. As set out in more detail in the Landlord's written submissions, he has done everything he can to move things forward. The whole process has taken some time due to the cost of the required repair, as the property factor has had to obtain quotes and then seek agreement and funding for the works from the co-owners.
37. The Landlord confirmed his approval for the works and paid his share of the costs on 19 February 2025, which was the date on which Ross and Liddell

wrote to owners seeking their approval and funding for the repairs. Several reminders had since been sent out to co-owners, asking them to respond.

38. A specialist ceiling contractor instructed by Clyde Property had inspected the ceiling on 17 April 2025, and had confirmed that there was no risk of any further ceiling collapse. The contractor had also advised that any internal ceiling repairs should not be carried out before the common roof repairs had been done. Otherwise, this could risk trapping water between the roof and ceiling, which could cause further problems.
39. The Landlord had done everything he could to ensure that the roof repairs are carried out as soon as possible. He had acted on the professional advice which he has received, but the agreement of other co-owners is outwith his control. It is difficult for one owner to pay out all of the money required for the common repair. Glasgow City Council had been approached and had issued an abatement notice requiring all owners to carry out the repairs, but had confirmed that they were unable to enforce this due to budget constraints.
40. With regard to the bathroom issues, the Landlord disputed that the bathroom was covered with mould at the start of the Tenant's tenancy. Clyde Property had carried out an inspection prior to this, and would not have accepted the property onto their books if it was in a poor state. As a result of the Tenant's concerns, the Landlord had instructed a dampness survey which was carried out on 12 March 2025. This had identified no signs of penetrating damp, but identified a lack of appropriate extraction. The extractor fan had been cleaned and tested on 3 April 2025 and was found to be working.
41. The video evidence submitted by the Tenant, which had obtained from the previous tenants, showed a significant flow of water pouring through the shower ceiling in October 2023. This related to a flood of water resulting from the bath in the attic flat upstairs having been left unattended. This was a temporary issue which had been addressed, and did not relate to any current issues with alleged dampness in the bathroom.

## **The evidence**

42. The evidence before the Tribunal consisted of:

- The application form submitted by the Tenant.
- Copy email correspondence between the Tenant and Clyde Property dated between 8 August 2024 and 3 December 2024.
- Written representations received from the Tenant on 6, 13, 19 and 20 May 2025.
- Written representations submitted by the Landlord on 25 April and 6, 13 and 20 May 2025.

- Video evidence submitted by the Tenant.
- Registers Direct copy of Land Register title GLA104214.
- Scottish Landlord Register registration details for the house.
- Private residential tenancy agreement between the Landlord and the Tenant and Ms Morgan in respect of the house which commenced on 12 August 2024.
- The Tribunal's inspection of the house.
- The oral representations of the parties at the hearing.

### **Summary of the issues**

43. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the Landlord has complied with the duty imposed by section 14 (1) (b). The Tribunal focused on whether the house met the repairing standard as at the date of its inspection.

### **Findings in fact**

44. The house is owned by the Landlord.
45. The Landlord is the registered landlord for the house.
46. The Landlord entered into a private residential tenancy agreement with the Tenant and Ms Morgan which commenced on 12 August 2024.
47. The Tenant notified the Landlord of the required repairs on numerous occasions between 8 August 2024 and 3 December 2024.
48. The title deeds for the tenement block within which the house is situated provide that the owners are jointly liable for upholding and maintaining in good repair the common parts of the property, including the roof.
49. Quotes for the common roof repairs required to address the water ingress in the living room had been obtained by the property factor for the block and were circulated to owners in February 2025.
50. A majority of the owners within the block had agreed to the necessary roof repairs as at the date of the inspection and hearing. A minority of owners had paid their share of the costs as at that date.
51. At its inspection, the Tribunal carefully checked the items which were the subject of the complaint. The Tribunal observed the following:



- i. There was evidence of water ingress and mould on the living room ceiling about 1 metre from the corner, and high moisture readings were noted.
- ii. A corner section of the original lath and plaster ceiling had collapsed due to water ingress from the common roof.
- iii. A low moisture reading was noted at this corner site.
- iv. There was evidence of cracking and water staining to the ceiling and the decorative cornicing in the living room.
- v. In the bathroom/shower room, there was evidence of peeling paint within the shower cubicle.
- vi. Low moisture readings were noted within the shower cubicle.
- vii. The walls and ceiling within the bathroom/ shower room did not appear to be plasterboard. This may be causing the paint to peel from the surface.
- viii. A small section of mould was noted on the bathroom/ shower room ceiling, and normal moisture readings were noted.
- ix. The extractor fan in the bathroom/ shower room appeared to be operating correctly.

### **Reasons for the decision**

52. In making its decision, the Tribunal carefully considered all of the substantial amount of evidence which had been received from both parties. In doing so, it applied the civil burden of proof, which is the balance of probabilities.
53. The Tribunal considered each of the Tenant's outstanding complaints in turn, as set out below.

#### **1. *Leaking roof***

54. During its inspection, the Tribunal observed evidence of water ingress and mould on the living room ceiling about 1 metre from the corner, and high moisture readings were noted. It also observed that a corner section of the original lath and plaster ceiling had collapsed due to water ingress from the common roof. A low moisture reading was noted at this corner site. There was evidence of cracking and water staining to the ceiling and the decorative cornicing.
55. The Tribunal was unable to carry out a thorough inspection of the ceiling using a ladder, due to the height of the ceiling. There was no ceiling hatch to allow access to inspect the roof space above the area of water ingress and it would be difficult to reach the ceiling without a tower scaffold / platform.
56. The Tribunal noted that in terms of section 15(1) of the Act, where a house forms part only of any premises, the reference in section 13(1) (b) to the house includes reference to any part of the premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of

ownership, any real burden or otherwise. The Landlord is therefore responsible for ensuring that the roof of the tenement block, being part of the structure and exterior, is in a reasonable state of repair and in proper working order.

57. It was clear to the Tribunal on the basis of the evidence before it that at the time of its inspection: a) the house (and in particular the living room ceiling) was not wind and watertight, and b) the structure and exterior of the house was not in a reasonable state of repair and in proper working order.
58. There was a question, however, as to whether there was an exception to the landlord's repairing duty in terms of section 16 (4) of the Act, which states:

*"A landlord is not to be treated as having failed to comply with the duty imposed by section 14 (1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights".*

Subsection 16 (5) of the Act goes on to say:

*"For the purpose of subsection (4), in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary rights."*

59. While he had not explicitly referred to these sections, it appeared to the Tribunal that the Landlord was making the argument that he had done everything within his power to address the repairs. The carrying out of the roof repairs was reliant on all of the co-owners agreeing to the works and paying upfront for these.
60. The Tribunal noted that the Deed of Conditions by the Trustees of Thomas Elliot Baird referred to in the land certificate for the property (recorded GR.S. (Glasgow) on 19 July 1979) refers to a tenement of 15 houses at 15 and 19 Glasgow Street and 20 to 3 Bank Street. The correspondence from the property factor submitted by the Landlord suggests that there are in fact 17 properties within the block. The Minute of Waiver by the Trustees of Thomas Eliot Baird registered in 22 January 1999 gives consent to divide the leftmost second floor flat at 17 Glasgow Street, creating an attic flat above the house. The Tribunal presumes that a similar subdivision has also occurred within another flat in the tenement, to create a 17<sup>th</sup> flat.
61. The Landlord had advised in his written submissions of 20 May 2025 that Ross and Liddell had confirmed that 9 out of 17 owners had agreed to the repairs, and that 6 of the 17 had paid. As 9 out of 17 constitutes a majority, subsection 16 (5) above does not apply here.

62. The Tribunal then considered whether the Landlord should nevertheless be treated as lacking the necessary rights to comply with the duty, despite having taken reasonable steps for the purposes of acquiring those rights, in terms of section 16(4).
63. The Tribunal accepts that the Landlord has experienced difficulties in ensuring that the roof repairs are carried out. There are 17 flats involved, which means that at least 9 owners need to agree to the works being done in terms of the title deeds. Repairs are managed within this tenement block by a property factor appointed by the owners in terms of the title deeds.
64. The Tenant first reported the roof leak to Clyde Property on 5 September 2024. It was first identified as a common repair issue in October 2024, and was escalated to the property factor, Ross and Liddell, in December 2024. The tendering process then took place between December 2024 and February 2025, and three quotes were obtained in February 2025. Since then, efforts have been ongoing to secure approval and payment from the co-owners.
65. The Tribunal notes that the Landlord has made considerable efforts to ensure that the repairs are carried out. These include agreeing to and paying for his share of the works as soon as the quotes were circulated by the property factor, and following things up with the property factor.
66. It appeared to the Tribunal that the Landlord was under the impression that the works cannot be carried out at all until a majority of the owners within the block have agreed to the works and all owners have then paid for their share of the repair costs. While the title deeds do provide that a majority of owners can make a decision about common repairs, this is not necessarily the case where a roof issue is concerned.
67. Section 8 of the Tenements (Scotland) Act 2004 provides that the owner of any part of a tenement building which provides, or is intended to provide, support or shelter to any other part of the tenement has a duty to maintain that support or sheltering part. That duty may be enforced by any owner who is, or would be, directly affected by any breach of the duty. Any owner can carry out works which are necessary to maintain any such commonly owned part of the tenement, to ensure that it provides such support or shelter.
68. The common roof is a part of a tenement building which provides, or is intended to provide, support or shelter to any other part of the tenement. This means that any owner can instruct or pay for works to the roof if necessary, without the agreement of the other co-owners. This course of action was in fact suggested by the Tenant at the hearing. The Tribunal notes that, given the relatively low cost of the required repairs, it would be open to the Landlord to unilaterally fund the outstanding balance of the repair costs upfront. He / the property factor could then recoup the costs from the other owners.

69. While the Tribunal has some sympathy with the Landlord's situation, he nevertheless has a duty to ensure that the house meets the repairing standard.
70. A majority of owners have consented to the repairs, which the Landlord accepts are required. The outstanding funds required to pay for the repairs are relatively modest, and it would be open to the Landlord to pay the remaining balance of the repair costs and recoup these from the other owners if necessary.
71. Given these considerations, and bearing in mind the Tribunal's overriding objective, which is to deal with the proceedings justly, the Tribunal does not consider that the Landlord's failure to comply with the repairing standard occurred only because he lacked the necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights. He did in fact have the necessary rights, as set out in section 8 of the 2004 Act, but has not exercised these.
72. Moreover, the Tribunal does not consider that it would be just in the circumstances to conclude that the Landlord has not failed to comply with the repairing standard duty. Otherwise there would be no clear legal remedy for the Tenant, who is currently living in a property which does not meet the repairing standard.
73. The Tribunal therefore determines that the house did not meet the repairing standard at the time of its inspection. The roof and the living room ceiling were not wind and watertight, and the structure and exterior of the house was not in a reasonable state of repair and in proper working order.

## **2. *Dampness / paint falling off the walls in the bathroom***

74. During its inspection, the Tribunal took dampness readings within the bathroom/ shower room. Low moisture readings were noted within the shower cubicle. A small section of mould was noted on the ceiling, and normal moisture readings were noted. The Tribunal observed that the extractor fan in the bathroom/ shower room appeared to be operating correctly.
75. The Tribunal therefore found no evidence of dampness within the bathroom/ shower room. While there was some very slight mould in one section of the ceiling, this was not unusual in a bathroom/ shower room, where moisture is regularly present. Having considered all of the evidence before it, the Tribunal determined that at the time of its inspection, the bathroom/ shower room was wind and watertight and reasonably fit for human habitation. It also met the tolerable standard as there was adequate ventilation and it was substantially free of no evidence of rising or penetrating damp.

76. With regard to the complaint about paint falling off the walls, the Tribunal observed at its inspection that there was evidence of peeling paint within the shower cubicle. The Tribunal also observed that the walls and ceiling within the shower room did not appear to be plasterboard, as might have been expected. This may be causing the paint to peel from the surface. The peeling was not caused by dampness, as there was little evidence of dampness within the bathroom/ shower room. In any case, this was a cosmetic issue and there was no breach of the repairing standard. The Tribunal observed at the hearing that the Landlord may wish to take advice about this from the decorator he has instructed before the ceiling and walls are repainted.

### **Summary of decision**

77. On the basis of all the evidence before it, the Tribunal determined that the landlord had failed to comply with the duty imposed by section 14(1) (i) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that the house is not wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the house is not in a reasonable state of repair and in proper working order.

78. The Tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

### **Rights of Appeal**

79. 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.

80. 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.

# S O'Neil

Date: 26 June 2025

Sarah O'Neill, Chairperson