

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/24/3748

Title Number: REN9084

**Re: Flat 1, 47 Neilston Road, Paisley, PA2 6LY
("the House")**

The Parties:

**Mr. Adam Kerr-Quinn, 235 Boardwalk Place, Canary Wharf, Tower
Hamlets, E14 5SQ
("the landlord")**

**Ms. Carolyn Quinn, 12 Victoria Gardens, Paisley PA2 9PQ
("the landlord's representative")**

Tribunal Members:

Susan Christie (Legal Member)

Andrew McFarlane (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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the House, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act. The tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the Act.

Background

1. The former Tenant's Representative applied on behalf of the tenant, to the Tribunal around 15 August 2024 in terms of Section 22(1) of the Housing

(Scotland) Act 2006, seeking an Order against the landlord on the basis that he had failed to comply with the duties imposed by Section 14(1)(b) of the Act under section 14(1) to meet the Repairing Standard.

2. By Notice of Acceptance of Application, dated 16 September 2024, the Legal Member with delegated powers of the Chamber President intimated that there were no grounds upon which to reject the application and the application was referred to the tribunal for a determination.
3. The application specified the nature of the work needed done as replacement of rotten joists underneath the bathroom floor of the House.
4. Written representations were submitted by both Parties subsequently.
5. An inspection of the House was arranged to take place on 30 April 2025 at 10a.m. and a Hearing for 12.15 p.m. on the same date in the Glasgow Tribunals Centre, Room G04, 20 York Street, Glasgow, G2 8GT.

The Inspection

6. The tribunal inspected the House on the morning of 30 April 2025.
7. At the time of the inspection the weather was dry and sunny.
8. The House is a first-floor flatted dwelling house that forms part of a tenement building with a commercial unit below it on the ground floor.
9. Access on the day was given by the former tenant and his Representative. The landlord and his now Representative attended late but were able to access the House and participate in observing the inspection. The tribunal was afforded access to the ground floor commercial unit to inspect the under-floor aspect of the joists from the room below where they are exposed.
10. It was established and noted by those present that the area complained of in fact related to the timbers at the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House and not the bathroom area.
11. The underfloor aspect at the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House was inspected by the tribunal and photographs taken. A number of joists were noted to be rotten and on visual inspection appeared to be affected by what is commonly referred to as dry rot.
12. The Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House were inspected and the floors were noted to be running off level in the areas affected by the rotten joists. This had impacted partitions built off the floor.
13. A Schedule of Photographs taken during the inspection was issued to the Parties around 5 June 2025, and is attached to this decision.

The first Hearing

14. The first Hearing took place on 30 April 2025 at 10a.m. around 12.15 p.m. in the Glasgow Tribunals Centre, Room G04, 20 York Street, Glasgow, G2 8GT.
15. The former tenant's representative and the landlord participated. The landlord's supporter, who is now his Representative was also present.

16. The preliminary findings of the inspection were relayed to the Parties, with it being noted that there was visible decay of joists underneath the House that also formed part of the ceiling area of the commercial unit. This area appeared to be in line with the kitchen and bedroom of the House, not the bathroom.
17. A Report had been produced by the tenant from R.E. Spencer Ltd dated 15 January 2025. This was to be considered by the landlord, and he was to make his own enquires around the conclusion and recommendations.
18. The tribunal continued the hearing, with the Parties agreement, to allow Parties to consider the preliminary findings of the tribunal around the inspection and for enquiries to be made by the Parties in relation to the extent and specifics of the contemplated works, timescales involved and also to identify the areas that they are in agreement about.
19. Meantime, it was agreed as a precaution that temporary propping be installed, without delay, to provide support to the area of the floor of the House identified as weakened at inspection.
20. Parties were directed to provide photographs of the temporary propping *in situ* along with copies of any further survey reports, quotations and estimates and with details of any scheduled work, no later than 3 days prior to the next Hearing date. All for the tribunal's consideration.
21. The Parties provided their verbal consent to a shorter notice period for the next Hearing; and given that there are urgent circumstances to enable progress whilst assuring that any interim potential safety issues are addressed.
22. The Tribunal determined that the Hearing be continued to 21 May 2025 at 2 p.m. by conference call. The Parties will be provided with written intimation of the joining details.

Legislation referred to by the tribunal at the first Hearing for consideration by the Parties.

- (1) Private Housing (Tenancies) (Scotland) Act 2016
- (2) Housing (Scotland) Act 2006, Chapter 4, section 22.

The second Hearing- 21 May 2025

23. The Second Hearing took place by teleconference on 21 May 2025 at 2pm. The former tenant's representative and the landlord's representative participated.
24. The tribunal was advised an investigative survey was being carried out that same day by the contractors Peter Cox of Edinburgh and the Report and written findings were to be prepared the following day.
25. Meantime, the Parties had produced to the tribunal photographs evidencing temporary propping had been installed to support the affected joists below the House.

26. The Parties were considered to be in a better position to inform the tribunal of the findings of the investigations and Report within 14 days.
27. The Parties were then expected to consider the findings and convey to the tribunal the detail of the extent of any works instructed or contemplated, the scheduled date for works to be carried out; or alternatively where agreement cannot be reached.
28. The tribunal considered that it was evident during discussions that Brite Holdings, who are the owners of the commercial unit underneath and to the side of the House, were keen to proceed with the work needed to treat the joists and rot and would provide access; and appeared willing to pay towards the works that were common. The difficulty at the hearing was that the extent of the work and the costings were not yet available and the landlord was concerned about how much it may cost him and if affordable to him.
29. The tribunal intimated that once the position became clearer it could consider all the information and decide what further action, if any, is required. This included considering whether the matter could be resolved by the Parties acting upon any agreement they might have reached or if not, the tribunal deciding on the application, which could include the making of a Repairing Standard Enforcement Order (RSEO) over the House. The tribunal was aware by virtue of the discussions that the landlord was considering his other options which included selling the House.
30. A Direction was made and issued to the Parties on 21 May 2025, The Parties were jointly required to provide the tribunal with a copy of the Report (commissioned by the Parties via Brite Holdings) over the Property, prepared by Peter Cox, 1 Aquarius Court, Viking Way, Rosyth Fife no later than close of business on 4 June 2025. They were also required to provide written confirmation as the position regarding the extent and specifics of the contemplated works affecting the House, the timescales involved and the extent of their agreement or disagreement over the works affecting the House, no later than close of business on 18 June 2025.
31. The tribunal was subsequently provided by the Report dated 21 May 2025 from Peter Cox, which is attached to this Decision.
32. The Parties were thereafter unable to reach an agreement to carry out works needed to resolve this application by the former tenant.
33. The tribunal was advised that the landlord intended to sell the House at auction.
34. The tribunal was also advised that the tenant had left the Property around 7 June 2025.
35. A Second Direction was issued dated 22 June 2025 with both Parties being required to provide, no later than close of business on 4 July 2025, evidence that the tenancy has been lawfully terminated by the tenant and the date of termination of the tenancy; or written confirmation that the Parties agree that the tenancy has been lawfully terminated by

agreement, and the agreed date of termination, or not. The landlord/landlord's representative was required to provide written documentation showing or tending to show that the proposed sale of the House had been concluded and if so, to whom (name and address) and the date of entry agreed.

36. Numerous e mails were sent into the tribunal by both Parties regularly providing updates or comments thereafter.
37. It was confirmed that there was no issue with the tribunal proceeding on the basis that tenancy had been terminated lawfully.
38. A Minute of Continuation to a determination dated 14 August 2025, being a Decision under Schedule 2 paragraph 7(3) of the 2006 Act was issued to the Parties given the extensive works required to the House and the potential safety risks for any occupier because of its the condition. This decision was made in the knowledge that the Landlord proposes to sell the flat.
39. The tribunal was made aware firstly that a bargain had been agreed to sell the House to a third party at auction, however around the end of August 2025 the prospective sale of the House had fallen through, and the Landlord was apparently considering other options to dispose of it.
40. The tribunal thereafter reviewed all of the information before it, including the Specialist Reports, deliberated and proceeded to a determination.

Findings in Fact

41. The House is one to which the repairing standard applies.
42. The original Parties entered into a tenancy agreement over the House.
43. The tenancy lawfully ended.
44. A Minute of Continuation to a determination dated 14 August 2025, being a Decision under Schedule 2 paragraph 7(3) of the 2006 Act was issued to the Parties.
45. The landlord remains the owner of the House.
46. Two specialist Reports have been produced following on from inspection of the House and the Commercial Unit underneath the House. Those are from RE Spencer Limited dated 17 January 2025 and from Peter Cox dated 21 May 2025.
47. Dry rot (*Serpula lacrymans*) is affecting the House on the floorboard timbers and underfloor timbers and joists at the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House. It has caused timbers to rot, including some joists in this area and poses a danger to the stability of the floors there.

Reasons for decision

48. The Tribunal determined that there was sufficient information available by the application terms of reference, the written information given, specialist reports provided by the Parties and the findings of the inspection for it to make a fair determination of the application.

49. The tribunal had regard to the Report prepared by Mark Patrick BSc MRICS CSRT CSSW, Specialist Property Preservation Surveyor of Peter Cox, dated 21 May 2025 in so far as it related to the issues affecting the House.
50. In its current condition the floorboard timbers and underfloor timbers at the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House means that the structure and exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order and the House does not meet the tolerable standard, and it is not structurally stable.
51. Wood-rotting fungi (dry rot) repairs, replacement and treatments to the areas of timber decay on the floorboard timbers and underfloor timbers at the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House are required.
52. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 14(3) of the 2006 Act, "The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it". Section 22(3) of the 2006 Act states that an application can only be made if the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard. The Tribunal is satisfied that the landlord was notified of the repairs issues at the House prior to lodging the application.
53. The tribunal then considered paragraph 7 of Schedule 2 to the Act. It states that a tenant may withdraw an application at any time, and the tenant is to be treated as having withdrawn the application if the tenancy concerned is lawfully terminated (Paragraph 7(1)). This application had not been withdrawn by the tenant, and the tenancy had been lawfully terminated. The tribunal continued to determine the application given the extensive works required to the House and the potential safety risks for any occupier because of its the condition.
54. The tribunal is satisfied that the landlord has failed to comply with the repairing standard in relation to the landlord having failed to ensure that:
55. 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 and The House meets the tolerable standard, and it is structurally stable. In terms of Section 13(1) (b) and (h) of the 2006 Act.
56. The Tribunal concludes that the landlord has failed to comply with the repairing standard as set out in the Act. The Act states that where a tribunal decides 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."

57. The tribunal had regard to the fact that there was willingness on the part of the owners of the commercial unit underneath the House to progress with common works. This was considered in the context of Sections 16(4) and (5) of the 2006 Act. The Parties had jointly installed temporary supports to the affected area, to reinforce the floor to the House.

58. The Tribunal determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act and proceeded to make a repairing standard enforcement order (RESO) to require the landlord to rectify the identified defects as follows:

(1) Prepare areas affected by the outbreak of timber decay to allow remedial works to proceed by carrying out the following works in the House:

a) Remove the kitchen base units in Rear Room Left (the kitchen) and lay aside for refitting upon completion of the works.

b) Remove the kitchen sink and associated plumbing pipework and lay aside for refitting upon completion of the works.

c) Remove the washing machine and lay aside for refitting upon completion of the works.

d) Remove the gas cooker and lay aside for refitting upon completion of the works

e) Remove the fridge freezer and lay aside for refitting upon completion of the works.

f) Remove required electrical sockets and lay aside for refitting upon completion of the works.

g) Remove the central heating radiator and associated pipework in the Rear Room Right (bedroom) and lay aside for refitting upon completion of the works.

h) Uplift existing floor coverings and lay aside for refitting on completion of the works.

(2) Carry out the main works as follows. Eradicate the dry rot (*Serpula lacrymans*) affecting the House by carrying out wood-rotting fungi (dry rot) repairs, replacement and treatments to the areas of timber decay on the floorboard timbers and underfloor timbers at the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House; and repairing, treating and replacing where required the floor supporting joist timbers at the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House; including any affected wall-plates, deafening boards and runners, wall fabric, lath and plaster fabric; the works to be carried out by an appropriately experienced Contractor. Upon completion of the works, and within one month, exhibit to the tribunal a Completion Report detailing the works carried out, and confirming timbers and fabric affected by the dry rot in the House at those areas have been treated, repaired or replaced and the dry rot eradicated at the floor and subfloor

level of the Rear Room Left (kitchen) and Rear Room Right (bedroom) of the House.

- (3) Renew floorboards disturbed to match the existing dimensions in the Rear Room Left (kitchen) and Rear Room Right (bedroom) and leave ready to receive floor coverings.
- (4) Refit the following items upon completion of the works:
 - a) The kitchen base units in Rear Room Left (the kitchen)
 - b) The kitchen sink and associated plumbing pipework
 - c) The washing machine
 - d) The gas cooker
 - e) The fridge freezer
 - f) Any electrical sockets in the Rear Room Left (the kitchen) and the Rear Room Right (bedroom) which were removed in preparation of the main works
 - g) The central heating radiator and associated pipework in the Rear Room Right (bedroom)
 - h) Existing floor coverings.
- (5) Carry out the following remedial works upon completion of the main works:
 - a) Patch repair or renew the bay window panelling disturbed in the Rear Room Left (kitchen) and Rear Room Right (bedroom) and any required timber sub-framing in the Rear Room Left (kitchen), and Rear Room Right (bedroom).
 - b) Remove lath strapping and dry lined wall finishes where decayed, as required to complete main works. Reinstall same with a new timber framework to support new plasterboard linings. Finish to match surroundings.
 - c) Strip any areas of plaster as required to complete the works. Reinstall and finish to match surroundings.
 - d) Repair or renew the timber finishings (i.e. architraves, base blocks, skirtings and similar) disturbed or removed during the main works in Rear Room Left (kitchen) and Rear Room Right (bedroom) to match existing.
 - e) Prepare all new wall panelling, plaster and plasterboard surfaces and timber finishes and leave ready for decoration.
 - f) Prepare and decorate the ceiling and wall areas, including doors, windows, timber finishes, wall panelling and any other plaster

finishes affected by the works in Rear Room Left (kitchen) and Rear Room Right (bedroom).

59. The decision of the Tribunal is unanimous.

Right of Appeal.

A Landlord, Tenant or Third-Party applicant 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.

In terms of Section 63 of the Act, 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.

Susan Christie, Legal Member

1 September 2025

