

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 of the Private Housing
(Tenancies)(Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/24/0260

Re: Property at 15D Baffin Street, Dundee, DD4 6HB ("the Property")

Parties:

Mr Yaser Dweik, 15D Baffin Street, Dundee, DD4 6HB ("the Applicant")

Amountview Ltd, 56 Torridon Road, Broughty Ferry, Dundee ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

A Case Management Discussion ("CMD") took place by telephone conference on 25 September 2025.

At the CMD the Applicant was not in attendance but was represented by his son, Mr Mohammed Dweik.

The Respondent was represented by Mr Paul Letley of Pavilion Properties, Dundee. He had dialled in from Portugal.

Background

In a related Repairing Standards case bearing reference FTS/HPC/RP/24/0230 a Repairing Standards Enforcement Order dated 30 May 2024 ("RSEO") was issued on 19 June 2024.

The works required by the RSEO were completed by the Respondent and Certificate of Completion was issued by the Tribunal on 22 January 2025.

In this application a CMD had previously taken place on each of 13 November 2024 and on 17 March 2025. The Tribunal issued a Decision dated 17 March 2025. However, the Respondent subsequently issued an application for a review of that Decision which was granted by the Tribunal on 20 July 2025. This CMD was therefore assigned.

The CMD

For the Applicant

At the CMD the Mr Dweik for the Applicant adopted the oral submissions he had previously made at the CMDs on both 13 November 2024 and 17 March 2025. These submissions are recorded in the CMD Notes of those dates. For convenience these submissions are set out again below.

Submissions of 13 November 2024

- i. In terms of the RSEO the tribunal determined that the Property was not fit for habitation and was not wind and watertight with the exterior of the Property not being in good condition.
- ii. The ingress of water into the Property was reported by the Applicant to the Respondent in December 2022.
- iii. Despite the time that had since elapsed it was only after the RSEO was issued on 19 June 2024 that the works were done on 27 June 2024.
- iv. It only took eight days of dedicated work to resolve the situation and two years of apologising before that.
- v. The Applicant never met Paul Letley or Sean Cruickshank of Pavilion Properties prior to these proceedings. The Applicant dealt solely with Billy Baxter of Pavilion Properties and communications were mainly by email.
- vi. Whilst the Applicant had previously been advised that repairs had been carried out, water continued to leak into the Property after that work had been done and it was only after the works were effected on 27 June 2024 that the water leaks stopped.
- vii. The Applicant's claim for financial compensation is in respect of the water leak into the lounge of the Property alone.
- viii. Photographs of the hole in the ceiling with the water leaking in have been taken and lodged.
- ix. The ingress of water into the lounge gradually got worse with the paper starting to strip off the ceiling eroding the surface beneath.
- x. The water leaks were mostly in the winter and at those times the water had to be collected in buckets to avoid it leaking through to neighbours below.
- xi. During the night the buckets required to be emptied when they became full.
- xii. The Applicant was anxious about the proximity of the water to the ceiling lights.
- xiii. The Applicant suffered disturbed sleep as he could not fall asleep whilst the water continued to drip into the buckets.
- xiv. The Applicant did not seek medical support. He took over the shelf painkillers due to lack of sleep.
- xv. The Applicant did not seek nor was offered any reduction in rent due to the circumstances.
- xvi. No alternative accommodation was offered to the Applicant.
- xvii. No offer of any compensation has been offered.
- xviii. The Applicant was previously unaware of his rights.

Submissions of 17 March 2025

At the CMD the Applicant's representative stated that the rent for the Property remains at £630 per month, and the Applicant is in receipt of Universal Credit.

In terms of the application, the Applicant seeks an award of "*up to £5,000 in compensation for the inconvenience and unhealthy standards*" that his family had been forced to live under

due to the Respondent "*failing to maintain a healthy and adequate standard of living*" in the Property.

For the Respondent

At the CMD Mr Letley made the following oral submissions –

- i. Water penetration at the Property went back several years.
- ii. At each stage the Respondent gave authority to investigate and carry out repairs.
- iii. The Property is situated in a block of five flats where the water ingress related to mutual areas and therefore involved other owners.
- iv. Mr Letley's firm tried to recoup monies for repairs from other owners with varying degrees of success.
- v. The Respondent did all that could be done.
- vi. The gutters had been prone to choking and had been cleared out, something that is now done annually provided no issues arise in between times.
- vii. With regard to the water ingress into the lounge of the Property, this occurred when it rained heavily. They tried to identify the source the water ingress. Scaffolding was required and a repair effected. But the next time it rained the situation recurred. The Respondent spent a lot of money on these repairs.
- viii. It is unfair for the Respondent to have to pay more to the Applicant.
- ix. The Tribunal asked how it was that after the RSEO was granted a successful repair was carried out within 8 days. Mr Letley said various contractors had been employed and had tried different repairs, such as to the flashings and the skews and they also investigated a leaking bathroom from above. After the RSEO was granted another contractor was employed. They were running out of options. One option had not been tried and was successful.
- x. There is now also an agreement with the other owners that they will pay their share of repairs. There has been a rolling program of repairs since June 2024 and Mr Letley's firm has become the factor by default.
- xi. With regard to the repairs log previously lodged on behalf of the Respondent the roofing contractor instructed on 30 December 2022 was a small company that could attend quickly but was "not the best roofer". The contractor instructed on 9 January 2023 used a cherry-picker to provide cheap and quicker access. Another contractor was instructed on 31 October 2023. The log is not comprehensive in that a contractor might be asked to go out a second time or as a favour. In addition Mr Letley said a couple of other contractors had looked at the issue but did not know the cause and couldn't help.
- xii. The rent paid by the Applicant is low. It is not a market rent which would be in the region of £800-850 per month. The Applicant is single. The Respondent offered him to move out the Property but he refused to do so.
- xiii. The Respondent suffered a degree of frustration. There was a breach of the Repairing Standard. It was suggested the Applicant find alternative accommodation. Help was offered to the Applicant to do that. He was advised that no notice to leave would be required. The Applicant refused to consider that option. If he had moved the repairs could have been carried out and the Property relet.
- xiv. The Property is in a good location.
- xv. The Respondent has never sought to increase the rent payable by the Applicant.
- xvi. A good reference was offered to the Applicant.
- xvii. They would be happy to have him in another property.

Further Submissions for Applicant

Mr Dweik made the following additional oral submissions:-

- i. He did not deny contractors had attended the Property.
- ii. He did not know how many contractors attended.
- iii. However, when the RSEO was issued the repair required took place within 8 days.
- iv. The Applicant has not declined a rent increase.
- v. Mr Dweik's siblings lived in the Property with the Applicant and one sibling remains living there.
- vi. Mr Dweik has lived in the Property himself.
- vii. The Applicant and his family do not require to move out the Property.
- viii. Mr Letley wrote to the Applicant by email on 21 January 2025 regarding the Applicant moving to alternative accommodation and offering to release him from any notice period.
- ix. There is no evidence of the Applicant being offered to move out prior to the repairs being successfully effected.
- x. No rent discount has been offered.
- xi. Only when Mr Letley became involved was the situation resolved. Otherwise those involved have been demonstrably inefficient.

The Tribunal adjourned to consider the position and reach a decision on the application.

Findings in Fact

The Tribunal made the following Findings in Fact:-

- i. The Respondent is the heritable proprietor of the Property.
- ii. The Property is leased by the Respondent to the Applicant in terms of a Private Residential Tenancy Agreement dated 13 August 2019.
- iii. From around December 2022 to 27 June 2024 and within the lounge of the Property water leaked through the ceiling causing substantial damage to the plaster and decoration.
- iv. The ingress of water into the lounge gradually got worse with the paper starting to strip off the ceiling eroding the surface beneath.
- v. In heavy rain the ingress of water into the lounge was so severe that buckets placed beneath the leaking water required emptied regularly and sometimes during the night preventing the Applicant from sleeping.
- vi. The water had to be collected by the Applicant in buckets to avoid it leaking through to the neighbours below.
- vii. The Applicant was anxious about the proximity of the water to the ceiling lights.
- viii. The ingress of water into the Property was first reported by the Applicant to the Respondent in December 2022.
- ix. The Respondent is liable to maintain the Property to the Repairing Standard as defined by the Housing (Scotland) Act 2006 throughout the term of the tenancy and failed to do so.
- x. The Respondent was also liable to maintain the Property to the Repairing Standard as defined by the Housing (Scotland) Act 2006 in terms of the Private Residential Tenancy Agreement, Clause 9.2. The Respondent failed to do so and committed a material breach of contract.
- xi. It was only after the RSEO was issued to the parties by the Tribunal on 19 June 2024 that successful remedial works were effected and completed on 27 June 2024 by a contractor appointed by the Respondent.
- xii. Whilst the Applicant had previously been advised by the Respondent's agents that repairs had been carried out and whilst contractors had been appointed by those agents, water continued to leak into the Property after that work had been done

- and it was only after the works were effected on 27 June 2024 that the water leaks stopped and the necessary repairs could be regarded as completed.
- xiii. The Applicant's claim for financial compensation arises out of the water leak into the lounge of the Property alone.
 - xiv. The Applicant suffered disturbed sleep over a prolonged period as he could not fall asleep during periods of heavy rain whilst the water continued to drip into the buckets.
 - xv. The Applicant did not seek medical support. He took over the shelf painkillers due to lack of sleep.
 - xvi. The Applicant did not seek nor was offered any reduction in rent due to the circumstances.
 - xvii. No alternative accommodation was offered to the Applicant.
 - xviii. No offer of any compensation has been offered by the Respondent.
 - xix. The Applicant is entitled to an award of damages from the Respondent for the Respondent's material breach of contract and breach of statutory duty.
 - xx. During the period December 2022 to 27 June 2024 the living room of the Property was not in the condition it ought to have been and the Property did not therefore provide the level of comfort the Applicant was entitled to expect.
 - xxi. Rent paid throughout is £630 per month.

Reasons for Decision

There are no material disputed issues between the parties relative to matters of fact.

The Applicant's Claim

The Applicant did not suffer personal injury as such and did not seek or require medical attention relative to the water leak into the living room between December 2022 and 27 June 2024. His claim is for inconvenience alone arising out of having to live in a property where he required to collect water leaking into the lounge of the Property during periods of heavy rain in order to protect his contents and the property of the neighbours beneath causing him frequently disturbed sleep and anxiety.

(For the avoidance of doubt, the Tribunal could not and did not consider compensation for the Applicant's family. His family are not a party to the Private Residential Tenancy Agreement between the Applicant and the Respondent dated 13 August 2019 nor are they party to this application. The Tribunal therefore considered the Applicant's position alone.)

Caselaw Considered

In *Mack v Glasgow v Glasgow City Council* 2006 SC 543 in which a tenant raised an action against her landlord for damages for the landlord's failure to keep the property in question in tenable condition and repair the Court stated:-

"The inconvenience suffered by the pursuer is that she had to live in unpleasant conditions for a period of time as a result, so it is alleged, of the defenders' failure to fulfil their contractual obligation to keep the flat of which she was tenant in habitable condition. There is, in our view, no doubt that such inconvenience resulting from breach of contract sounds in damages..."

In *Quinn v Monklands District Council* 1995 SCLR 393, again involving a claim by a tenant against a landlord for damages for a property being in disrepair Sheriff Simpson stated:-

"There is clear authority for the proposition that damages are recoverable in a case of this sort in respect of inconvenience. In my view, the inconvenience in this case was considerable. It embraced the constant and embarrassing smell of dampness, the need for the pursuer to sleep with her children in the living-room rather than the bedrooms, and the need to vacate the house when the fungicidal wash was being applied."

In that case an award of damages was made in a sum of £2500 for "inconvenience and general depression".

In *Wallace v Manchester County Council* 1998 30 HLR 1111 the Court stated:-

"(2) For periods when the tenant remained in occupation of the property notwithstanding the breach of the obligation to repair, the loss requiring compensation is the loss of comfort and convenience which results from living in a property which was not in the state of repair in which it ought to have been if the landlord had performed his obligation..... (4) The sum required to compensate the tenant for the distress and inconvenience experienced because of the landlord's failure to perform his repairing obligation may be ascertained in a number of different ways, including-but not limited to—a notional reduction in the rent; some judges may prefer to use that method alone, some may prefer a global award for discomfort and inconvenience and others may prefer a mixture of the two; a judge is not, however, bound to assess damages separately under heads of both diminution in value and discomfort because those heads are alternative ways of expressing the same concept".

Analysis

The Tenancy Agreement between the parties states at Clause 9.2:-

"The landlord shall ensure that the accommodation meets the Repairing Standard as specified in Section 13 of the Housing (Scotland) Act 2006 at the start of the tenancy and at all times during the tenancy."

Section 13 of the 2006 Act states, amongst other matters,:-

"13 The repairing standard

(1) A house meets the repairing standard if—

(a) the house is wind and water tight 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...."

For completeness Section 14 of the 2006 Act states:-

"14 Landlord's duty to repair and maintain

(1) 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.

(2) The duty imposed by subsection (1) includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the duty in that subsection.

(3) 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.
(4) The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required."

The condition of the lounge ceiling deteriorated over a period of time. The photographs sent by the Applicant to the Respondent's Letting Agent in November 2023 - 12 months after the need for repair was first intimated by the Applicant to the Respondent - in particular show the paper peeling from the ceiling and the bowls placed on the sofa and table beneath to collect leaking water. The proximity of the ceiling light to the water leak is also apparent.

No issue was taken by the Respondent relative to the Applicant reporting issues of repair relative to the ingress of water into the Property and, in particular, into the lounge. Notification was given timeously and repeatedly.

The Respondent's position is that enough was done in response to the Applicant's notifications of the ingress of water and therefore the Applicant's claim should be refused. The Respondent, whilst not said in terms, presumably relies upon Section 14(4) of the 2006 Act which states that the Repairing Standard is met if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant of the defect.

Given the ongoing ingress of water into the Property during the period from December 2022 to 27 June 2024 it did not meet the Repairing Standard. The Property was not watertight. The structure of the Property was not in a reasonable state of repair.

The Respondent did not do enough in response to the Applicant's complaints of water leaking into the lounge. Following the Tribunal making an RSEO the issue was successfully resolved within 8 days. Prior to that the Respondent's agent instructed various contractors from time to time a number of which are said to have attempted unsuccessful repairs and others who intimated they could not assist. Indeed by the Respondent's own admission the first contractor was "not the best roofer". That does beg the question as to why that contractor was employed at all if his skills were unlikely to source and resolve the issue, as happened. On any view the necessary repairs were not completed as required by Section 14(4) within a reasonable period, being a period of around 18 months.

Therefore the Respondent's failure to ensure the Property met the Repairing Standard throughout the tenancy is a material breach of the Tenancy Agreement and a breach of their statutory duty under the 2006 Act.

Issues of the level of rent payable under the Tenancy Agreement and the size of the Property relative to the Applicant's circumstances are simply not relevant at all.

As a consequence of the Respondent's material breach of contract and breach of statutory duty the Applicant is entitled to pursue a damages claim. After careful consideration the Tribunal determines that the Respondent requires to pay to the Applicant damages of £3,000 to reflect the impact of those breaches and the inconvenience suffered by the Applicant as a

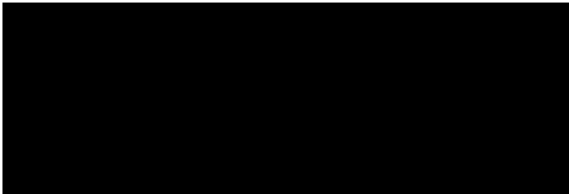
result of the condition of the lounge of the Property not being as it ought to have been over a prolonged period therefore not providing the comfort he was entitled to expect.

Decision

The Tribunal ordered the Respondent to pay to the Applicant damages of £3,000.

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.



5 November 2025
Date