

Housing and Property Chamber

First-tier Tribunal for Scotland



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/25/0926

Re: 8/2 Eyre Crescent, Edinburgh EH3 5ET being the southmost house forming the south half of the first flat above the ground flat of tenement 8 Eyre Crescent, Edinburgh referred to in Disposition to Robert Drummond, recorded 16 May 1884 (Search Sheet Number 9252) (“the house”)

The Parties:-

Mr Christopher Lynch, formerly residing at the house (“the former tenant”)

Ms Carolyn Clark, residing at the house (“the landlord”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Robert Buchan (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 her 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 3 March 2025, the former tenant applied to the tribunal for a determination that the landlord had failed to comply with her duty under Section 14(1) of the Act.

2. In his application, the former tenant stated that he believed the landlord had failed to comply with her duty to ensure that the house met the repairing standard as set out in section 13(1) (a), (b), (e) and (h) of the Act. His 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
- any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed
- the house meets the tolerable standard, in the following respects:
 - it has satisfactory provision for natural and artificial lighting, for ventilation and for heating
 - it is substantially free from rising or penetrating damp
 - it has satisfactory thermal insulation.

3. The former tenant included the following complaints in his application form:

1. The windows throughout the property are rotting and very fragile and are not wind and waterproof.
 2. There is structural water damage to the plaster of my bedroom wall.
 3. There is a tap that has been leaking for more than six years.
 4. My bed frame and mattress are broken and soiled, and there are slats missing.
4. On 27 March 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 11 September 2025.
5. The parties were invited to submit written representations no later than 21 August 2025. No written representations were received from either party in advance of the scheduled inspection and hearing.
6. On the morning of 11 September 2025, the tribunal was unable to obtain access for the property inspection. The tribunal administration called the tenant on behalf of the tribunal with regard to obtaining access to the property. He advised them that he was no longer living at the property as he had been evicted.
7. A hearing was held on 11 September 2025. The former tenant was present and represented himself. The landlord was not present or represented.

8. The former tenant confirmed that he was no longer residing at the property and had therefore been unable to provide access for the inspection.
9. The Legal Member confirmed that as the tribunal had been unable to carry out an inspection, it could not proceed with the hearing as planned. In any case, if the tenant was no longer living at the property, and his tenancy had been lawfully terminated, he would no longer be treated as a party to the application.
10. On 6 October 2025, the tribunal issued a minute of continuation in terms of Schedule 2 Paragraph 7(3) of the Act confirming its intention to continue with the application. This was on the basis that the application should be determined on public interest grounds due to the nature of the alleged repairs issues and the potential effects for any future tenants/occupiers if the allegations were substantiated.
11. Written representations were received from the landlord on 14 and 20 October 2025. A rescheduled inspection and hearing were arranged for 3 February 2026.

The inspection

12. The tribunal inspected the house on the morning of 3 February 2026. The weather conditions at the time of the tribunal's inspection were cold, damp and overcast. The landlord was present and allowed the tribunal access for the inspection.
13. Photographs were taken during the inspection. These are attached as a schedule to this decision.

The house

14. The house is a first floor flat within a C listed four-storey Victorian tenement. The house comprises three bedrooms, lounge, kitchen, bathroom and hallway.
15. The windows are of traditional timber framed sash and case, single glazed, design, except for the bathroom which has a modern upvc framed double glazed unit, and the kitchen which has a single glazed, single pivot unit with fixed glazing above. There is gas central heating with a boiler serving radiators.

The hearing

16. Following the inspection, the tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH.

17. The landlord was present at the hearing and represented herself.

The evidence

18. The evidence before the tribunal consisted of:

- The application form submitted by the former tenant, together with further written submissions and photographs relating to the outstanding repairs issues.
- Copy email correspondence and WhatsApp messages between the parties regarding the repairs alleged to be required, dated between 14 June 2022 and 25 January 2025.
- Copy email from the landlord to the former tenant dated 27 December 2018 regarding commencement of his tenancy.
- Copy confirmation of payment of a tenancy deposit by the former tenant to the landlord on 31 December 2018.
- “Agreement for lodger” from the landlord dated 1 October 2023 and addressed to the former tenant regarding his occupation of the house.
- Register of Sasines search sheet (number 9252) relating to the house.
- The Energy Performance Certificate dated 9 October 2024 relating to the house.
- The oral representations of the former tenant at the hearing of 11 September 2025.
- Written representations received from the landlord on 14 and 20 October 2025.
- The tribunal’s inspection of the house.
- The landlord’s oral representations at the hearing on 3 February 2026.

Preliminary issues

19. The landlord told the tribunal that the former tenant had been living in the property since 2018 and it had been agreed that he would look after the property when she was not there. There had previously been a short assured tenancy in place between the parties, followed by the “lodger” agreement which was before the tribunal and then a private residential tenancy agreement from January 2025.

20. The legal member noted that in fact the original tenancy agreement would have been a private residential tenancy, rather than a short assured tenancy, given when it commenced.

21. The landlord confirmed that there had also been another tenant living in the property alongside the former tenant. She had previously been living in England, but was now residing in the property. There were currently no tenants living in the property.

22. The landlord advised that she now intended to make the property her home for the long term. She confirmed that she remained on the Scottish Landlord Register in relation to the property, and thought her current registration had around a year to run. She said that she had no plans at present to rent out the property again, but that her circumstances could change.
23. The tribunal noted that the use of a “lodger agreement” suggested that the landlord was resident in the property. It was apparent from what she told the tribunal that she had not in fact been resident in the property during at least some of the former tenant’s tenancy. The landlord also said that there had previously been a private residential tenancy agreement between the parties. The tribunal notes that in any case, there is no exception for tenancies involving a resident landlord under section 12 of the Act. The repairing standard duty therefore applies here.

Summary of the issues

24. 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).

Findings in fact

25. The landlord has been the owner of the house since 1982.
26. The landlord is the registered landlord for the house. The Scottish Landlord Register gives the landlord’s address as the house address.
27. The former tenant’s tenancy of the house commenced on or around 27 December 2018.
28. Under the tenancy agreement, the former tenant had exclusive use of one of the bedrooms within the house, together with shared use of the kitchen, hall and bathroom.
29. During the former tenant’s occupation of the house, there was another tenant living there. That tenant had exclusive use of another bedroom within the property, together with shared use of the kitchen, hall and bathroom.
30. The landlord has been living elsewhere for some time, but is now living alone in the house. There were no tenants resident in the house at the time of the rescheduled inspection and hearing.

31. The former tenant notified the landlord of the required repairs on or before 25 January 2025.
32. At the time of the tribunal's inspection, the house was undergoing some renovation and redecoration. Furniture and other items were awaiting uplift in the hallway, and some of the carpets had been taken up. There was limited access to the window of the rear bedroom 1 due to the extent of stored items there.
33. At its inspection, the tribunal carefully checked the items which were the subject of the complaint. The tribunal observed the following:
 - a) The windows in the two rear bedrooms were in a poor state of repair and were not wind and watertight. Parts appeared to be painted shut and cracked panes were noted.
 - b) The kitchen window was also in a poor state of repair and was not wind and watertight. Part of the frame of the fixed window above appeared to be rotten.
 - c) The windows in the front bedroom were seen to be in a reasonable state of repair and to be wind and watertight.
 - d) The lounge room window was in the process of being repaired and repainted. The brass fittings had been taken off to enable repainting.
 - e) The wall in the rear left bedroom, which is adjacent to the bathroom wall, had been repaired and redecorated.
 - f) The kitchen tap was not leaking.
 - g) No bed frame or mattress were observed in the rear left bedroom.

Reasons for decision

34. In making its decision, the tribunal carefully considered all of the evidence before it. In doing so, it applied the civil burden of proof, which is the balance of probabilities.
35. The tribunal considered each of the former tenant's outstanding complaints in turn, as set out below.

1. Windows throughout the property

36. The landlord told the tribunal that she was aware that the windows throughout the property required repair or replacement, aside from the bathroom window, which had been replaced some years ago.

37. She said that she would not need much convincing to replace the windows at the rear of the property and admitted that the kitchen window was dangerous if opened. It was her intention to carry out the necessary works, which had now commenced, gradually over time.
38. The tribunal noted that it was likely that the landlord would need to apply to the council for listed building consent with regard to replacing the windows at the front of the house.
39. The tribunal determined that at the time of its inspection, the house was not wind and watertight and in a reasonable state of repair and in working order.

2. Structural water damage to the plaster of the bedroom wall

40. The tribunal observed during its inspection that the wall in the rear left bedroom, which the landlord confirmed was the room which had been occupied by the former tenant, had been replastered and repaired.
41. The tribunal determines that, at the time of its inspection, the bedroom wall was in a reasonable state of repair and in proper working order.

3. Leaking tap in the kitchen

42. The tribunal noted from the former tenant's notification email to the landlord of 25 January 2025 that the leaking tap referred to in the application was in the kitchen.
43. The tribunal observed during its inspection that the kitchen tap was not leaking.
44. The tribunal determined that at the time of its inspection the kitchen tap was in a reasonable state of repair and in proper working order.

4. Broken and soiled bed frame and mattress

45. The landlord said that she had now disposed of the bed frame and mattress which she had provided to the former tenant under his tenancy. The tribunal did not observe a bed frame and mattress in the rear left bedroom, which had previously been occupied by the former tenant.
46. The tribunal noted that there were currently no tenants residing in the property. It did not consider that there was a repairing standard issue to consider with regard to the bed frame and mattress at the time of its inspection.

5. Complaints relating to the tolerable standard

47. While the former tenant had not included any specific complaints with regard to the tolerable standard, he had indicated on the form that he did not consider that the house met the tolerable standard, in the following respects:
- it has satisfactory provision for natural and artificial lighting, for ventilation and for heating
 - it is substantially free from rising or penetrating damp
 - it has satisfactory thermal insulation
48. Without further information from the former tenant, the reasons for his complaints relating to the tolerable standard were unclear to the tribunal. The tribunal did not observe anything at its inspection which would suggest that the house does not have satisfactory provision for natural and artificial lighting and for heating. It could be assumed that the lack of ventilation referred to windows not being capable of being opened. This has partly been addressed by the works undertaken to date, but is addressed under item 1: "Windows throughout the property" above.
49. The tribunal observed no indication of the existence of rising or penetrating damp within the house during its inspection.
50. With regard to the thermal insulation, the Energy Performance Certificate (EPC) for the house shows it to have a "C" rating of energy efficiency. The average rating for EPCs in Scotland is band D and therefore the property must be considered to have satisfactory thermal insulation. The energy efficiency of the windows is shown as one star out of five and whilst the listed building status may limit what improvements can be made, it is to be hoped that as much improvement as possible can be incorporated into the planned repair/replacement of the windows.
51. The tribunal therefore determines that on the balance of probabilities at the time of its inspection, the house met the tolerable standard.

Summary of decision

52. 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) (b) 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 the structure and exterior of the house are not in a reasonable state of repair and in proper working order.

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

Rights of Appeal

54. 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.

55. 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'Neill

Signed.....Date: 18 February 2026
Sarah O'Neill, Chairperson