

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

Chamber Ref: FTS/HPC/RP/25/3146

Property: 15D City Road, Dundee, DD2 2BG ('The House')

The Parties: -

Amy Capes and Richard Carr, 21 Inverary Terrace, Dundee DD3 6BS ("the landlord")

Maria Del Cristo Hernandez Diaz, 15D City Road, Dundee, DD2 2BG ("the tenant")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 in respect that the house does not meet the repairing standard set out in section 13(1)(a) of the said Act.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

David Godfrey, Ordinary Member (surveyor)

Background

1. By application accepted on 21 August 2025, the tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the section 13(1) of the Act.
3. The application contained a copy of the tenancy agreement and correspondence between the parties.
4. The application and accompanying correspondence specified that the said failure was established as the following work needed to be carried out:
 - *Full repair of roof, exterior and interior, including the gutters*
 - *Clean and removal of the rubbish left in the attic that is causing the presence of rats*
 - *Paint the damage caused by the leakage in the bedrooms, causing mould*
 - *Removal of buckets left to hold the water from the roof all over the attic*
 - *Any other damage that the leakage can cause during the time it takes for the repairs to be completed*
5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 24 December 2025.
6. Prior to the hearing the landlord submitted detailed written submissions and documents running to over 300 pages in 3 emails dated 31 December 2025, and 14 and 29 January 2026. The documents submitted included *inter alia*:
 - Invoice from Jimmy Shaw Decorators Ltd dated 22 September 2025
 - Invoice from GRB Plasterer and Roughcaster dated 11 September 2025
 - HAR Roofing – roof status report dated 10 September 2025

- HAR Roofing – invoice dated 14 September 2025
 - Sutherland Management inspection report dated 24 November 2020
 - Property inspection report dated 30 May 2024
 - Property inspection report dated 4 December 2025
 - Invoices for pest control services dated 31 January 2023, 24 October 2023, 4 September 2024, 7 October 2025, 15 October 2025
 - Quotes for roof repairs
 - Email and text correspondence
 - Details of severe weather events in the Dundee area
7. The tenant's solicitor, Mr Marshall from Dundee Law Centre lodged written submissions on 2 February 2026 responding to the documents submitted by the landlord. The written submissions were submitted after the 7day deadline in advance of the hearing and inspection however, taking into account the large volume of documents received from the landlord some of which was received on the deadline the Tribunal determined to allow the tenant's submissions to be received late.

Hearing and Inspection

8. The Tribunal inspected the house on the morning of 5 February 2026. The tenant was present. Mr Carr was also in attendance. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision. A hearing took place at Endeavour House, Dundee at 11.45 am. The tenant attended in person with her solicitor, Mr Marshall. The landlord, Mr Carr attended with Melissa Coleman, Office Manager, Struan Baptie Property Management Ltd.
9. At the inspection and hearing the Tribunal considered each of the issues specified in the application in turn.
10. "Full repair of roof, exterior and interior, including the gutters": It was observed at the inspection that there was extensive and widespread water penetration through the roof. Water was not observed to be leaking through the ceilings into the living areas below. Mr Marshall stated that the water penetra-

tion had been occurring through the roof for a considerable period of time and had caused problems for the tenant on a number of occasions. He stated that it would have been noted at the inspection that the roof did not meet the repairing standard.

11. It was not disputed that there had been 4 incidents of leaks as a result of the water ingress through the roof since the tenancy commenced. Both parties confirmed that a repair to the roof was carried out in August 2025. A further incident of water ingress occurred in December 2025. A further repair had been carried out to the roof since the leak in December 2025.
12. The tenant stated that she had been advised by various roofers who had attended the property that due to its age the roof required be replaced to avoid future issues with leaks into the property.
13. Mr Carr stated that the roof did meet the repairing standard. He referred to the roof status report that had been submitted dated 10 September 2025. This stated that all active areas of water ingress had been repaired. He stated that water ingress had occurred during severe wet weather. The most recent incident that took place in December 2025 was as a result of Storm Bram. The leak had subsequently been repaired. Mr Carr stated that as the roof withstood unexceptional weather events it met the repairing standard.
14. Mr Carr stated that any dampness observed at the inspection was not due to a defect in the roof but was due to the type of roof. He stated that the roof is an "open roof". This meant that it was to be expected, due to the type of construction with slates nailed directly onto the exposed sarking, that the sarking would be wet. He stated that there had been wet weather almost continuously in January and therefore it was not unexpected that the sarking was wet however, there was no active ingress into the living areas below the roof space. Mr Carr accepted that that roof was of considerable age however he stated that there was no active repairs issue. He stated that he had obtained quotes for a larger repair involving extensive re-slating which was intended to reduce future maintenance.

15. Mr Carr stated that the roof was owned in common with the downstairs property. He stated that each property was responsible for 50% of the costs of roof repairs. He anticipated that there would be issues in reaching agreement with the other property owner regarding a large scale repair to the roof.
16. It was observed at the inspection that vegetation was growing from the chimney stack and there was evidence of damp staining to the stonework. Mr Carr stated that the gutters had been placed in working order at the same time as the most recent roof repair had been carried out. Whilst Mr Carr stated that he intended to upgrade the gutters as part of any wider roof improvement his position was that they were in reasonable working order at the date of the inspection.
17. The landlord stated that there had been issues with access in connection with obtaining quotes for repairs to the roof since September 2025. He referred to file notes from the letting agents that had been submitted showing that the tenant was refusing access for the purposes of obtaining quotations which was hampering progress.
18. The tenant denied that she refused access. She stated that she had allowed access on many occasions for necessary repairs but was concerned that access was not for the purpose of carrying out necessary repairs that would resolve the issues with the roof. The tenant stated that she required to take time off work and be present in the property which was inconvenient due to the level of repairs that had been required since the tenancy commenced.
19. "Clean and removal of the rubbish left in the attic that is causing the presence of rats:/ Removal of buckets left to hold the water from the roof all over the attic": The tenant stated that there was no active issue with rats in the property as at the date of the hearing and inspection. She stated that there had been an issue with rats in 2024 which had been dealt with at that time by the landlord instructing pest control services. The tenant stated that she had been advised by the pest control company that the large volume of cardboard boxes in the attic was contributing to the problem with rats. She stated that there had

been a reoccurrence of rats in the attic in October 2025 however after pest control attended the issue appeared to have been resolved. She stated that she was worried that the problem would reoccur if the items remained in the attic. She had also been advised that the water buckets that had been placed in the attic to deal with leaks provided a source of water for the rats.

20. The landlord's position was that any issue with mice or rat infestation had been dealt with promptly. Mr Carr stated that the tenant had been refusing access to allow the items in the attic to be removed since September 2025. He referred to file notes that had been submitted showing a number of occasions when the tenant refused to engage with the letting agents to make arrangements for the removal of the cardboard boxes and buckets.

21. The tenant denied that she had refused access. She stated that due to the large number of occasions when she had to stay at home to allow access, which affected her work, she required reassurance that the access would result in necessary work being carried out. She stated that she has requested removal of the cardboard boxes on a number of occasions.

22. "Paint the damage caused by the leakage in the bedrooms, causing mould/ Any other damage that the leakage can cause during the time it takes the repairs:" It was observed during the inspection that areas in the bedrooms that may have been impacted by previous leaks had been replastered and redecorated since the application was submitted. No dampness was observed. The tenant confirmed that satisfactory repairs had been carried out in respect of this item.

Other issues raised

23. Mr Carr raised an issue relating to the notification of the repairs. He referred to the letter of notification which was dated 21 July 2025. He stated that this was the first time the tenant had raised an issue regarding mould growth. He stated that following the notification letter the application was submitted to the Tribunal on 23 July 2025 which did not allow the landlord a reasonable period to carry out the repairs following notification.

24. Ms Coleman stated that the tenant was currently withholding rent and that the landlord intended to pursue an eviction order.

25. It was discussed that the tenant required to allow reasonable access to the property for the purpose of allowing the landlord to carry out repairs. This included allowing access for quotations to be prepared. It was discussed that in the event that progress could be made to remove the cardboard boxes and buckets in the attic after the hearing it was open to parties to confirm that this issue had been resolved before a decision was issued.

Summary of the issues

26. The issues to be determined are

- whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by section 13(1) of the Act.
- whether any exception to the repairing standard in terms of section 16 applies

Findings in fact

27. The tribunal finds the following facts to be established: -

- a. The landlord and tenant entered into a tenancy agreement with a commencement date of 1 December 2020.
- b. The property is a 3 Apartment, First and Attic floor Flat which forms part of a mid terraced building which contains two flats in all..
- c. The roof in the property is of significant age. At the date of inspection there was evidence of widespread water ingress in the attic of the property. Sarking boards and rafters were wet to the touch. Water was penetrating into the roof space.
- d. The responsibility for repair and maintenance of the roof is divided equally between the landlord and the owner of the downstairs property at 8 Baxter Street.
- e. The guttering in the property has been cleared of vegetation and is in reasonable working order.

- f. At the date of inspection there was no evidence of vermin infestation in the property.
- g. Since the application was submitted repairs have been carried out in the bedrooms to include replastering and repainting areas affected by water ingress.
- h. As at the date of the inspection no ongoing damage or mould growth in the living area of the property as a result of leaks was observed.
- i. Since the hearing and inspection the attic has been cleared of excess cardboard boxes. Buckets remain however these have been positioned so as not to provide a water source for vermin.
- j. The landlord has sought to obtain quotations from roofing contractors with a view to re-slating the roof and upgrading the guttering at a future date.
- k. The tenant has previously refused access for the purpose of having quotations prepared.

Reasons for the Decision

28. The Tribunal determined the application having regard to the bundle of papers which had been available prior to the hearing, the inspection and the oral representations at the hearing. The Tribunal was only able to consider those items which formed part of the intimated application.
29. The Tribunal considered Mr Carr's submission that he had not been given a reasonable opportunity to resolve the repairs issues as the notification letter had been sent 3 days before the application was submitted. The Tribunal noted that the hearing and inspection took place 6 months after the notification letter was sent to the landlord. The Tribunal required to assess whether at the date of the hearing the landlord had a reasonable time since notification to carry out the required works. The Tribunal determined that 6 months was a reasonable period following notification for the landlord to carry out any repairs.
30. The Tribunal considered the condition of the roof. It was not disputed that there had been at least 4 incidents of water ingress which required roof

repairs. At the date of the inspection the roof was wet to the touch with evidence of widespread and active water ingress. The Tribunal considered the landlord's arguments that the roof was of a type where some dampness to the sarking was to be expected and that issues arising only when there was a severe weather event was not a breach of repairing standard. The Tribunal also took into account the landlord's submissions that any water ingress was not impacting the tenant as at the date of the inspection and that there was no water ingress into the living areas of the property.

31. The Tribunal had regard to Annex B of repairing standard statutory guidance for private landlords (<https://www.gov.scot/publications/repairing-standard-statutory-guidance-private-landlords/pages/11>) which states:

B.2 When determining whether the privately rented house meets the standard of repair required by section 13(1)(a), the landlord should have regard to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any relevant building regulations. Building standards require that the climatic conditions in Scotland including temperature, snow, wind, driving rain and flooding and the impact of climate change should be carefully considered in the structural design of buildings.

B.3 The test has been defined as "wind and watertight against what may be called the ordinary attacks of the elements, not against exceptional encroachments of water due to other causes" (Wolfson v Forrester 1910 SC 675). This could be expressed as "weathertight", that a house should be free from draughts and leaks under the current climatic conditions of the area where it was built. Windtight is not the same as airtight and needs to be compatible with the need for adequate ventilation.

B.4 Private landlords must be satisfied that any house they rent to tenants is fit for the tenants to live in. They should be confident that the essential fabric elements of the property (i.e. those parts of the physical structure which ensure the building's stability and resistance to the ordinary encroachments of weather) are in good repair. If essential fabric elements are not in good repair, then it is likely that the inside of

the property will, in time, be adversely affected. The most common problems arise with rising or penetrating dampness in the property. Private landlords must ensure that the properties they rent to tenants are substantially free from rising and penetrating damp, which is also required by the Tolerable Standard.

32. The inspection was carried out during unexceptional weather conditions. There had been wet weather since the start of January however, this was unexceptional given the Scottish climate and the time of year. Whilst the water ingress was not impacting directly into the living areas it was impacting the essential fabric elements of the building i.e. the roof and attic space. The Tribunal determined based on their observations at the inspection the condition of the roof did not meet the repairing standard.

33. The Tribunal then considered whether any of the exceptions set out in section 16 of the 2006 act applied. Section 16 states:

(4) 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.

(5) 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.

34. The Tribunal took into account the documentary evidence and oral submissions relating to access to the property for repairs. Repairs had been carried out to the roof on 2 occasions since the application was submitted. The Tribunal took into account that the tenant had allowed access for various repairs and reports on a large number of occasions as well as access for pest control, redecoration and plastering during the tenancy period.

35. The Tribunal accepted the evidence that had been submitted which showed that the tenant had refused access for quotations to be prepared since the application was submitted. However, the Tribunal did not determine that the exception in paragraph 4 applied. The Tribunal determined that there had not been any sustained refusal to grant access for necessary repairs by the tenant. The landlord had provided no evidence of efforts to gain access to carry out repairs where access had been denied, such as a Right of Entry application which may have been appropriate had there been denial of entry for repairs. The tenant had over the period of the tenancy allowed access to the property, most recently in December 2025 for an inspection. It was accepted that there had been some difficulties in the relationship between the tenant and the landlord, with issues raised relating to access for quotations however the Tribunal determined that the landlord had not established that the exception in paragraph 4 had been met.
36. In relation to the fact the issue of common ownership the Tribunal determined that the exception in section 13(5) did not apply. No evidence was referred to at the hearing to show that the owner of the downstairs property at 8 Baxter Street, who is liable for a 50% share of any roof repair had been approached for his consent in relation to a roof repair and had refused. No evidence of other steps that may have been taken to enforce a common repair or to recoup outlays in respect of a common repair had been submitted.
37. Taking the foregoing factors into account the Tribunal determined that the condition of the roof constitutes a breach of section 13(1)(a) and (b) and that no exception applies.
38. In relation to the damage to the walls within the property the Tribunal took into account that the tenant accepted that satisfactory repairs had been carried out to the damaged areas of paint in the bedrooms. There was no evidence of associated mould growth/damage as a result of previous water ingress. The Tribunal determined that there had been no breach of the repairing standard in relation to these issues.

39. In relation to the cardboard boxes/buckets in the attic, the landlord provided photographs to the Tribunal by email dated 16 February 2026 showing that the cardboard boxes previously stored in the property had been removed. Buckets remained however these had been placed in a position that did not retain water. The Tribunal determined that there was no breach of the repairing standard relation to these issues.

Decision

The tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(a) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

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.

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.

M C Kelly

Chairperson:

Date: 5 February 2026