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)

Land Register Title No: ANG24388

Chamber Ref: FTS/HPC/RP/26/1131

Property at 1/3, 341 Clepington Road, Dundee, DD3 8BA
("the Property")

The Parties:-

Mr Nicholas Shepherd, 1/3, 341 Clepington Road, Dundee, DD3 8BA
("the Tenant")
(Represented by Dundee Law Centre, 163 Albert Street, Dundee, DD4 6PX)

Mr James Mudie Symons, 1 Cameron Street, Dunfermline, KY12 8DP
("the Landlord")
(Represented by MML Law, Meadowplace Buildings, Bell Street, Dundee, DD1 1EJ)

Tribunal Members:

Gillian Buchanan (Chair) and David Godfrey (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) in relation to the Property, and taking account of the documentary and oral evidence for the parties, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application comprising various documents received on 11 March 2026 the Tenant applied to the tribunal 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 that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

(a) The house is wind and watertight and in all other respects reasonably fit for human habitation.
(b) The installations in the house for the supply of water, gas and, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order.
(c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
(d) The house meets the tolerable standard, including –
    i. In the case of a house having a supply of electricity, it complies with the relevant requirements in relation to the electrical installations for the purposes of that supply.
    ii. It is substantially free from rising or penetrating damp.
    iii. It has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of hot and cold water and suitably located within the house.
    iv. It is structurally stable.

3. By letter dated 5 May 2026 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.

4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant per his representative and upon the Landlord.

Inspection

5. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr David Godfrey, Ordinary Member, inspected the Property on the morning of 7 October 2025.

6. The Tenant was in attendance and provided access. The Landlord did not attend the inspection but was represented by Ms Carla Ritchie of Burnside Properties (Dundee) Limited (the Landlord's Letting Agent) and Mr Ritchie McNeill of MML Law (the Landlord's solicitor).

7. At the time of the inspection it was fair and dry.

8. Photographs were taken during the inspection and are included in the attached schedule.

Hearing

9. Following the inspection of the Property the tribunal held a hearing on 7 October 2025 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB. The Tenant attended the Hearing with his solicitor, Mr Kenneth Marshall of Dundee Law Centre. The Landlord did not attend the Hearing but was represented by Ms Ritchie and Mr McNeill.

10. The Tribunal discussed with the parties its findings at the inspection and heard submissions from the parties in response as set out below.

The shower

11. Mr Marshall for the Tenant advised that the shower does not work and does not supply hot water. The Tenant said he uses the immersion heater to take a bath.

12. Mr McNeill for the Landlord said that tradespersons had been instructed to attend but there were issues with access in that the Tenant would not be present or the tradesperson was not prepared

to go into the Property. He referred to the existence of call logs between the letting agent and the tradespersons.

The Tribunal asked what efforts had been made to access the Property after 6 November 2025, the date of Ms Ritchie's email to Dundee Law Centre in which she states that a new shower was installed in August 2022 and no further issues with the shower have been reported since. The Tribunal was advised by Mr McNeill that no attempts had been made after that date.

Mr McNeill said that the extent of the repairs required to the Property were such that Notice to Leave was served to evict the Tenant. The Tribunal stated that this was not good enough as any eviction process could take many months.

The Tribunal asked what issues the contractors reports with access to the Property. Mr McNeill said the contractors would not take access without the Tenant being present. Ms Ritchie stated that one contractor was not prepared to attend due to there being bags of rubbish. She said she took access on 4 December 2025 with a builder to assess the repairs required. The entry door was not secure. There was evidence of drugs paraphernalia and the contractor was not willing to be there as a result.

The Tribunal asked whether the Landlord accepted work to be required to the shower. Ms Ritchie said a fuse had been removed from the consumer unit and used to make the cooker work. She said the Tenant had removed the fuse although he will say the fuse was removed by a qualified electrician in June 2024 who attended to install sockets. The Landlord instructed and paid for these works. The electrician would not have removed a fuse and not replaced it.

13. In response the Tenant said he wants the shower to work. He would not have removed the fuse.

Heaters

14. The Tribunal stated that it observed the bathroom heater working. The living room heater does not work. Mr McNeill stated that the Landlord's position is as stated already relative to access.

Windows

15. The Tribunal stated that it found no issues with the windows generally. With regard to the living room window the Tenant stated that when he was cleaning the window the glass cracked on the outside.

16. For the Landlord Mr McNeill stated that he accepted it was the Landlord's obligation to ensure the windows were wind and watertight which includes repairing any windows. The position relative to access is as previously stated.

Cracks in Bedroom/Kitchen Ceiling

17. The Tribunal stated that the cracks in the ceiling are just affecting the paper and the ceiling behind is not cracked in any significant manner. Mr Marshall for the Tenants accepted the position to be purely cosmetic and agreed to withdraw that complaint from the application.

Water Ingress

18. The Tribunal stated that the issues of alleged penetrating damp and condensation are one and the same issue. Mr Marshall stated that he replied upon the report of Richardson & Starling lodged with the application and prepared following an inspection on 15 December 2025. The Tenant said the landlord had fixed the ceiling through which water had previously ingressed.

The situation should not therefore deteriorate further and the outstanding repairs are cosmetic only to the decoration.

19. Mr McNeill for the Landlord again referred to access issues being involved.

Condensation

20. The Tribunal intimated that there is mould in the upper walls and ceiling in the bathroom and at the window area of the kitchen and on the ceiling and walls in the living room.

21. Mr Marshall again stated that he relied upon the report of Richardson & Starling. The Tribunal expressed concerns at the content of the report which did not articulate the cause of the repairs they offered to carry out. Mr Marshall described the difficulties that Dundee Law Centre generally face in securing expert reports. Richardson & Starling will provide reports but must be able to quote for the works required too. Mr Marshall said Richardson & Starling identify a lack of extractor fans. However the Tribunal stated that in the living room the problem could be with the hot water tank located in the cupboard there venting as the immersion heater is not working and Richardson & Starling do not address that point.

22. Mr McNeill for the Landlord stated that he could see condensation in the living room and agreed with the Tribunal's observations.

Electrics

23. The Tribunal observed the very dated fusebox in the Property. Some sockets don't work, the heater in the living room does not work and the Electrical Installation Condition Report ("EICR") produced by the Tenant shows issues with the electrics.

24. The Tenant stated that if a fuse blew in an appliance he would change the fuse. He said he had no input with the fusebox at all.

25. The Landlord had not produced any EICR relative to the Property. No details could be provided as to when any EICR has last been prepared. Mr McNeill said the Landlord accepted the terms of the EICR produced by the Tenant. He said access issues were holding back the Landlord from dealing with the position.

    The Tribunal asked Mr McNeill what steps had been take by the Landlord to take access to the Property to resolve the electrical issues following sight of the EICR produced by the Tenant. He said no steps had been taken and access had not even been sought for that purpose.

Access

26. With regard to access, the tenants stated that when the Landlord personally attended at the Property to fix the ceiling he took access himself without the Tenant being present.

    He accepted that for some appointments made he had not been available to give access but his Mum was ill in hospital.

    He said he has given access on other occasions. He said the condition of the Property is generally as the Tribunal saw it at the inspection. He said it was only untidy and any bags of rubbish were in the kitchen. He has previously allowed tradesmen access for example to install the double socket in the living room.

He said the entrance door to the Property is not secure and he has been told this will be fixed when back rent is paid. The Tribunal indicated that any complaint about the front door does not form part of the application.

27. The Tribunal asked about Burnside Properties (Dundee) Limited not being registered as a Letting Agent. Ms Ritchie stated that AA Properties (Scotland) Limited is an "umbrella company" which is so registered and the two companies "work together on a daily basis". The Tribunal intimated its concern as to whether such an arrangement is sufficient to comply with legal requirements.

Summary of the issues

28. The issues to be determined are:-

(a) Whether the Property is wind and watertight and in all other respects reasonably fit for human habitation.
(b) Whether the installations in the Property for the supply of water, gas and, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order.
(c) Whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
(d) Whether the Property meets the tolerable standard, including –
    i. Whether the Property complies with the relevant requirements in relation to the electrical installations for the purposes of that supply.
    ii. Whether the Property is substantially free from rising or penetrating damp.
    iii. Whether the shower has a satisfactory supply of hot and cold water.
    iv. Whether the Property is structurally stable.

Findings of fact

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

(a) The Landlord is the heritable proprietors of the Property.

(b) The Property is leased by the Landlord to the Tenant in terms of a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016.

(c) It is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.

(d) The shower does not operate correctly and has no hot water supply.

(e) The electric heater in the living room does not work at all.

(f) The windows in the Property are wind and watertight and in a reasonable state of repair and in proper working order.

(g) The crack to the glazing of the living room window was caused by the Tenant.

(h) There is no ongoing ingress of water into the Property through the bedroom/kitchen ceiling. The repaired ceiling has not been decorated and requires to be redecorated.

(i) The hot water tank located in the cupboard in the living room is venting as the immersion heater/thermostat is not working causing significant condensation.

(j) The installations in the Property for the supply of water and electricity are not in a reasonable state of repair and in proper working order.

(k) The Landlord has not produced any satisfactory EICR relative to the Property.

(l) The Property does not meet the tolerable standard

(m) The Property does not meet the Repairing Standard.

Reasons for the Decision

30. The Property is a flatted dwelling house in an established residential area north of Dundee City Centre.

31. The Property is on one level and comprises a hallway, bedroom/kitchen, living room and bathroom.

32. The inspection was restricted to those items within the application paperwork.

33. The inspection commenced in the bathroom. The shower did not operate at all with no water running. The combination electric ceiling light/heater operated correctly. The bathroom window operated correctly and a vent was noted above the window. Condensation mould was noted on the upper walls and ceiling.

34. There is no heating in the large room used as a bedroom and kitchen. The kitchen window was intact with dampness and mould found to the left when tested with a damp meter. The wall beneath the window was dry. Mould was present there. Above the kitchen the ceiling was found to show evidence of previous water ingress. The Tenant stated there had been no recent water ingress or further deterioration.

35. In the living room there is evidence of water running down the walls and mould on the ceiling. The electric heater in the living room does not operate at all and a cupboard within the room houses the hot water tank.

    The window glazing was found to be cracked which the Tenant stated occurred when he was washing the windows.

36. In the hallway a light on the fuseboard situated at ceiling height was found to be flashing red.

37. The Tribunal observed there to be no smoke detector in the living room.

Decision

38. The tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

39. The tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).

40. The decision of the tribunal was unanimous.

Access

41. The Landlord and his agents are reminded that any requirement for access to the Property relative to the works required by the RSEO must be intimated to the Tenant in writing giving reasonable notice therefore – being no less that 48 hours from the date the Tenant receives the written communication.

42. The Tenant is reminded that where written notice is given as described above, the Tenant must make himself available to provide access to the Property on the date and at the time required.

Right of Appeal

43. **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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Effect of section 63

44. **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.**

G Buchanan

Signed

Date : 7 October 2026

Legal Member and Chairperson