

# Housing and Property Chamber First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 section 24(1)**

**Chamber Reference: FTS/HPC/RP/20/0974**

## **The Parties**

**Miss Marie Hamilton, formerly residing at 11/4 James Street, Edinburgh, EH15 2DT (“The Tenant”)**

**Ms Nicola Hopkins, c/o Tay Lettings Ltd., 8 Eagle Street, Craighall Business Park, Glasgow, G4 9XA (“The Landlord”)**

**Land Register Title: MID78792**

**Subjects: 11/4 James Street, Edinburgh, EH15 2DT (“the House”)**

## **Tribunal Members**

Ms H Forbes (Legal Member)

Mrs S Hesp (Ordinary Member)

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 House, determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’).

## **Background**

1. By application dated 18<sup>th</sup> March 2020, made under section 22 of the Housing (Scotland) Act 2006 (‘the Act’), the Tenant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) for a determination as to whether the Landlord have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’).
2. The Tenant considered that the Landlord had failed to comply with their duty to ensure that the House meets the repairing standard, in that the House does not meet the tolerable standard.

3. The Tenant listed the issues as follows:

*With the exception of one small bathroom window, I am unable to open any of the windows.*

4. The Tenant notified the Landlord's representative of the defects by email dated 3<sup>rd</sup> October 2019.
5. As part of the Application, the Tenant enclosed copy email correspondence between the Tenant and the Landlord's representative.
6. A decision to refer was made by the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber) on 30<sup>th</sup> March 2020.
7. Procedure was delayed due to measures taken in response to the Covid-19 pandemic.
8. The case was set down for a Case Management discussion to take place on 18<sup>th</sup> January 2021. Notification letters were sent to parties on 9<sup>th</sup> December 2020.
9. By email dated 30<sup>th</sup> December 2020, the Tenant lodged written representations and productions
10. A Case Management Discussion ("CMD") took place by telephone conference on 18<sup>th</sup> January 2021. The Tenant was in attendance. Mr David Gibb attended on behalf of the Landlord. Mr Gibb said that the Landlord's representative had not received the notification letter of 9<sup>th</sup> December 2020. The Tenant informed the Tribunal that she was no longer the tenant. The tenancy terminated on 2<sup>nd</sup> August 2020.
11. In terms of Schedule 2 Paragraph 7(1) of the Act, when a tenancy is lawfully terminated, the application is treated as having been withdrawn. The Tribunal must then consider the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act.
12. The Tribunal adjourned the CMD for consideration of the application and whether it should be determined or abandoned. The Tribunal decided, in terms of Schedule 2 Paragraph 7(3) of the Act, that the application should be determined, given the health and safety issues raised in respect of the windows.
13. A Minute of Continuation dated 18<sup>th</sup> January 2021 was issued and a further CMD set down.
14. By email dated 23<sup>rd</sup> February 2021, the Landlord lodged written representations and productions.

- 15.** A CMD took place by telephone conference on 8<sup>th</sup> March 2021. The Landlord was in attendance together with Mr David Gibb, Letting Agent. The Landlord said that the windows were attended to in January 2020 and it was found that they did not require replacement. All windows were capable of being opened. The Tenant had not opened the windows regularly and they had seized. Pictures lodged by the Landlord showed that the windows could not be reached by the Tenant. Refurbishment of the House was carried out when the Tenant left in August 2020. There are now new tenants and they have not reported any issues with the windows.
- 16.** The Tribunal referred to an email lodged by the Tenant, from A1 Lockman to the Landlord's previous letting agent, which was dated 25<sup>th</sup> May 2017, and stated that there were latch pieces missing from the windows, and that this was 'clearly dangerous as the sash could tilt/fall forwards into the room'. The Tribunal decided, given the serious concerns raised in the email, and the fact that no substantive work had been carried out thereafter, that this was a matter that would be best assessed during an inspection when lockdown restrictions have eased and inspections have recommenced.
- 17.** The Tribunal carried out an inspection of the House on 28<sup>th</sup> June 2021. Mr Ben Gettel of Tay Letting attended on behalf of the Landlord. The Tribunal found that the windows in the bedroom and living room could be opened. The window in the kitchen could not be opened. Photographs of the windows were taken. A pre-hearing inspection summary and schedule of photographs was circulated to parties prior to the hearing.
- 18.** A hearing took place by telephone conference on 6<sup>th</sup> July 2021. The Landlord was in attendance together with Mr David Gibb and Mr Malcolm Pickard of Tay Letting. The Ordinary Member informed those present of the findings at inspection.
- 19.** It was stated on behalf of the Landlord that the kitchen window is capable of being opened and is opened from the top. The representative of Tay Letting present at the inspection was not aware of this but has subsequently ascertained that the window can be opened. The Landlord referred to her written representations lodged on 23<sup>rd</sup> February 2021 which show the kitchen window in the open position, on page 6. The Landlord said she has invested a lot of money in the House and pointed out that the current tenants had no complaints about the windows. There was no date stamp on the photograph of the kitchen window in the open position.
- 20.** The Tribunal decided to continue consideration of matters to allow the Landlord to produce further evidence that the kitchen window can be opened. The Tribunal decided to issue a Direction to the Landlord requiring date-stamped photographic evidence that shows the window in full working order in the open position. The Tribunal also reiterated a previous request for a copy of the tenancy agreement between the parties.
- 21.** By email dated 20<sup>th</sup> July 2021, the Landlord's representative submitted the tenancy agreement and Form AT5, together with two photographs of the

kitchen window and a quotation for works to the kitchen window. The photographs were not date-stamped, did not appear to show the window in full working order and in the open position, and no explanation was provided by the Landlord's representative. An explanation was requested by the Tribunal.

22. By email dated 3<sup>rd</sup> August 2021, the Landlord's representative stated the following:

*Since our first visit the metal hoop (which is used to open the window) has cracked the PVC directly below, which is now preventing the window from opening. To reiterate this is a new issue that has arisen due to general wear on the windows. We have instructed Alba Glass and Glazing to repair the issue as quoted and will provide you with a date stamped picture of the windows opening as soon as the works have been completed.*

23. The Tribunal determined that no evidence had been submitted to reliably indicate that the kitchen window was in working order at any point after the application was made. By Notice of Direction dated 11<sup>th</sup> and issued 12<sup>th</sup> August 2021, the Tribunal ordered the Landlord to produce the following within 7 days:

1. *A clearly date-stamped photograph or photographs showing the kitchen window in full working order in the open position; and*
2. *A copy of the invoice or receipt for works carried out to the kitchen window in August 2021.*

24. By email dated 17<sup>th</sup> August 2021, the Landlord's representative lodged four photographs showing the kitchen window in full working order and in the open position, and a copy invoice dated 17<sup>th</sup> August 2021 indicating that works had been carried out to the kitchen window.

## **Determination**

25. The Tribunal determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act and that the House meets the repairing standard in so far as the windows are concerned.

26. The decision of the Tribunal was unanimous.

## **Right of Appeal**

27. **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.**

Where such an appeal is made, the effect of the decision and the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# H Forbes

Helen Forbes

Legal Member and Chairperson  
Date: 25<sup>th</sup> August 2021