

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: FTS/HPC/RP/22/1817**

**Title no: ANG6260**

**Property at 76 High Street, Carnoustie, Angus DD7 6AH (“The Property”)**

**The Parties:-**

- **Ms Laura McDonald, 76 High Street, Carnoustie, Angus DD7 6AH (“the Tenant”)**
- **Ms Cheryl Armit, 5 Beldavia Court, Pope Street, Altofts, Wakefield, West Yorkshire WF6 2 RL (“the Landlord”)**

**The Tribunal comprised:-**

Ms Gabrielle Miller - Legal Member  
Mr David Godfrey - Ordinary Member

### **Decision**

1. 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 evidence led by the Tenant and the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

### **Background**

2. By application dated 2<sup>nd</sup> June 2022, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

3. The application by the Tenant stated that it was considered that the Landlord had failed to comply with his duty to ensure that the Property met the Repairing Standard. The application stated that the House was not wind and watertight and in all other respects reasonably fit for human habitation. In particular, the complaints consisted of:-
  - a) That the Landlord had not repaired or replaced windows in the lounge and two bedrooms.
4. On 19<sup>th</sup> August 2022, the Landlord lodged a submission stating that she has had issues with communications from her letting agent. She is now in communication directly with the Tenant. She has been trying to arrange funds for the windows to be replaced from her mortgage company. She has had the first meeting and is to meet again on 1<sup>st</sup> September 2022 when she hopes for an outcome. She has obtained quotes for replacement windows.

### **The Inspection**

5. The Tribunal attended the Property on the morning of 25<sup>th</sup> August 2022. Only the Tenant was present. The Tribunal was let into the Property by the Tenant. It was clear, dry and of mild temperature on the day of the inspection.
6. The Property is a first floor and attic flat in a detached tenement. The building is 2 storey and attic in height with commercial properties on the ground floor.
7. The windows in the lounge were inspected first. There were four windows in the room. Three together at the front and one at the side. The side window on the west elevation was opened and the mechanism was found to be operating satisfactorily. Signs of water penetration were, however, evident and the external mastic seal around the window frame was found to be perished. The front windows were also opened and a number of the fittings were found to be difficult to open and several of the mechanisms defective. Signs of water penetration were also noted.
8. The windows in bedroom number 1 were inspected next. This consisted of two windows together. The windows were opened and a number of the fittings were found to be difficult to open and several of the mechanisms defective.
9. The windows in bedroom number 2 were then inspected next. The windows consisted of three windows in a bay window formation. The windows were opened and a number of the fittings were found to be difficult to open and several of the mechanisms defective. Additionally some of the windows are distorted and do not close properly.
10. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.

11. The inspection was concluded and the Tribunal reconvened in the afternoon to for the hearing conducted by teleconferencing.

### **The Hearing**

12. The hearing was held on 25<sup>th</sup> August 2022 at 2pm by teleconferencing. The Tenant attended. Neither the Landlord nor her letting agent attended.

13. The Tribunal discussed the windows detailed in the application. The Tribunal had found that the windows in both bedrooms and the lounge did not meet the repairing standard.

14. The Tenant had nothing further to comment. She noted that the Landlord is trying to obtain funds through her mortgage to allow her to replace the windows.

15. It was explained to the Tenant that the Tribunal had the option of making a RSEO should they believe that there was merit to do so.

### **Summary of the issues**

16. The issues to be determined are: -  
a) Whether the windows in the lounge and bedrooms were not in working order;

### **Findings of fact**

17. Having considered all the evidence, the Tribunal found the following facts to be established: -

- a) The tenancy is a Private Rented Tenancy between the Landlord and the Tenant. The tenancy commenced on 1<sup>st</sup> April 2021.
- b) The windows in the lounge and both bedrooms are in poor condition. The windows need repaired or replaced.

### **Reasons for the decision**

18. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Tenant at the hearing.

19. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

20. The Tribunal was in no doubt, from its inspection, that the property did not meet the Repairing Standard.

21. There was clear evidence that the windows were in a poor state of repair and needed to be replaced or repaired.
22. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord was in breach of the duty to comply with the Repairing Standard.
23. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal “must by order require the landlord to carry out such work”.
24. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

### **Decision**

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

**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 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 Miller, Chair

28<sup>th</sup> August 2022