

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**Statement of Decision under section 25(1)(a) of the Housing (Scotland) Act 2006 ("the 2006 Act")**

**Chamber Ref: FTS/HPC/RP/17/0084**

**Title no: Subjects being the top floor flat at 21 Court Street, Dundee, DD3 7QS registered under title number ANG10143**

**Property at Top Floor, 21D Court Street, Dundee, DD3 7QS ("The House")**

### **The Parties:-**

~~Lynne Findlay, residing at Top Floor, 21D Court Street, Dundee, DD3 7QS ("the Tenant")~~

Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX ("the Tenant's Agent")

Samantha Whittington, formerly known as Samantha Hall residing at Strathearn, Findon Road, Findon, Worthing, West Sussex, BN14 0RD ("the Landlord")

### **The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr Nick Allan	-	Ordinary Member

### **Background**

1. Reference is made to the determination of the Tribunal dated 14 June 2017 which determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in that she had failed to ensure the Property met the Repairing Standard. The works required by the RSEO were:-
  - (a) Instruct an independent chartered building surveyor to undertake a full survey report of the house to identify where possible the causes of water ingress and damp and carry out the works recommended in the report to ensure the house is watertight;
  - (b) Make good any internal decoration following completion of the works required at (a); and

- (c) Where the works required at (a) cannot be completed for any reason, provide evidence of reasonable steps taken to carry out the works;

The Tribunal required the works be completed within a period of three months from the date of service of the order.

2. Following receipt of the RSEO the Landlord lodged a request for permission to appeal. The request was refused by the Tribunal in terms of its decision dated 20 August 2017. Subsequent correspondence from the Landlord's partner Gary Whittington to the Tribunal indicated that he had consulted with various surveyors who were of the view that the full survey report required by the RSEO was not necessary. The Landlord also pointed out that the roof had been inspected by a qualified contractor and had been assessed as being in a reasonable state of repair.
3. On 11 October 2017 the Ordinary Member carried out a re-inspection of the property. The Tenant was present and allowed access. The re-inspection confirmed that damp readings were still present within the property. This included fresh readings to the rear elevation kitchen wall which were not previously in evidence and increased levels of dampness in the third bedroom. The re-inspection report is attached herewith.
4. The re-inspection report was circulated to parties for comment. The Tribunal subsequently received a number of written representations from both the Landlord and the Tenant. The representations were lengthy and highlighted various matters which fell outwith the jurisdiction of the Tribunal, including issues surrounding the payment of rent. However the points of relevance to the Tribunal's determination of the matter can be summarised as follows:-
  - (i) The Landlord had served the Tenant with a Notice to Quit and Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 however it appeared as if the Notice to Quit did not align with the ish date of the tenancy and was therefore invalid.
  - (ii) The Landlord intended to sell the property and had marketed it for sale.
  - (iii) The Landlord did now intend to undertake the survey report required by the RSEO and was attempting to gain access to the property for this purpose. However she had not been given sufficient time to do so following receipt of the Tribunal's decision to refuse permission to appeal. The Landlord further alleged the Tenant was obstructing access to the property for the survey to be carried out. The Tenant in turn alleged the Landlord was not giving proper notice of access required and she had concerns regarding her legal position in view of the ongoing proceedings.
  - (iv) The Landlord requested details of the damp meter used by the Ordinary Member to obtain the readings at the property. The Tribunal did however note that the Landlord had been given the opportunity to attend or be represented at the inspection and re-inspection when the

readings were taken and had chosen not to do so. The Tribunal was satisfied that the readings taken were accurate and reliable. The Tribunal was aware that there was no requirement to share that information with the Landlord.

5. Having regard to the findings of the re-inspection and the written representations from the parties the Tribunal was satisfied that it had sufficient information to make a determination without the requirement for a further hearing.

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### **Decision**

6. The Tribunal having made such enquiries as it saw fit for the purpose of determining whether the Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that the RSEO should be varied so as to give the Landlord a further six weeks to complete the works required all in terms of Section 25(1) of the Housing (Scotland) Act 2006.

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### **Reasons for the decision**

7. The Tribunal determined the application having regard to the findings of the re-inspection and the written representations from the Landlord and the Tenant.
8. The Tribunal remained of the view that the full survey report required by the RSEO was necessary in order to identify the probable cause of the water ingress. The readings taken at the re-inspection indicated that damp was still present in the property. The Tribunal was clear that the report was required in order to provide the necessary assurances as to what works were required and therefore give the Tribunal confidence that the cause of the water ingress would be properly identified and resolved. The Tribunal noted from the Landlord's later correspondence that there was now a willingness to instruct the report and attempts were being made in this regard.
9. The Tribunal was also conscious that the Landlord had submitted a request for permission to appeal following receipt of the RSEO. The Tribunal accepted that this may have resulted in a delay in instructing the survey report. The Tribunal further noted that relations between the parties had deteriorated significantly and this was having an effect on any attempts by the Landlord to gain access to the property. The Tribunal was sympathetic to the Tenant's position, being uncertain as to what action she should take in view of the ongoing proceedings before the Tribunal. However it was imperative that the Landlord was allowed access to the property to enable the survey report to be carried out.
10. The Tribunal therefore considered that it would be reasonable to vary the RSEO under section 25(1)(a) to extend the period for the works by a further six weeks. The Tribunal would wish to stress going forward the importance of

cooperation between the parties, in particular with regard to access to the property for the survey report to be carried out.

11. The Tribunal has noted the Landlord's intention to market and sell the property. The Tribunal would request in the event that a purchaser is identified that contact details for the new owner are provided to the Tribunal timeously.

**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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

R O'Hare

Signed

Ruth O'Hare  
Legal Member

13 February 2018

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**



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

**Variation of Repairing Standard Enforcement Order ("RSEO") under section 25(1) of the Housing (Scotland) Act 2006 ("the 2006 Act")**

**Chamber Ref: FTS/HPC/RP/17/0084**

**Title no: Subjects being the top floor flat at 21 Court Street, Dundee, DD3 7QS registered under title number ANG10143**

**Property at Top Floor, 21D Court Street, Dundee, DD3 7QS ("The House")**

### **The Parties:-**

Lynne Findlay, residing at Top Floor, 21D Court Street, Dundee, DD3 7QS ("the Tenant")

Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX ("the Tenant's Agent")

Samantha Whittington, formerly known as Samantha Hall residing at Strathearn, Findon Road, Findon, Worthing, West Sussex, BN14 0RD ("the Landlord")

### **The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr Nick Allan	-	Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined on 13 February 2018 that the RSEO relative to the Property dated 14 June 2017 should be varied, the said RSEO is hereby varied with effect from the date of service of this Notice in the following respects:-

**The period allowed for the completion of the work required by the order is extended by a further 6 weeks from the date of service of this notice.**

**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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page(s) are executed by Ruth O'Hare, Chairperson, 2 Mill O'Forest Grove, Stonehaven, chairperson of the Tribunal at Aberdeen on 13 February 2018 before this witness:-  
R O'Hare

A. Toye witness

chairperson

Anna Toye, c/o Aberdeenshire Council  
Woodhill House, Westburn Road, Aberdeen



## Re-inspection Report

**Top floor flat, 21D Court Street, Dundee, DD3 7QS**

**Case Reference:** PRHP/RP/1/0084

**Surveyor:** Mr Nick Allan (Ordinary member)

**Date of re-inspection:** 11th October 2017

**Time of re-inspection:** 12 noon

**Weather conditions:** Sunny and dry

**Present:** Mr Nick Allan

Miss Lynne Findlay

(Miss Findlay's daughter was also present in the property but was confined to bed and took no part in the re-inspection process)



Photo 1 – Front elevation

### **Requirements of RSEO:**

The following actions were required by the RSEO following the inspection and Hearing held by the Tribunal on the 31st May 2017.

In particular, the Tribunal required the landlord to: -

- (a) Instruct an independent chartered building surveyor to undertake a full survey report of the house to identify where possible the causes of water ingress and damp and carry out the works recommended in the report to ensure the house is watertight;
- (b) Make good any internal decoration following completion of the works required at (a); and
- (c) Where the works required at (a) cannot be completed for any reason, provide evidence of reasonable steps taken to carry out the works.

The Tribunal ordered that the works specified in the Order must be carried out and completed within a period of three months from the date of service of the Notice.

During the original inspection on the 31<sup>st</sup> May, a dual function dampness meter capable of determining levels of moisture below surfaces, and deeper within building materials was used to check specific areas within the Lounge, kitchen and Bedrooms 2 + 3. These were areas within the property where the Tenant has advised that there had been an ongoing issue with water penetration over a period of some considerable time. The Tenant also advised the Tribunal that the water penetration issues occurred in each of the four corners of the flat.

The dampness meter scale extends from 0-999, with readings over 200-250 indicating a threat to timber, if within close proximity.

The moisture readings results taken during the two inspections can be compared below.

#### **Lounge - Inspection 31/05/2017**

Readings ranging between 400-600 were obtained at a wall height level of approximately 1.5-2m. These readings were obtained within the open mirrored press shown in Photograph 2 below. These readings indicate a serious level of moisture present below the internal wall surface.

#### **Lounge – Re-inspection 11/10/2017**

Very similar readings of between 300-500 were obtained at the same location, indicating that the water penetration issue persists.





Photo 2 – Mirrored press in lounge



Photo 3 – Location of dampness in Kitchen

### **Kitchen – Inspection 31/05/2017**

Readings between 400-999 were obtained at a wall height level of approximately 1-1.4m. These readings were obtained from the internal wall to the left of the sink unit where the tiled surface has become detached. The area in question is shown in Photograph 3 above. These readings indicate a significant level of moisture present below the internal wall surface. The wall surface area above the kitchen units, where the wallpaper has partly peeled off due to a previous water penetration issue, did not produce any dampness readings. The existence of a wall vent below the detached wallpaper suggests the presence of a cavity, possibly a former press.

### **Kitchen – Re-inspection 11/10/2017**

Very similar readings were obtained at the same location, indicating that the water penetration issue persists. However, new dampness readings were recorded along the rear elevation kitchen wall, and from ceiling level to floor level. These readings fell within the 170-200 range. Dampness on this wall was not previously in evidence.

### **Bedroom 1 – Inspection 31/05/2017**

No dampness readings of any concern were recorded in this room. Photograph 4 below.

### **Bedroom 1 – Re-inspection 11/10/2017**

No dampness readings of any concern were recorded in this room.

### **Bedroom 2 – Inspection 31/05/2017**

No dampness readings of any concern were recorded in this room.

#### **Bedroom 2 – Re-inspection 11/10/2017**

It wasn't possible to gain access to this room for the purposes of the re-inspection.



Photo 4 – Bedroom 1



Photo 5 – Bedroom 3

#### **Bedroom 3 – Inspection 31/05/2017**

No dampness readings of any concern were recorded in this room.

#### **Bedroom 3 – Re-inspection 11/10/2017**

Surface dampness readings of 20%, and embedded dampness readings in the order of 160-190 were obtained along the rear wall of this room from floor to ceiling height. Photograph 5 above. This increased level of dampness indicates an escalation of the dampness issue from the date of the original inspection.

#### **Gas Boiler – Inspection 31/05/2017**

It was noted that a new gas boiler had been installed very recently and that the Gas Safety Certification held on file related to the previous boiler.

#### **Gas Boiler – Re-inspection 11/10/2017**

It was noted that there was an issue with the boiler. Please refer to photographs 6 & 7 below.



Photo 6 – Boiler-use warning



Photo 7 – Warning advice notice

During the re-inspection, Mr Kenny Morrison, a Heating Engineer with QTS Contracts, arrived to attend to the boiler and pipework issue. No work had commenced within the property by the time the re-inspection had concluded.

Nick Allan FRICS

Ordinary Member - First-tier Tribunal for Scotland

26/10/2017