

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision on tenant's application: Housing (Scotland) Act 2006**

**Chamber Ref: PRHP/AB10/92/10**

**1B Diamond Place, Aberdeen, AB10 1NL ("the Property")**

**The Parties:-**

**Miss Lisa Baxter, formerly residing at 1B Diamond Place, Aberdeen, AB10 1NL ("the Tenant")**

**Toscafund Brand Street Limited, a Company incorporated in Jersey (Registered Number 114598) and having its registered office at Second Floor, N0.4 The Forum, Grenville Street, St Helier, JE2 4UF ("the Landlords")**

**Tribunal Members:**

**Ewan Miller (Legal Member)**

**Colin Hepburn and Michael Scott (Ordinary Members)**

### **DECISION**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have now complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property concerned and taking account of a re-inspection of the Property, determined that the Landlords were currently continuing to fail with the duty imposed by Section 14(1)(b) of the Act.

### **Background**

1. This matter was previously heard by a Committee of the Private Rented Housing Panel in 2010. On 1 December 2017 the purpose and functions of the Private Rented Housing Panel were transferred to the First Tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"). The Tribunal therefore has jurisdiction to continue with this matter.
2. Reference is made to a previous determination of the Private Rented Housing Panel dated 22 September 2010 in which the Committee found that the Property did not meet the repairing standard. A Repairing Standard Enforcement Order ("RSEO") was issued on the same date and required the then Landlords:-

- (a) to carry out such works as are necessary to render the Property wind and watertight and to ensure there is no further water ingress to the Property with particular reference to the main bedroom, bathroom and kitchen within the Property; and
  - (b) to carry out such internal remedial works as are necessary to repair the damage caused by previous water ingress including renewal of plaster where required and to carry out redecoration works following completion of the repair works.
3. Following the issue of this Decision a re-inspection of the Property was carried out on 13 January 2011. At that stage no meaningful progress had been made or works carried out and the Committee was not satisfied with the condition of the Property. The Tenant had, by that point, vacated the Property and so the Committee determined there was no point in issuing a Rent Relief Order as the Property could not be re-let with the RSEO in place and this therefore effectively acted as a 100% restriction on the ability of the then Landlord to achieve rental from the Property.
  4. Thereafter matters fell into abeyance and no contact was had with the then Landlord.
  5. In early 2018 Mr Michael McDowall of London and Scottish Investments made contact with the Tribunal. Mr McDowall is the agent for Toscafund Brand Street Limited who are now the landlords of the Property.
  6. On 3 April 2018 a re-inspection of the Property took place, carried out by Mr Colin Hepburn, Surveyor Member of the Original Committee and now an Ordinary Member of the Tribunal. Access to the Property was provided by Andrew Beedie of Messrs F G Burnett. Whilst the Ordinary Member found that the Landlords had made progress and had carried out repairs to the roof and to the external stairwell, nonetheless there were still elevated levels of damp in the kitchen, bedroom, bathroom and communal stairwell. Accordingly the RSEO remained in place at that point.
  7. Mr McDowall again contacted the Tribunal in the latter part of 2018 to ask the Tribunal to again re-inspect the Property to see if compliance had now been achieved. A re-inspection and hearing took place on 23 October 2018. The Tribunal Members present were Mr E K Miller, Chairman and Legal Member, Mr C Hepburn, Ordinary/Surveyor Member and Mr M Scott, Ordinary Member.

The Tribunal again inspected the Property. It was apparent that extensive works had been done in the communal stairwell to address the water ingress. These appeared to be effective, although some redecoration was still required. Whilst it was apparent that the Landlord had carried out further works to the roof and had replaced various areas of plasterboard, nonetheless there were still elevated areas of damp in the same areas in the kitchen, bedroom and bathroom.

8. A discussion was had at the Hearing as to whether or not these areas of damp might simply be because the Property was taking some time to dry out. The Tribunal had reservations that this was the case but offered Mr McDowall the option of delaying matters a little further and carrying out a re-inspection shortly to see if these areas had dried out. After discussion Mr McDowall was of the view that this was unlikely to be the case and that it was simply the case that the Landlords had not yet identified the root cause of the water ingress.
9. The Tribunal had some sympathy for Mr McDowall who was clearly trying to address the issue and to achieve compliance. From the outset of this case in 2010 the Committee and now the Tribunal had highlighted that because of the complex nature of the roof structure it may take a number of different repairs to take place before the correct solution could be found. There was an element of trial and error. The Tribunal was satisfied that the Landlords and Mr McDowall were doing their best to solve the problem properly and that they would get there. However, in the meantime, the RSEO would require to remain in place.

### **Decision**

10. The Tribunal accordingly determined that the Landlords had not yet achieved compliance with the duty imposed by Section 14(1)(b) of the Act.
11. The Decision of the Committee was unanimous.

### **Right of Appeal**

12. 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.

**Effect of Section 63**

13. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

E Miller

Signed .....

Date ..... 14.1.19 .....

Chairperson