

Housing and Property Chamber
First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION OF THE TRIBUNAL
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 23 Sunnybraes Terrace, Steelend, Fife KY12 9NE ("the House")

The Parties:

Miss Danielle Paul, 23 Sunnybraes Terrace, Steelend, Fife KY12 9NE ("the Tenant")

Mordecai (otherwise Mordechai) Bamberger, 15 Belmont Drive, Glasgow G46 7NZ and Mordela Bamberger, 86 Hillside Road, London N15 6NB ("the Landlord")

Chamber Ref: FTS/HPC/RP/22/0442

DECISION

The Tribunal having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the inspection and hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 15 February 2022 (hereinafter referred to as "the Application") the Applicant 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 Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
(b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.”*

The Applicant complained that: the living room window is draughty, not able to be closed and the lintel above it is cracked; the bedroom windows were draughty; and mould and dampness are present.

By letter of 21 March 2022, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson
Geraldine Wooley, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

An inspection was fixed for 16 May 2022 and a hearing for 23 May 2022.

The Tribunal inspected the House on 16 May 2022. The Tenant's step father was present. The Landlord was not represented.

On 23 May 2022, the Tribunal held a hearing by telephone conference. The Tenant was present. The Landlord was neither present nor represented. The Tribunal considered the written evidence submitted by the parties and the Tenant's oral submissions.

Submissions at the Hearing

The Tenant reported that she had first reported the cracked lintel in May last year and that it had worsened since. Workmen on behalf of the Landlord had fixed temporary supports in the past few days. There has been a long standing problem with cold and dampness. The problems exist throughout the House but had been particularly bad in the main bedroom. The Tenant had had to move into the smaller bedroom because of the damp and water ingress. She reported slugs entering the House in the bedrooms and kitchen. The Tenant had cleaned mould and repainted but reported that it quickly returned.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a ground floor maisonette flat in a block of four.
- 2 The Tenant holds a private residential tenancy of the House dated 3 February 2021.
- 3 Mordecai (otherwise Mordechai) Bamberger is the registered owner of the House.
- 4 Mordela Bamberger is noted as the Landlord in the tenancy agreement.
- 5 The Tenant took possession of the House from 4 February 2021.
- 6 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 7 The Tenant notified the Landlord of the defects in the House which are now the subject of the Application at the time of the handover of the House and in email correspondence to the Landlord's agent dated 4 January 2022.
- 8 The inspection on 16 May 2022 revealed:
 - a. The front door is an internal door type and has no draught proofing.
 - b. The frame to the living room window is distorted making it draughty and preventing the upper lights from closing.
 - c. The steel reinforced lintel above the living room window is cracked and the structural steelwork exposed. It is no longer able to fully bear the weight of the structure above. The window frame is carrying some of that weight. It is in dangerous condition.
 - d. Mould is present throughout the property and is particularly bad in the bathroom and bedrooms.

- e. The carpets in the bedroom are very wet adjacent to the rear wall. Dampness appears to be penetrating from the outside.
- f. The bathroom sink tap does not switch off fully.
- g. The exterior rainwater drainage pipes are in poor condition.

A schedule of photographs taken at the inspection is attached to this Decision.

Reasons for the Decision

Living room window

The lintel above the window is cracked. As a result, the window frame is bearing weight which it is not designed to bear. It is in a dangerous condition. The window openings cannot be shut. The window is not weatherproof.

Other windows

The bedroom windows are draughty.

Dampness and Mould

Mould is present in the two bedrooms; the living room and the bathroom.

The carpets in the bedrooms are very wet. There appears to be moisture ingress from the rear wall. The cause is uncertain but may be:

- Failure of the damp proof course
- Structural failure in the concrete sub-floor slab
- Water penetration from the damaged and leaking rainwater goods.

Consideration should be given by the Landlord as to whether there may be an issue with “blaes heave” (sulphate damage) in the sub-floor slab.

Rainwater Goods

These are in poor condition and their condition may be contributing to water ingress and dampness.

The Repairing Standard

The Tribunal considers the condition of the living room lintel; the windows; the rainwater goods and the presence of dampness and mould to constitute a breach of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made in respect of them.

Observations

The issue of the bathroom sink tap and the front door are not included in the current application and so the Tribunal may not make an Order in respect of those. However, the Tenant is at liberty to make a fresh application in respect of those. It is likely that those items would be found to breach the repairing standard so the

Landlord would be well advised to attend to those matters without the need for further formal steps.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of Section 63 of the 2006 Act

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.

J McHugh

John M McHugh
Chairperson

Date: 23 June 2022

Housing and Property Chamber
First-tier Tribunal for Scotland



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

REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Tribunal

RE: All and Whole the dwelling house known as 23 Sunnybraes Terrace, Steelend, Fife KY12 9NE registered in the Land Register and having Title No FFE54903 (hereinafter referred to as "the House")

The Parties:

Miss Danielle Paul ("the Tenant")

Mordecai (otherwise Mordechai) Bamberger, 15 Belmont Drive, Glasgow G46 7NZ and Mordela Bamberger, 86 Hillside Road, London N15 6NB ("the Landlord")

Chamber Ref: FTS/HPC/RP/22/0442

NOTICE TO MORDECAI (otherwise MORDECHAI) BAMBERGER and MORDELA BAMBERGER

WHEREAS in terms of their decision dated 26 May 2022 the Tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that:

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation.

(b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order."

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord to:

- 1 Replace the cracked lintel above the living room window with a lintel which is able to bear the load of the building as appropriate.
- 2 Replace or repair all windows in the House such that they are capable of being open and closed as intended; have working, unbroken handles; and are draught proof.
- 3 Commission a report from an appropriately qualified person such as a Chartered Surveyor or a structural engineer as to the causes of penetrating dampness, paying particular attention to the integrity of any damp proof course present and the condition of the concrete slab sub-floor. The report should include recommendations as to ways of eliminating the damp problem and ensuring the property is structurally sound.
- 4 In accordance with the report's recommendations, take measures to render the House free from penetrating dampness and provide evidence of same in the form of detailed estimates, invoices and guarantees from appropriately registered companies.
- 5 Replace the bedroom carpets.
- 6 Remove all mould and redecorate all affected areas.
- 7 Repair or replace any damaged rainwater goods.

The Tribunal orders that the works specified in this Order must be carried out and completed within 60 days from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

IN WITNESS WHEREOF these presents typewritten on this and the two preceding pages are signed by John Miller McHugh, Chairperson of the Tribunal at Edinburgh on the Twenty Third day of June Two Thousand and Twenty Two in the presence of the undernoted witness:

J McHugh