

# Housing and Property Chamber First-tier Tribunal for Scotland



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

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

**Chamber Ref:** Reference number: FTS/HPC/RT/20/1752

**Property:** 2/1, 65 Causeyside Street, Paisley, PA1 1YT ("The property")

**Parties:**

Luke Humberstone, residing at 2/1, 65 Causeyside Street, Paisley, PA1 1YT ("the Applicant")

Mr Amarjit Kaur Kambo, residing at 142 Maxwell Drive, Glasgow, G41 5AF, and c/o 1st Lets (Glasgow) Limited, 2 Calder St, Glasgow G42 7RT. ("the Respondent")

**Tribunal Members:**

**Paul Doyle (Legal Member)**  
**Lorraine Charles (Ordinary Member)**

**Decision**

**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 concerned, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. On 19 August 2020 the applicant submitted Form A and applied to the Housing and Property Chamber to determine whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) The house is wind and water tight and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act;
- (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, in terms of Section 13(1)(d) of the 2006 Act; and
- (c) The house meets the tolerable standard in terms of in terms of Section 13(1)(h) of the 2006 Act.

3. By letter dated 20 October 2020 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.

5. Following service of the Notice of Referral the Landlord made detailed written submissions in an email letter dated 22 June 2021. The applicant made a number of written further representations as the application progressed.

6. Tribunal members inspected the Property on the morning of 23 July 2021. The Tenant was present but was not represented. The landlord was represented 1<sup>st</sup> Lets (Glasgow) Ltd. During the inspection on 23 July 2021, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

7. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 10am on 30 July 2021. The Tenant was present but was not represented. The landlord was represented by Ms J Simpson of 1<sup>st</sup> Lets (Glasgow) Ltd.

#### **Summary of the issues**

8. The issues to be determined are whether the property meets the repairing standard set out in s.13 of the Housing (Scotland) Act 2006.

#### **Findings of fact**

9. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 2/1, 65 Causeyside Street, Paisley, PA1 1YT ("the property"). On 4 May 2019, the landlord let the property to the tenant.

(b) The property is a one bedroomed, second floor, flat entering by a common passage and stair forming part of a stone-built tenement of flatted

dwellinghouses above ground floor retail units. The property has one bedroom, a living room, a kitchen and a bathroom. The front door to the property opens onto a central hallway which provides access to each of the rooms.

(c) When the tenant submitted his application, the property was affected by an infestation of insects and vermin. The applicant reported the infestation to both the landlord's agents and to the local authority environmental protection department. Pest control works have been carried out both by the local authority and the landlord's contractors. Those works include sealing access points to the property.

(d) On both 23 July 2021 and 30 July 2021, the tenant candidly told the tribunal that there have been no signs of vermin in the property since the pest control works were completed.

(e) Since the application was submitted the landlord has installed new window units in the property. The tenant has no complaints about the new windows in the living room to the front of the property and the kitchen to the rear of the property, however, there remains a problem with the new window unit in the bedroom to the rear of the property.

(f) Parties agree that the sealant around the exterior of the bedroom window is incomplete. To the exterior of the bedroom window, there is one significantly weathered stone, which creates a gap between the exterior stonework and the window frame. There is no sealant between that weathered stone and the window frame.

(g) The gaps created between the window frame and that weathered exterior stonework creates an area where the property is not wind and watertight.

(h) The landlord's agent expressed concern about the obvious defect in the fitting of the new window to the bedroom. The tribunal accepts that the landlord intends to instruct contractors to return to complete the work undertaken, but at the date of inspection, and at the date of hearing, the property is not wind and watertight and so does not meet the requirements of section 13(1)(a) of the 2006 Act

(i) At the time of inspection, daylight could clearly be seen in around the central heating boiler flue in the kitchen. The schedule of photographs prepared by the ordinary member includes a photograph of the central heating boiler flue from which it can be seen that on 23 July 2021 the seal around the central heating boiler flue was incomplete.

(j) Parties agreed that, in the week between the date of inspection at the date of hearing, the landlord's contractors properly sealed the central heating boiler flue - so that the gap through which daylight could once be seen no longer exists. The tenant is content that the work has been properly carried out.

(k) Below the kitchen window to the rear of the property there is a small cupboard. Gaps in the fabric of the building within that cupboard have been filled with expanding foam. The work to that cupboard is incomplete. The work will be complete if the interior of the cupboard is framed and lined (or boxed in timber) with provision for access points to the piping to the rear of the cupboard.

(l) The stonework to the rear of the larger tenement of which this property forms part is cracked and weathered, but the structure and exterior of the house is in a reasonable state of repair, because the defects to the stonework of the larger building are commensurate with the age of the building. Future common repairs and maintenance can be anticipated, but the condition of the stonework does not amount to a contravention of section 13(1)(b) of the 2006 Act.

(m) During the currency of this application, the tenant reported that there had been flooding and drain overflow to the commercial properties on the ground floor. The property which is the subject of this application was not directly affected by the flooding and drain overflow. Works have been carried out to remedy the flooding and drain overflow affecting the ground floor properties. The drains gutters and external pipes of this property are a reasonable state of repair and proper working order.

(n) Although not part of this application, both parties have referred to problems with the central heating system. Those problems were mentioned in an earlier Case Management Discussion note. The tribunal was pleased to hear (from both parties) that works have been successfully completed and that the gas central heating system is now in a reasonable state of repair and in proper working order.

(o) The landlord has taken this application seriously and carried out works to try to bring this house into compliance with the repairing standard. Unfortunately, by the time this application came to hearing, there are still outstanding works. This tribunal finds that the defect to the exterior of the bedroom window and the incomplete work to the kitchen cupboard prevents the house from being wind and watertight, so that the property does not yet meet the requirements of section 13(1)(a) of the 2006 Act.

(p) Despite those failings, the house meets the tolerable standard. The tolerable standard is the minimum standard for all housing, and a house which is below this standard is considered to be unfit for human habitation. Some remedial work is necessary, but the property is fit for human habitation.

(q) Because the property does not meet the requirements of section 13(1)(a) of the 2006 Act, we make a Repairing Standard Enforcement Order (RSEO). The landlord should be neither surprised nor disheartened by the RSEO because we accept the evidence that he will complete the works necessary to ensure that this property meets the repairing standard.

## Reasons for the decision

10. (a) Tribunal members inspected this property at 11:30am on 23 July 2021. It was a hot, dry, summer's morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property. The landlord's representative greeted tribunal members and observed the inspection.

(b) The tenant told the tribunal members that various works had already been satisfactorily completed but directed tribunal members to the rear of the property where, he said, there were still defects.

(c) Tribunal members opened the bedroom window and examined the joint between the window frame and the stonework of the property. It was immediately obvious that new sealant has been placed around the new window frame, but that there is one section where there is no sealant. There, there is one significantly weathered stone immediately adjacent to the window frame. It was apparent that the contractors who installed the window have placed sealant around the adjacent stonework but left a gap in the sealant at the one weathered stone.

(d) With such a large gap in the sealant around the window frame, the property cannot be wind and watertight. The landlord's representative was invited to comment on the gap in the sealant around the window frame, and candidly conceded that tribunal members' observations were correct. The landlord's agent told us that contact has already been made with the contractor who installed the window frame so that remedial works can be carried out.

(e) During the inspection it was noted that the sealant around the central heating boiler flue in the kitchen was incomplete. Both the tenant and the landlord's agent confirmed that, in the week between inspection and hearing of this application, the central heating boiler flue has been properly sealed.

(f) Tribunal members inspected the cupboard below the kitchen window. It was obvious that works have been carried out to close gaps in the building fabric. Expandable foam can be seen liberally applied to the stonework contained within the cupboard. That work closes some, but not all, gaps through which wind and rain can blow. The work can properly be completed by timber framing and lining the kitchen cupboard.

(g) The landlord's agents agreed that timber framing and lining the kitchen cupboard is work which the landlord anticipates. The landlord is already speaking to contractors and obtaining estimates.

(h) When the bedroom window is properly sealed and the kitchen cupboard is framed and lined this property will be wind and watertight, but until then, a repairing standard enforcement order is necessary.

(i) Tribunal members inspected the exterior of the property. There, tribunal members could see the gutters, rhones, and downpipes. Tribunal members could also see evidence of the local authority environmental protection department pest control works. The tenant told tribunal members that it is some time since he last saw any trace of vermin or insect infestation.

(j) A combination of the tribunal members' observations and the words of the tenant lead the tribunal to find that the property is no longer troubled with insect and vermin infestation.

(k) Tribunal members could see by looking at the exterior rear wall of the property from the back green of the larger tenement (of which this property forms part) that the stonework of the larger tenant is weathered. The stonework will require repointing, but there is a communal repair which can be anticipated in the future. Mindful of the age of this stone-built tenement in central Paisley, we find that the structure and exterior of the house is in a reasonable state of repair.

(l) Nothing in the tribunal's observations, nor any part of the oral evidence, indicates defects in the drains gutters and external pipes. There is no reliable evidence that the drains, gutters, and external pipes are not in proper working order.

(m) S.86 of the Housing (Scotland) Act 1987 says

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(n) There is no reliable evidence that the property does not meet the detailed requirements of s.86 of the 1987 Act. The property therefore meets the tolerable standard.

(n) The Tribunal therefore make a repairing standard enforcement order requiring the landlord to

(a) complete the seal to the exterior of the bedroom window

(b) frame and line the interior of the cupboard below the kitchen window

### **Decision**

11. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

12. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

13. The decision of the tribunal was unanimous.

### **Right of Appeal**

**14. 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**

15. 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.

**P Doyle**

Signed

30 July 2021

Legal Member

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref:** Reference number: FTS/HPC/RT/20/1752

**Property:** 2/1, 65 Causeyside Street, Paisley, PA1 1YT ("The property")

**Parties:**

Luke Humberstone, residing at 2/1, 65 Causeyside Street, Paisley, PA1 1YT ("the Applicant")

Mr Amarjit Kaur Kambo, residing at 142 Maxwell Drive, Glasgow, G41 5AF, and c/o 1st Lets (Glasgow) Limited, 2 Calder St, Glasgow G42 7RT. ("the Respondent")

Whereas in terms of their decision dated 30 July 2021, The First-tier tribunal for Scotland (Housing and Property Chamber) ('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 ("The Act") and in particular that the landlord has failed to ensure that:-

The house is wind and water tight and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act;

the tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned 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:-

- (a) complete the seal to the exterior of the bedroom window
- (b) frame and line the interior of the cupboard below the kitchen window

All within 6 weeks

The tribunal order that the works specified in this Order must be carried out and completed within the period of 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 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 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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the tribunal at Edinburgh on 31 July 2021 before Eve Doyle, 252 Gorgie Road, Edinburgh

**E Boyle** \_\_\_\_\_ witness \_\_\_\_\_ **P Doyle** chairperson