

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: FTS/HPC/RP/23/1600

Title no: ANG2438

**341C Brook Street, Broughty Ferry, Dundee DD5 2DS
("the House")**

The Parties:-

**Mr Edward Staples, 341C Brook Street, Broughty Ferry, Dundee DD5 2DS
("the Tenant")**

**Mr Peter Campbell, 23 Beechgrove, Monifieth, Dundee DD5 4TE
("the Landlord")**

Whereas in terms of their decision dated 26 September 2023, 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:-

- (a) House is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- (c) House met the tolerable standard.

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) To carry out such works to the property as are necessary to ensure that the property is wind and water tight and in all other respects reasonably fit for human habitation. This work should include removal of vegetation and comprehensive repair of defective elements of the roof coverings, sealing of open joints on the chimney stacks, the drying out of the interior, repair of damaged plasterwork and the making good of internal decoration.

The Tribunal order that the works specified in this Order must be carried out and completed within the period two months from the date of service of this Notice.

A landlord or tenant 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.

In terms of Section 63 of the Act, 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 Graham Harding, legal member of the Tribunal, at on 26 September 2023 in the presence of the undernoted witness:-

G Harding

J Harding

witness

Legal Member

name in full

Address

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: FTS/HPC/RP/23/1600

341C Brook Street, Broughty Ferry, Dundee DD5 2DS
("The Property")

The Parties:-

Mr Edward Staples, 341C Brook Street, Broughty Ferry, Dundee DD5 2DS
("the Tenant")

Mr Peter Campbell, 23 Beechgrove, Monifieth, Dundee DD5 4TE
("the Landlord")

Tribunal Members

Graham Harding (Legal Member)

Robert Buchan (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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the written representations and the evidence led by the Tenant's representative 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. By application dated 4 May 2023 the Tenant applied to the Housing and Property Chamber for a determination of 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 stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-

- (a) The house is wind and watertight 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.
- (c) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- (d) The house met the tolerable standard.

Specifically the Tenant's representative complained that:-

The roof was leaking for over a year and that the walls and ceilings in the house were damaged by water ingress.

The Tenant submitted photographs showing the condition of the property in support of the application.

3. By notice of Acceptance dated 22 June 2023 a legal member of the Tribunal with delegated powers accepted the application
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 14 August 2023.
5. Following service of the Notice of Referral the Landlord by email dated 3 September 2023, made written representations to the Tribunal.
6. The Tribunal inspected the Property on the morning of 21 September 2023. The tenant was in attendance. The Landlord did not attend nor was he represented. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
7. Following the inspection of the Property the Tribunal held a hearing at Endeavour House, Dundee and heard from the Tenant's representative Mrs Collette Goodson. Neither the Tenant nor the Landlord were in attendance.

The Hearing

8. Mrs Goodson submitted that the property failed to meet the tolerable standard and that it was apparent that there had been dampness throughout the property since 2022. Although the Landlord had in his written representations suggested that agreement had been reached with the other owners of the block to carry out repairs the Landlord had not provided any details as to the nature of the work or when it would be carried out. She submitted that in the circumstances it would be appropriate for the Tribunal to issue a Repairing Standard Enforcement Order.

9. The Tribunal expressed its concern that the Landlord had not attended at either the inspection or the hearing. The Tribunal noted from the case papers that the Landlord was seeking to evict the Tenant from the property and queried what the grounds were. Mrs Goodson advised that these were in respect of alleged rent arrears and alleged breaches of the tenancy agreement. She explained that the Tenant had not paid rent since January due to the poor condition of the property. The Tribunal queried if the Landlord had agreed to any rent reduction given the obvious water ingress to the property affecting most of the living areas. Mrs Goodson advised the Tribunal that no reduction of rent had been offered. The Tribunal also noted that the living conditions were having an adverse effect on the Tenant's health.

Findings in Fact

10. The tenancy is a Private Residential tenancy that commenced on 24 August 2020 at a rent of £590.00 per month.
11. All of the rooms except the bathroom suffered to a significant degree from rainwater penetration, damaged plasterwork and fallen wallpaper.
12. High instrumental moisture meter readings were noted in the affected areas indicating continuing dampness from several different sources including the chimney stacks and defective flashings.
13. Inspection of parts of the exterior was limited by the dormer windows but vegetation could be seen growing between some of the slates, and open joints, weathering and vegetation were noted in and on the chimney stacks.
14. Previous repairs carried out by the Landlord have not remedied the problems.
15. The Landlord has indicated he intends to carry out further repairs but has not provided any details of the proposed work or a timescale for its completion.

Reasons for the decision

16. The Tribunal was concerned at the condition of the property. It was apparent from the high moisture readings and the damage to the walls and ceilings in the main living areas that the property was badly affected by water ingress and damp. Although the Landlord had indicated his intention to carry out further repairs to the roof he had chosen not to participate in the hearing and had provided no indication as to the nature of the proposed work or the timescale for its completion. The Tribunal was satisfied that the conditions under which the Tenant was living were entirely unsatisfactory and it was apparent that the property failed to meet the repairing standard. The house was not wind and watertight. There

were open joints on the chimney stacks and vegetation growing on the roof and gutters. All the main living areas were badly affected by damp from several different areas of the roof and with the onset of autumn and winter imminent the Tribunal considered it imperative that the Landlord takes immediate action to carry out the necessary repairs. The Tribunal acknowledged that the Landlord may have had some difficulty obtaining suitable contractors previously and that other owners in the block may be liable to contribute to the cost of repairs. However, given the severity of the problem the Tribunal was of the view that the Landlord must ensure that there is no further delay in having the necessary works completed.

Decision

17. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
18. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
19. The decision of the tribunal was unanimous.


Right of Appeal

20. **A landlord or tenant 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

21. 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.

G Harding

Signed  Graham Harding

Date 26 September 2023

Chairperson



Top floor flat - Front



Rear

Photographs taken during the inspection of 341C Brook Street, Broughty Ferry, DD5 2DS
Chamber reference number FTS/HPC/ RP/23/1600



Living-room



Kitchen

Photographs taken during the inspection of 341C Brook Street, Broughty Ferry, DD5 2DS
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Below kitchen window



Moisture meter reading in the kitchen

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Rear bedroom



Rear bedroom meter reading

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Rear bedroom



Rear bedroom meter reading

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Front bedroom



Front bedroom meter reading

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Rear roof detail



Stack detail