

# 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/RT/23/0027**

**Title no: ANG22680**

**Property at 3/2 29A Strathmartine Road, Dundee DD3 7RL ("The Property")**

**The Parties:-**

- **Mr Cameron Cox, 3/2 29A Strathmartine Road, Dundee DD3 7RL ("the Tenant")**
- **Mr Stuart Cuthill, Dundee City Council Private Sector Services Unit, 5 City Square, Dundee DD1 3BA ("the Third Party Applicant")**
- **Mr Sean Lewis, SGL Investment Ltd, Top Floor India Buildings, 86 Bell Street, Dundee DD1 1HN ("the Landlord")**

**The Tribunal comprised:-**

Ms Gabrielle Miller - Legal Member  
Mr Robert Buchan - Ordinary Member

Whereas in terms of their decision dated 19<sup>th</sup> May 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 -

- a) The Property 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) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- e) The Property meets 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 to:-

- a) Remove the window which is sitting on the stair and reinstate the top stair window which is currently boarded over so that the window and the stairwell are made safe, in a reasonable state of repair and in proper working order.
- b) Repair or replace the second floor window so that it and the stairwell are made safe and in a reasonable state of repair and in proper working order
- c) Provide to the Tribunal an up-to-date Electrical Installation Condition Report by a qualified electrical contractor registered with SELECT or NICEIC or NAPIT dated after the date of this Order. The report must also specifically address the faulty water heating switch.
- d) Provide to the Tribunal an up-to-date Portable Appliance Test certificate for the electrical appliances provided by the landlord, completed by a suitably competent person.
- e) Arrange for the necessary repairs required to the access to the roof space, and to the hot water supply system serving the property to be carried out by a suitably qualified person so as to ensure that the installation is safe, in a reasonable state of repair, in proper working order, fit for human habitation and capable of being accessed safely. Details of the person undertaking this work and the detail of the work to be undertaken should be provided to the Tribunal and, following the completion of the works, a satisfactory water quality test certificate confirming that the cold and hot water supplies serving the property are fit for human habitation should be provided to the Tribunal.
- f) Following completion of the works specified in paragraph numbered e) above, a satisfactory Legionella Risk Assessment prepared by a suitably qualified person should be provided to the Tribunal.
- g) Arrange for a roofing contractor to inspect the roof and stack above the living-room, to carry out any necessary repairs required so as to ensure that the property is wind and water tight and to provide to the Tribunal a report with a photograph of the inspection and any works undertaken.
- h) Repair or replace the windows so as to ensure that they are in a reasonable state of repair and in proper working order.

- i) Provide suitable draught-proofing to the front doors so as to ensure that they are wind tight and secure.
- j) Properly secure the electrical heater in the bedroom.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 3 months 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.**

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 pages are executed by Gabrielle Miller, Chair and Legal Member of the Tribunal at Glasgow on 19<sup>th</sup> May 2023 in the presence of the undernoted witness:

**J Buchanan**

**G Miller** chairperson

Glasgow Tribunal Address  
Centre  
20 York Street  
Glasgow  
 G2 8GT

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: FTS/HPC/RT/23/0027**

**Title no: ANG22680**

**Property at 3/2 29A Strathmartine Road, Dundee DD3 7RL ("The Property")**

**The Parties:-**

- **Mr Cameron Cox, 3/2 29A Strathmartine Road, Dundee DD3 7RL ("the Tenant")**
- **Mr Stuart Cuthill, Dundee City Council Private Sector Services Unit, 5 City Square, Dundee DD1 3BA ("the Third Party Applicant")**
- **Mr Sean Lewis, SGL Investment Ltd, Top Floor India Buildings, 86 Bell Street, Dundee DD1 1HN ("the Landlord")**

**The Tribunal comprised:-**

Ms Gabrielle Miller	-	Legal Member
Mr Robert Buchan	-	Ordinary Member

### **Decision**

1. 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 Property and taking account of the evidence led by the Tenant and the Third Party Applicant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

## **Background**

2. By application dated 5<sup>th</sup> January 2023, the Third Party Applicant applied to the Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
3. The application by the Third Party Applicant stated that it was considered that the Landlord had failed to comply with his duty to ensure that the Property met the Repairing Standard. The application stated that the Repairing Standard had not been met, namely that the Landlord had not ensured that:
  - a) The Property was wind and watertight and in all other respects reasonably fit for human habitation;
  - b) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
  - c) The installations in the Property 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) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
  - e) The Property met the tolerable standard.
4. In particular, the complaints consisted of:-
  - a) The hot water supply is contaminated from pigeons inhabiting the attic where the boiler is located;
  - b) The west wall in the living room/kitchen is showing signs of water damage;
  - c) The seals of all the windows in the Property have failed;
  - d) The hinges on the living room/kitchen windows are broken
  - e) The handles on the left window in the living room/kitchen are broken;
  - f) The front door is not wind and water tight;
  - g) The water heater controller does not work;
  - h) The bedroom heater requires to be secured to the wall;
  - i) There is no Electrical Installation and Condition Report ("EICR");
  - j) There is no Portable Appliance Test certificate ("PAT"); and
  - k) There is no evidence of the Legionella Risk Assessment.

## **The Inspection**

5. The Tribunal attended the Property on the morning of 26<sup>th</sup> April 2023. The Tenant and Third Party Applicant were present. The Landlord was not present. The Tribunal was let into the Property by the Tenant. It was clear, dry and of mild temperature on the day of the inspection.

6. The Property is a third floor flat in a terraced tenement. The building is 4 storey in height with commercial properties on the ground floor.
7. When entering the tenement block, the Tribunal climbed the internal stairs. All three windows were either damaged or boarded up. The window on the third floor had been removed from its setting and was on the stairs leaning against the wall.
8. Once in the Property the Tribunal inspected the kitchen lounge. The windows were inspected. The window closing mechanisms did not work on the window directly across from the door. The window on the west wall had a significant amount of water droplets inside the double glazing. Damp readings were taken against the west wall where a number of stains were noted. The damp readings were found to be at a normal level.
9. The Tribunal were shown the water running in the bathroom next. The water quickly turned brown. The water was run for 2 -3 minutes.
10. The Tribunal was shown the circuit board for the water heating. There was no EICR to show when it had last been inspected.
11. The Tribunal inspected the main front door to the Property and the secondary front door. Neither had suitable draught proofing.
12. The attic space was not able to be inspected due to the dangerous nature of the hatch. It had been altered and the Tribunal concluded that it would not be appropriate to inspect the attic in that state.
13. The bedroom was inspected. The electric heater was loose from the wall. The window had droplets of water inside both halves of the double glazing.
14. The stairwell windows were clearly either not in situ or boarded up. The third-floor stair well window had been placed upon the stairs.
15. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal reconvened in the afternoon for the hearing conducted by teleconferencing.

### **The Hearing**

17. The hearing was held on 26<sup>th</sup> April 2023 at 2pm by teleconferencing. The Tenant and Third Party Applicant attended. Neither the Landlord nor his letting agent attended.
18. The Tenant confirmed that he had not received an up to date copy of the EICR or PAT.

19. Mr Cuthill told the Tribunal that there are issues with pigeons in the attic space as there is a window missing which has allowed the pigeons to gain access to the attic. The water tank is located there but is not covered allowing any debris or mess from the pigeons to enter the tank and go into the water system. Feathers have come out of the tap when the water runs as a result. A Legionella Risk Assessment is needed to ensure that the water is safe. This has not been received from the Landlord.
20. The Tenant told the Tribunal that he put his finger through the wall on the west side of the kitchen lounge when the wall was wet. The Surveyor Member noted that the damp reading on the wall was within normal parameters, though it had been dry a lot lately. The Tenant said that he had not been aware of anyone trying to repair the roof. Someone came to do the guttering but had not brought the correct equipment to go onto the roof. The Tenant said that the wall had been particularly wet when Storm Eunice was present. He could not rule out that it was a one off instance.
21. The Tribunal discussed the loose heater. The Tenant said it was less loose than it had been as he had put a screw in place to secure it more, though it was not properly fitted to the wall still. He has concerns that the heater will still fall off.
22. The Tenant raised that he has been told that there is no insulation on his side of the attic. He noted that the Property is on the bottom rating of the Energy Performance Certificate. He was told by the letting agent at the end of February that insulation would be fitted but nothing further has happened.
23. Mr Cuthill noted that neither the Landlord nor his letting agent have been in contact regarding the notification of the repairs that are required to be undertaken. The Landlord and his agent have also not worked with him or the Housing and Property Chamber regarding this case.
24. It was explained to the Tenant that the Tribunal had the option of making a Repairing Standard Enforcement Order ("RSEO") should they believe that there was merit to do so.

### **Summary of the issues**

25. The issues to be determined are: -
  - a) Whether the hot water supply was contaminated from pigeons inhabiting the attic where the water tank is located;
  - b) Whether there was water damage on the west wall in the living room/kitchen;
  - c) Whether the seals of all the double glazing in the Property have failed;
  - d) Whether hinges on the living room/kitchen windows are broken
  - e) Whether the handles on the left window in the living room/kitchen are broken;
  - f) Whether the front door is not wind and water tight;
  - g) Whether the water heater controller does not work;
  - h) Whether the bedroom heater requires to be secured to the wall;

- i) Whether there is no Electrical Installation and Condition Report ("EICR");
- j) Whether there is no Portable Appliance Test certificate ("PAT");
- k) Whether there is no evidence of the Legionella Risk Assessment.
- l) Whether the Repairing Standard has been met.

### **Findings of fact**

26. Having considered all the evidence, the Tribunal found the following facts to be established: -

- a) The tenancy is a Private Residential Tenancy between the Landlord and the Tenant. The tenancy commenced on 19<sup>th</sup> June 2020.
- b) The windows in the stair well were missing or damaged. The third floor stairwell window was on the stairs unsecured.
- c) There was no evidence of an up to date EICR by a qualified electrical contractor registered with SELECT or NICEIC or NAPIT.
- d) There was no evidence of a Portable Appliance Test certificate for the electrical appliances provided by the Landlord, completed by a suitably competent person.
- e) When the bathroom tap was run the water was brown. A Legionella Risk Assessment prepared by a suitably qualified person needs to be undertaken.
- f) The windows in the Property were not in a reasonable state of repair and not in proper working order.
- g) The front door does not have sufficient draught proofing.
- h) The electrical heater in the bedroom was not secure to the wall.
- i) The Repairing Standard has not been met.

### **Reasons for the decision**

27. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Tenant and the Third Party Applicant at the hearing.

28. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

29. The Tribunal was in no doubt, from its inspection, that the property did not meet the Repairing Standard.

30. There was clear evidence that the windows were in a poor state of repair and needed to be replaced or repaired.

31. There is an obvious and alarming risk of water contamination and risk to the health of the tenant which needs to be addressed by the landlord as a matter of urgency.

32. No electrical certificates have been provided by the Landlord.



33. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord was in breach of the duty to comply with the Repairing Standard.
34. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
35. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

### **Observations**

36. The Tribunal observed that the main entrance intercom had the front of it removed with wires exposed. It was hanging off the wall. The main door to the entrance hallway for the tenement block was broken and attached by one set of hinges only and both the door and the wall of the close were covered in graffiti.
37. The matter of the lack of loft insulation was not formally notified to the landlord and therefore cannot be considered by the Tribunal. However, had it been notified, the Tribunal would have found that the absence of loft insulation would be such that the property would not meet the Tolerable Standard and a requirement to install loft insulation would have been included in the RSEO. The Tribunal hopes that the landlord will undertake to install modern standards of insulation without the need for further Tribunal involvement.

### **Decision**

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

**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.

# G Miller

19<sup>th</sup> May 2023