

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act  
2006, Section 24(2)**

**Chamber Ref: FTS/HPC/RP/18/0510**

**60 Leng Street, Dundee, DD3 6QY, which subjects form part of the larger subjects, 40¼ Poles of Ground, bounded on the north by Byron Street, Dundee and on the east by Leng Street, at Coldside, near Dundee, in the Barony of Hilltown of Dundee and Parish of Dundee, as more particularly described in the Feu Disposition by Governor and Company of Bank of Scotland to Jainti Dass Sagggar and recorded in the General Register of Sasines on 17 October 1928 ("The House")**

### **The Parties:-**

**The successor in title to Dr Karam Dev Sagggar, 27 Albany Terrace, Dundee c/o Mr Seng-Say Li, Balgay Property and Investment Services, 8 Westport, Dundee, DD1 5EP ("the Landlord")**

**Neena Sagggar, Westridge House, Badgers' Hill, Evesham, Worcestershire, WR11 4SD ("the Landlord's representative")**

### **Tribunal members**

**Susanne L M Tanner Q.C. (Legal Member)  
David Godfrey (Ordinary Member)**

**NOTICE TO the successor in title to Dr Karam Dev Saggar  
(the LANDLORD)**

**WHEREAS** in terms of its decision dated 15 August 2018 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 the following respects:

- “(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:

1. To replace the roof covering on the front and rear roof pitches and the supporting structure where necessary, to make the roof wind and watertight and the House reasonably fit for human habitation;
2. To replace all four external doors and frames to make them wind and watertight and in a reasonable state of repair and proper working order;
3. To remove or repair the external canopy above the front door to make it watertight and in a reasonable state of repair and proper working order;
4. To repair or replace the garage so that it is wind and watertight and in a reasonable state of repair and proper working order;

The tribunal orders that the works specified in this Order must be carried out and completed within 90 days from the date of service of this Notice.

### **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.**

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 an 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 two preceding page(s) are executed by Susanne L M Tanner, Queen's Counsel, Legal Member and chair of the tribunal  
S Tanner

Legal Member/Chair

\_\_\_\_\_  
Susanne L M Tanner

signed on 15 August 2018 (date) at Edinburgh

before this witness:-

M McDougall

Witness

\_\_\_\_\_  
Yvonne McDougall

Name in full

6 Rattray Way

Address

Edinburgh EH10 5TU

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

**Chamber Ref: FTS/HPC/RP/18/0510**

**60 Leng Street, Dundee, DD3 6QY, which subjects form part of the larger subjects, 40¼ Poles of Ground, bounded on the north by Byron Street, Dundee and on the east by Leng Street, at Coldside, near Dundee, in the Barony of Hilltown of Dundee and Parish of Dundee, as more particularly described in the Feu Disposition by Governor and Company of Bank of Scotland to Jainti Dass Saggarr and recorded in the General Register of Sasines on 17 October 1928 ("The House")**

### **The Parties:-**

**The successor in title to Dr Karam Dev Saggarr, 27 Albany Terrace, Dundee c/o Mr Seng-Say Li, Balcay Property and Investment Services, 8 Westport, Dundee, DD1 5EP ("the Landlord")**

**Neena Saggarr, Westridge House, Badgers' Hill, Evesham, Worcestershire, WR11 4SD ("the Landlord's Representative")**

### **Tribunal members**

**Susanne L M Tanner Q.C. (Legal Member)  
David Godfrey (Ordinary Member)**

### **DECISION**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("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 2006 Act") in relation to the

House, and taking account of the written documentation included with the Application and the parties' written and oral representations, determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

### **The House**

4. The House at 60 Leng Street, Dundee, forms part of the larger subjects, 40¼ Poles of Ground, bounded on the north by Byron Street, Dundee and on the east by Leng Street, at Coldside, near Dundee, in the Barony of Hilltown of Dundee and Parish of Dundee, as more particularly described in the Feu Disposition by Governor and Company of Bank of Scotland to Jainti Dass Saggar and recorded in the General Register of Sasines on 17 October 1928..
5. The House is a semi-detached property containing Hall, Living Room, Four Bedrooms, Kitchen and Shower Room. (See external and internal views in attached **Schedule of photographs**).

### **Parties and parties' supporters / representatives**

6. The former tenant, Johannes Rauscher, is no longer a party to the application.
7. The Landlord is as designed above. Dr Karam Saggar is deceased. The title is still in his name. The Landlord's Representative is the deceased's daughter. Title is discussed further, below.
8. The property was tenanted by Mr Johannes Rauscher, and latterly his family, from 2006. The tenancy is in the name of Dr Karam Dev Saggar but lease extensions are in the name of the Landlord's Representative. The tenancy was due to run until September 2018 but the former tenant indicated that he wished to terminate the lease early as a result of his concerns about repairs issues.
9. The House has been vacant since the former tenant moved out early by agreement on 20 June 2018.

### **Procedural Background**

10. On 8 March 2018, the Tenant made an Application to the tribunal for a determination of whether the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.
11. 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, with reference to paragraphs (a) and (b) of Section 13(1) of the 2006 Act, in that (a) the house was not wind and watertight and in all other respects reasonably fit for human habitation and (b) the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order. In Section 8, the Tenant listed the details of the alleged failures as being:
  - 11.1. "Since a number of year and since I first moved in the roof has been in a state of disrepair.
  - 11.2. Damp and draft problems in kitchen and other areas, mainly front porch, bedroom door to garden, kitchen French doors.
  - 11.3. Roof needs re-done, unsafe leaking and crumbling.
  - 11.4. Landlord agent does his best but Landlord refuses to spend money for lasting and quality repairs."
12. In Section 9 of the Application the Tenant listed the following work as being required:
  - 12.1. "All issues / related issues have been highlighted a number of years ago.
  - 12.2. Front porch leaks into front door.
  - 12.3. Drafts mainly front door and bedroom outside door.
  - 12.4. Gutters and roof leaking.
  - 12.5. Unsafe roof.
  - 12.6. Neighbour states that garage is made of asbestos, in disrepair.
13. The Tenant attached to the Application:
  - 13.1. A cover email dated 7 March 2018;
  - 13.2. Short Assured Tenancy agreement (Lease) with "Schedule of conditions of occupancy", dated 28 November 2006 in the names of Dr Karam Dev Saggar c/o Balgay Property & Investment Services, 8 Westport, Dundee, DD1 5EP (signed by Colin Campbell, agent) and Johannes Rauscher;
  - 13.3. Extension of lease dated 17 July 2015 for 12 months until 27 September 2016 in the names of Ms Neena Saggar c/o Balgay Property and

- Investment Services, 8 West Port, Dundee, DD5 1EP (signed by Colin Campbell agent) and Johannes Rauscher;
- 13.4. Extension of lease dated 27 September 2017 for 12 months until 27 September 2018 in the names of Ms Neena Saggar c/o Balgay Property and Investment Services, 8 West Port, Dundee, DD5 1EP (signed by Colin Campbell, agent) and Johannes Rauscher;
- 13.5. Rent receipt from Balgay Property & Investment Services signed by Colin Campbell, dated 5 March 2018 for £550 in cash from Mr J Rauscher;
- 13.6. Copy letter of notification (undated) to the Landlord's Representative c/o Balgay Properties, regarding the work which the tenant stated required to be carried out to meet the repairing standard, namely:
- 13.6.1. "All issues / related issues have been highlighted a number of years ago. Repairs done do not meet standard.
  - 13.6.2. Front porch leaks into front door. Council inspector states that the porch should not be needed to keep the house watertight.
  - 13.6.3. Leaky and unsafe roof.
  - 13.6.4. Water leaking from roof in between the walls causing damp smell and nauseous smells.
  - 13.6.5. Gutters leaking.
  - 13.6.6. Kitchen French doors letting in cold, Kitchen French doors, below the doors letting in damp.
  - 13.6.7. Draughts and droughts [sic] from various locations, namely bedroom side door to garden and front door.
  - 13.6.8. Neighbour states that garage is made of asbestos, garage in a state of disrepair. "
14. Proof of posting of the notification letter was not provided by the former tenant. On 8 March 2018 the tribunal's administration requested that the former tenant provide proof of the letter being sent by recorded delivery or that the letter should be re-sent by recorded delivery with proof of recorded delivery provided thereafter.
15. On 14 March 2018, the former tenant provided an updated notification letter to the Landlord's representative c/o Balgay Properties, together with proof of recorded delivery on 14 March 2018 (signed for by Campbell). In the updated letter the former tenant acknowledged that a number of temporary fixes had been carried out, including: works to the porch; foam being inserted into an area that leaked above the front door; some more slates had been glued back into place or renewed to stop water running into the wall at the back of the house; and a statement that the damp smell which had developed since the last leak was slowly

fading. The work which the former tenant stated required to be carried out was as follows:

- 15.1. "Leaky and/or unsafe roof;
- 15.2. Temporary repairs not up to standard
- 15.3. Kitchen French doors letting in cold and damp;
- 15.4. Draughts and droughts [sic] from various locations, namely bedroom side door to garden and front door.
- 15.5. Neighbour states that garage is made of asbestos, garage in a state of disrepair".

16. On 18 May 2018, the Application, comprising documents received between 8 March and 11 April 2018 was referred to the tribunal for determination.

17. On 17 May 2018, parties were advised the Application had been so referred and that an inspection of the House and a hearing had been fixed for 26 June 2018 at 10.00h and 13.30h, respectively. Parties were advised that any written representations or a request to make oral representations must be made and returned to the tribunal's offices by 7 June 2018.

### **Title to the House**

18. On 16 May 2018, the tribunal's administration made an enquiry to Registers of Scotland in relation to the title for the House.

19. On 23 May 2018, Ms Bruce of the Search Team at Registers of Scotland advised that the deeds were registered in the Register of Sasines. She stated that from an examination of the surrounding titles the House was identified as forming part of a larger Sasines title, described as 40 ¼ poles of ground bounded on north by Byron Street, Dundee and on east by Leng Street. Search Sheet (angus) 12428 was produced. The current owner of the remainder of the Sasines title was said to be Karam Dev Saggar.

20. The tribunal's administration obtained the said search sheet and provided it to the tribunal. It showed that the owner of the House was Mr Karam Dev Saggar.

### **Pre-hearing Procedure and correspondence**

21. On 25 May 2018, the Landlord's Representative, Ms Saggar, sent an email to the tribunal stating that the letting agent had been in discussions with the former tenant about the required repairs and that the tenant had been advised that the repairs could not be carried out with the former tenant and his family in situ. The former tenant had apparently agreed with this and had been looking for



alternative accommodation. The Landlord's Representative advised that repairs had been carried out as and when required to date but it was now prudent and more cost effective for the whole of the House to be refurbished. She stated that it was intended that full refurbishment be carried out as soon as possible and the letting agent had been trying to secure an alternative property for the former tenant and his family. The former tenant's lease was not due to expire until September 2018 but the Landlord's Representative was not going to insist that the former tenant remain until the termination date and she had been waiting for him to secure alternative accommodation, which she understood he had done. The agent had notified her on 25 May that the former tenant would be leaving the House by the end of June and that once he left the refurbishment project would commence. The Landlord's Representative stated that as the House would be vacated by the end of June she did not see the need for the inspection and hearing to proceed on 26 June 2018.

22. On 29 May 2018, the Landlord's Representative sent a further email to the tribunal's administration. She confirmed that the former tenant had served notice terminating his tenancy with effect from 28 June 2018. She stated that she had no intention whatsoever of re-letting the House or marketing it for let and that the House would revert to her for her own use. She advised that she was taking steps to de-register as a landlord with Dundee City Council and confirmed the same with her agent. Further to her email four days previously she had reached the conclusion that it would not be economically viable or cost effective for her to carry out refurbishment works as previously envisaged and hoped and that she intended to consider demolishing the House in its entirety / applying for planning permission. She stated that she was saddened to have reached this decision, the House having been in her family in excess of 80 years. She stated that in light of the foregoing she felt that it would be a waste of the tribunal's time and expense to conduct an inspection and hearing on 26 June 2018. She stated that the Tenant would not be prejudiced as he would have left by 28 June. She requested that the tribunal stopped or suspended the proceedings.
23. On 4 June 2018, the tribunal issued a decision refusing the Landlord's Representative's application to postpone the inspection of the House and the hearing fixed for 26 June 2018, in terms of Rule 28 of the 2017 Rules, for the reasons stated therein.
24. On 5 June 2018, the tribunal's administration contacted Ms Neena Saggar to ask her to confirm the nature of her relationship with the Landlord and to ask her to confirm whether she was acting as the Landlord's Representative. Ms Saggar replied the same day stating that she inherited the House from her late father Dr Karam Dev Saggar, who had passed away in December 2009, at which time the House was already let to the former tenant.

25. On 6 June 2018, the tribunal received written notice from the former tenant that he would be quitting the lease early and moving out of the House on 20 June 2018 and that he wished to withdraw the Application in terms of Rule 15 of the 2017 Rules. The tribunal considered whether it should continue to determine the Application or whether it should abandon its consideration of the Application in terms of Schedule 2, Paragraph 7 of the 2006 Act. On 12 June 2018, the tribunal decided to continue its consideration of the Application for the reasons stated in the decision of the same date. Thereafter the former tenant was no longer a party to the Application. The Landlord's Representative was informed that the Inspection and Hearing fixed for 26 June 2018 at 10.00h and 1330h would be proceeding unless parties were notified otherwise by the tribunal's administration.
26. On 12 June 2018, the tribunal, on its own initiative, decided to postpone the inspection of the House and the hearing, both fixed for 26 June 2018, to a date to be determined, in terms of Rule 28 of the 2017 Rules.
27. On 12 June 2018, the tribunal, on its own initiative and for the purpose of making inquiries in terms of paragraphs 2(1) and 3(1) of schedule 2 of the Housing (Scotland) Act 2006, and in terms of Rule 16 of the 2017 Rules, gave the following Directions to the Landlord and Landlord's Representative as to the conduct and progress of the Application:
- 27.1. DIRECTION 1. The Landlord and/or Landlord's Representative are required to produce to the tribunal's administration **no later than 26 JUNE 2018**:
- 27.2. A copy of any legal deed transferring ownership from Dr Karam Dev Saggar, 27 Albany Terrace, Dundee (now deceased) c/o Mr Seng-Say Li, Balgay Property and Investment Services, 8 Westport, Dundee, DD1 5EP, to another legal person or entity.
- 27.3. Proof of the registration of any such deed as mentioned in paragraph 1 in the Registers of Scotland and a copy of a title for the House showing the current proprietor of the House; and if no such proof is available, a written explanation as to why any party in favour of whom a deed transferring ownership has been executed does not hold a registered title.
- 27.4. Proof of de-registration of the House from Dundee City Council's register of let properties; proof of de-registration of the Landlord's Representative as a landlord of the said House; and proof that no other person or legal entity is registered as a landlord of the said House.
- 27.5. DIRECTION 2. The Landlord and/or Landlord's Representative are required to produce to the tribunal's administration **no later than 10 JULY 2018**:
- 27.6. Any response from Dundee City Council to the Landlord's

Representative's application for prior notification of demolition of the House  
Reference 100120962-001 dated 7 June 2018.

- 27.7. Any proof that the House has been demolished or if demolition has not taken place by the date specified for production of evidence, any written instruction to contractors to demolish the House which includes the proposed date for the same.
28. On 13 June 2018, the Landlord's Representative sent a copy letter from a Planning Officer at Dundee City Council confirming that the Landlord's Representative's application for prior notification of demolition of the Property had been received on 7 June 2018 and would be processed.
29. An inspection and hearing were fixed for 10.00 and 11.30 respectively on 25 July 2018.
30. On 20 June 2018, the Landlord's Representative emailed the tribunal's administration to advise that the tenancy was at an end and that she had contacted Dundee City Council to de-register as a landlord. She attached an email from Dundee City Council dated 20 June confirming that the House had been removed from her landlord registration and that no other party was listed as joint owner. The Landlord's Representative also advised that in relation to the title to the House, she had contacted the solicitors who dealt with the administration of her late father's estate. She attached her late father's will and stated that she was the sole beneficiary with confirmation in her favour. She stated that she was advised by the solicitors at the time of the administration that the confirmation could be used as a link in title for any future transactions in relation to the House.
31. On 22 June 2018, the Landlord's Representative emailed the tribunal's administration attaching the following documents:
- 31.1. Copy extract registered will
  - 31.2. Copy confirmation with docquet
  - 31.3. Letter from Solicitor regarding her title to the property
  - 31.4. Letter from solicitor re docquet.
32. The letter from the solicitor confirmed that Dr Saggar had bequeathed the whole of his estate, including the House, to his daughter Neena Saggar and that the solicitor had prepared a docquet on the back of the certificates of confirmation in terms of the Succession (Scotland) Act 1964 which validly transfer the House to Neena Saggar once signed by her.
33. On 9 July 2018, the Landlord's Representative emailed the tribunal's administration with an update about the case. She advised that she had received an email on 5th July from the planning department requesting further "prior approval" information for their consideration, relating to the proposed demolition

procedures and how this will affect the adjoining property. She also advised that given the scale of the proposed project she had instructed an architect and had held an initial meeting with him. She reiterated that she was not intending to re-let the House.

34. On 18 July 2018, the Landlord's Representative send a copy of her email correspondence with architect Jon Frullani, to confirm that he had been instructed to survey the property and prepare a plan
35. On 18 July 2018, the Landlord's Representative sent a further email stating that the proposed inspection date and time was not really convenient for her but stating that she had no alternative but to attend as the House is empty.
36. On 23 July 2018, the Landlord's Representative provided an email received from the architect, Jon Frullani, which said that he would have a sketch plan for her site within a few days. She stated that the architect would take over in liaison with the planning department.
37. On 24 July 2018, the Landlord's Representative provided an email from her letting agent in advance of the inspection and hearing the following day. Within the letter the agent advised that during the previous tenancy it had been discovered that the roof of the House needed repaired, and a few roofers had expressed the opinion that the whole roof needed replaced at a cost of about £20,000. The agent had advised the prior tenant that this would be a major job requiring the occupier to move out and stating that the prior tenant understood this but was happy to stay on rather than move out, accepting the fact that the agent would appoint a roofer to carry out repairs whenever needed, and that he had done so throughout the tenancy. The agent stated that whenever he received reports of roof repairs being needed, he asked tradesmen to attend to the repair without delay. He stated that he also responded to requests for other repairs such as draughts and dampness. The agent stated his opinion that the previous tenant's attitude to the condition of the House may have changed after his wife had moved in during the latter part of the tenancy and they had a daughter. The agent stated that he has a record of repairs to the House which would be available to the Landlord's Representative to provide to the tribunal if required.

### **Summary of the Issue to be determined by the tribunal**

38. The issue to be determined is whether the House meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

## **Inspection and Hearing – 25 July 2018**

- 39. The tribunal inspected the House on 25<sup>th</sup> July 2018 at 10.00.
- 40. The Tenant, Mr Johannes Rauscher no longer resides in the property and was not present during the inspection.
- 41. The Landlord's Representative was present together with her husband

## **Inspection and Schedule of photographs**

- 42. The tribunal confined its inspection on 25 July 2018 to the repairs issues detailed within the original notification to the Landlord's Representative's letting agent and included in the Application. Given that the former tenant's "updated" notification letter referred to temporary repairs which were not satisfactory, the tribunal decided to inspect all of the repairs issues detailed within the original Application.
- 43. Photographs were taken at the inspection, and a **Schedule of Photographs** is appended to and forms part of this Decision.
- 44. The weather at the time of the inspection was dry and bright.
- 45. **Schedule of Photographs, title page photograph and photograph numbers 1 and 4** show external views of the front and rear of the House. The House is a semi-detached property. The garden ground includes a garage, a view of which is shown in **photograph number 15**.
- 46. The tribunal proceeded with the inspection, in the presence of the Landlord's Representative.
- 47. The inspection revealed the following with reference to each of the former tenant's complaints in the Application / original notification, with reference to the **Schedule of Photographs** where applicable:
  - 47.1. **"All issues / related issues have been highlighted a number of years ago. Repairs done do not meet standard."**
    - 47.1.1. The tribunal took the view that this was a general statement and did not relate to a particular failure to meet the repairing standard.
  - 47.2. **"Front porch leaks into front door. Council inspector states that the porch should not be needed to keep the house watertight."**

47.2.1.1. On inspection the tribunal noted that some temporary repairs appeared to have been carried out to the area where the canopy was attached to the roof. Orange filler material (expanded foam) had been inserted. The canopy was not watertight. **Photograph number 13** shows the entrance canopy situated above the porch and **photograph number 14** shows the entrance canopy detail.

47.2.1.2. **Schedule of photographs number 7** shows the front door leading to the porch and **photograph number 8** shows front door detail.

47.2.1.3. There were no obvious signs of leaks or areas of dampness inside the internal porch area although daylight was visible between the external door and frame.

#### **47.3. "Leaky and unsafe roof"**

47.3.1. On inspection the tribunal noted that the rear pitch of the roof was in an extremely poor state of repair. There was an obvious difference between the front and the rear pitch. There were quite a few missing slates.

47.3.2. **Schedule of photographs number 1** shows the front pitch and **numbers 2 and 3** show the rear pitch of the roof.

#### **47.4. "Water leaking from roof in between the walls causing damp smell and nauseous smells"**

47.4.1. On inspection the tribunal looked for any signs of penetrating dampness and any signs of condensation.

47.4.2. The tribunal did not note any internal leaks in the House.

47.4.3. There was condensation in the bathroom with mould on the wall and ceiling. **Schedule of Photographs numbers 18 and 19** show the areas of mould. There is no mechanical ventilation in the bathroom and no vent on the window. The only way to ventilate the bathroom would be to open a window.

47.4.4. In relation to penetrating dampness, the tribunal was looking for any signs of water penetration from the roof or gutters, which one would expect to be visible on ceilings or upper walls. Generally, the tribunal did not find much evidence of that. The only other areas one would expect would be around doors and frames. The only evidence of dampness below a door frame was found in just in kitchen.

47.4.5. The tribunal did not notice any particular damp smell. The House did not smell fresh but it had been unoccupied for some weeks prior to the inspection and the Landlord's Representative had only arrived shortly before the inspection to air the House by opening windows and the front door.

**47.5. "Gutters leaking"**

47.5.1. On inspection, the tribunal noted there were two different types of guttering on the House. The front elevation and rear elevation of the House are constructed differently. The rhones are further away from the House at the front.

47.5.2. The front guttering was primarily cast iron, although there was a new plastic section next to the neighbouring property at Byron Street. The side and rear guttering look to be fairly new PVC guttering.

47.5.3. The cast iron guttering is rusty in places and the joints are quite badly corroded. **Schedule of Photographs number 6** shows the rusted front rhones.

47.5.4. It appeared that some gutter repairs had been carried out.

47.5.5. It could be seen externally that the rear rhones have been leaking for some time. In particular, there was staining on the external rear wall of the House which appeared to have been caused by a leaking gutter but may not have been caused recently. **Schedule of Photographs number 5** shows the area of staining to rear elevation from leaking rain water fittings.

47.5.6. On internal inspection the tribunal did not see anything that looked directly attributable to the gutters.

47.5.7. With good weather it was difficult to tell whether any guttering was still leaking.

**47.6. "Kitchen French doors letting in cold, Kitchen French doors, below the doors letting in damp".**

47.6.1. **Schedule of Photographs number 4** shows the location of the kitchen French door on the side elevation. **Photograph numbers 9 and 10** show external views of the foot of the left hand kitchen French door.

- 47.6.2. On internal inspection, the tribunal noted mastic seal/taping at the kitchen French door which can be seen in **Photograph number 16.**
- 47.6.3. A dampness reading was taken from the area below the kitchen French door which showed a high level of dampness, as seen in **Photograph number 17.**
- 47.7. "Draughts and droughts [sic] from various locations, namely bedroom side door to garden and front door."**
- 47.7.1. On inspection the tribunal noted that there are four external doors which are all of a similar vintage and in poor condition. All four were badly weathered. They were all poorly housed within the frames. They are likely to be allowing wind and water to penetrate the House. Piecemeal repairs appear to have been carried out. There is mastic and tape around some doors internally. The repairs which have been done are of a temporary nature and more extensive work is required to address the issues with the doors. The only significant damp reading found on inspection was the skirting in the kitchen French doors.
- 47.7.2. **Schedule of Photographs numbers 7 and 8** show external views of the front door.
- 47.7.3. **Schedule of Photographs numbers 9 and 10** show external views of the kitchen French door, as referred to above.
- 47.7.4. **Schedule of Photographs number 11** shows an external view of Bedroom 2 door.
- 47.7.5. **Schedule of Photographs number 12** shows an external view of Bedroom 3 door.
- 47.7.6. **Schedule of Photographs number 20** shows taping to the interior of the Bedroom 2 door.
- 47.7.7. The Landlord's Representative stated that in relation to 'Bedroom 3' which had an external door to the front elevation, she had understood that her father had excluded the room from the lease in order to use it as a storeroom for his own possessions. The tribunal asked if the issue could be addressed at the hearing, with reference to the lease.
- 47.8. "Neighbour states that garage is made of asbestos, garage in a state of disrepair."**
- 47.8.1. On inspection the tribunal noted that the garage is in a state of disrepair.



47.8.2. **Schedule of Photographs number 15** shows the poor state of the garage walls, roof and door area. It is not wind and watertight.

47.8.3. The Landlord's Representative advised that she did not think that the garage was included in the subjects of let and the tribunal asked if she could deal with this issue in her submissions at the hearing, with reference to the title and the lease.

#### **47.9. Electrical supply**

The former tenant had complained in correspondence to the Landlord's agent that the meter for the electrical supply could only be accessed by going into the next door property. The issue did not form part of the Application so it was not a matter that the tribunal had to determine.

47.9.1. The tribunal located the electricity fuse box in the hall cupboard, as seen in **Schedule of Photographs number 21**.

47.9.2. The Landlord's Representative advised that the meter was situated inside the property next door and that in order to obtain a reading the former tenant or meter reader would have had to request permission from the next door neighbour.

47.9.3. The tribunal made an observation to the Landlord's Representative during the inspection that it is not an ideal arrangement.

### **The Hearing**

#### **Attendance at hearing**

48. The hearing took place at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB at 11.30h on the same day as the inspection.

49. The Landlord's Representative attended the hearing.

#### **Documents produced late at the hearing – Landlord's Representative**

50. The Landlord's Representative produced the following documents at the hearing which had not been lodged or intimated at least seven days before the hearing:

50.1. A letter from the agent, Balgay Property and Investment Services to the Landlord's Representative dated 24 July 2018, within which the agent

advised Ms Saggar that a few roofers had previously expressed the opinion that the roof of the House needed replaced and the cost would be almost £20,000. The same letter had been emailed to the tribunal's administration the previous day.

- 50.2. Receipt dated 9 March 2018 from Cezary Kloczko for £161.11 and £100 for roof works on 13 February 2018, with two receipts for materials.
- 50.3. Receipt dated 6 September 2017 from Cezary Kloczko for £188.85 for re-fixing 20 tiles to roof; building up cement barrier to prevent water leaking to flat from garden; repairing gutters which were falling off, together with receipts for materials.
- 50.4. Receipts dated 25 January 2018 from Cezary Kloczko for £106.40, for repairs to roof, together with receipt for materials.
- 50.5. Receipt dated 15 December 2017 from Cezary Kloczko for £81.94 for repair to wall at the entrance; repairs to kitchen floor.
- 50.6. Invoice dated 28 November 2017 from Walker for £345 for supply and fit replacement PVC sheeting over canopy porch including fitting flash band sealant at eaves under existing guttering.
51. The Landlord's Representative advised that the letter was given to her on the morning of the hearing by the Letting Agent and that he had instructed all of the repairs to the House. He had also provided her with his original folder of everything that had been expended on the property. She advised that also had her own vouching for the most recent repairs to the external canopy and the roof.
52. The tribunal decided to allow the Landlord's Representative to lodge the documents although late. The tribunal considered that the Landlord's Representative had a reasonable excuse for late lodging in terms of Rule 22(2) of the 2017 Rules, in that the letter from the agent was dated that day before the hearing; and the folder of documentation had only been provided to her that morning. The tribunal took the view that the letter and the receipts / invoices were relevant to the issues in the hearing and there was no prejudice in allowing late lodging given that there was no longer a tenant in the proceedings.

### **Oral submissions by Landlord's Representative**

53. The Landlord's Representative began by addressing the title issue. Her deceased father's name still appears on the Register of Sasines title search. She stated that she was her father's sole beneficiary when he passed away. She

stated that she was advised by solicitors at the time of her father's executry that she had acquired a right to the property by right of the Succession (Scotland) Act 1964. She decided not to go ahead with the transfer. She was advised that she could use the confirmation as a link in title. She stated that when the tribunal made enquiries about title, she reverted to the solicitors who acted in the executry, Carr, Berman, and Crichton. She referred to the correspondence which had been forwarded to the tribunal's administration prior to the hearing. She was advised that she could do a docquet transfer on the confirmation and she thought that that would suffice. She intends in due course to use the docquet on the confirmation as a link in title. The tribunal chair stated that any RSEO which was made by the tribunal would name the owner, which in this case would be the successor in title to her father.

54. In relation to the previous tenancy she advised that the tenant had moved in in 2006 and had moved out in June 2018. She stated that he had had no problem terminating the lease at an earlier date by agreement. She said that the same agent had let and managed the House since 2006.
55. The Landlord's Representative went on to discuss her plans for the House. She said that she had de-registered as a landlord (proof of which had been lodged with the tribunal's administration prior to the hearing) and she stated that she does not intend to re-let the property again. She has applied for demolition of the House. She is also considering planning permission for the site, with and without the House on it. She has instructed an architect and is considering her options. The House will remain unoccupied in the meantime.
56. The tribunal asked the Landlord's representative to clarify whether it is only the property at no. 60 that she intends to demolish. She said that the Council had asked for the method of demolition and what steps would be taken to secure the property next door. She has decided that the whole site will now be demolished with a view to her applying for outline planning permission for development. The property next door, 26 Byron Street, is tenanted. They have been there for one and a half years. The planning permission is still at prior approval stage. Now an architect is involved, John Frulanii. She referred to emails lodged with the tribunal in advance of the hearing.
57. The Landlord's Representative was given the opportunity to respond to each alleged failure:
- 57.1. "All issues / related issues have been highlighted a number of years ago. Repairs done do not meet standard."**
- 57.2. No submissions were invited as this complaint did not relate to a particular failure to meet the repairing standard.

**57.3. "Front porch leaks into front door. Council inspector states that the porch should not be needed to keep the house watertight."**

57.3.1. The Landlord's Representative stated, with reference to the invoice from Walker dated 28 November 2017 (lodged at the hearing), that the external canopy appeared to have been repaired or replaced by them. It is described as a joinery repair to the porch area. The Landlord's representative stated that she did not know who had applied the orange filler material. As far as she is aware the whole canopy outside was replaced by Walker.

**57.4. "Leaky and unsafe roof"**

57.5. The tribunal noted that the terms of the letter produced that morning from the letting agent tended to suggest that a number of different tradesmen had provided estimates in the region of £20,000 for roof repairs. The Landlord's Representative replied that this letter was the first time she had been advised that an estimate had been obtained. However, from informal discussions she knew it would be expensive, probably in the region of £15,000.

57.6. She stated that there had been some recent slate repairs. The tribunal asked whether anything had been done since 8 March 2018 when the Application was made. The Landlord's Representative referred to the documents lodged that day, which had come from her letting agent, but stated that she did not know what work was done. She accepted that the invoices referring to roof repairs all appeared to pre-date the Application.

57.7. She said that the letting agent had made comment a couple of years ago that roof repairs were required. After discussions with the tenant the agent had agreed on her behalf to do temporary repairs to satisfy the former tenant in the meantime. As required, repairs were instructed and carried out by her letting agent. She was not given prior notification, they automatically instructed tradesmen and deducted the costs from the rent. For anything up to £500 the agent had permission to do that.

57.8. The Landlord's Representative stated that she does accept that the rear roof is in disrepair. The tribunal asked whether she had instructed or intended to instruct roof repairs. She replied that the House is not going to be occupied and she did not see the sense in expending additional costs when her aim was to demolish the House. She said she would reconsider roof repairs if it became a crisis but at present she does not think it is a cost effective move.

**57.9. "Water leaking from roof in between the walls causing damp smell and nauseous smells"**

57.9.1. The Landlord's Representative had nothing to add to what she had already said in relation to the roof.

**58. "Gutters leaking"**

58.1. The tribunal asked whether any sections of guttering had been replaced since the Application was made by the former tenant.

58.2. The Landlord's Representative did not think so but she did not know. She referred to one of the documents lodged at the hearing, a receipt from 6.9.17 which included "repair gutters which were falling off" and stated that from that invoice it looked like a repair was carried out as part of the works, which totalled £188.85.

58.3. She said that her agent has not told her that morning whether the gutters were leaking and that the House had been unoccupied since 20 June.

58.4. The Landlord's answer in relation to any gutter repairs which were required was that she is intending to demolish the House, therefore does not intend to carry out any gutter repairs.

**59. "Kitchen French doors letting in cold, Kitchen French doors, below the doors letting in damp".**

59.1.1. The Landlord acknowledged the dampness reading which had been seen at the inspection.

59.1.2. The Landlord's response in relation to the French door was that she is intending to demolish the House, therefore does not intend to carry out any French door repairs.

**60. "Draughts and droughts [sic] from various locations, namely bedroom side door to garden and front door."**

60.1. The Landlord's Representative's response to the issues with the doors was that she is intending to demolish the House therefore does not intend to carry out any door repairs.

60.2. In relation to the external door to 'Bedroom 3' the Landlord's Representative accepted that it was not excluded from the subjects of let in terms of the lease.

**61. "Neighbour states that garage is made of asbestos, garage in a state of disrepair."**

61.1. The Landlord's Representative accepted that there was nothing in the lease to exclude the garage from the subjects of let.

61.2. She stated that she was not aware that it was part of the property which had been let. She accepted that the former tenant had been using it.

61.3. She stated that the garage door is "a wreck".

61.4. She said that it was not until formal notification of the former tenant's complaint that she was made aware that there was a problem with the garage.

**61.5. Electrical supply**

61.5.1. As noted above, the complaint about the electrical supply did not form part of the Application and was not a matter that the tribunal required to decide. The tribunal had observed the fuse board during the inspection and the Landlord's Representative had advised the tribunal about the location of the meter in the next door property.

61.5.2. The Landlord's Representative advised that the electricity meter for the House is situated in the property next door but is separate from the other meter. The tenant would gain access by asking the next door tenant or going to the letting agent. She said the former tenant was free to change suppliers and had done so. The tribunal asked how electricity would be isolated. The Landlord's Representative stated that she assumed it would be done internally in the next door property.

61.5.3. She stated that electrical work was carried out in 2014 and 2015 and new fuse boards were put in, one of which was the fuse box the tribunal had looked at in the hall cupboard.

61.5.4. She said that she and her letting agents made an enquiry with British Gas and was told that it was not a necessity to have an electricity meter in the house, of which the former tenant was made aware. She was told by the letting agent that the former tenant was happy with the situation as long as he could gain access to take readings.

## **61.6. Closing submissions and further procedure**

61.6.1. The Landlord's Representative stated that in relation to the proposed demolition she had arranged a meeting with the architect for later in the same day as the hearing.

61.7. She said that she would keep the tribunal's administration advised of progress.

61.8. She said that they are applying for outline planning permission so that she can pursue the best way forward, as to whether she demolishes or sells the site with planning permission.

61.9. No work has been done since the former tenant's complaint came in. At first she considered refurbishment and then decided it was not cost viable. Then she decided to go ahead with demolition or obtain outline planning permission and consents. Then matters were discussed between the letting agent and the tenant. He agreed to terminate the lease early and move out. It was not safe to carry out extensive repairs while the former tenant was in situ. She and the agent gave the former tenant time to find somewhere, hence the reason no further works were carried out.

61.10. The tribunal clerk made copies of the documents which had been referred to and lodged by the Landlord's Representative with the tribunal's permission. The originals were returned to the Landlord's representative.

61.11. The Landlord's Representative was advised of further procedure, including the possibility of requesting a variation of the time allowed for any RSEO which the tribunal decided to impose. She indicated that she understood and agreed to keep the tribunal's administration apprised of any developments regarding planning permission and demolition.

## **Reasons for the Decision**

62. The tribunal made the following findings-in-fact:

- a. The Landlord's Representative is the daughter of the deceased Dr Karam Dev Saggar who is shown as the owner of the House in the most recent registered deed in respect of the House in the Register of Sasines.
- b. The deceased died in December 2006. He bequeathed the residue of his estate, including the House, to his daughter Ms Neena Saggar.
- c. There is a docquet on the back of the certificates of confirmation in terms of the Succession (Scotland) Act 1964.

- d. There was a short assured tenancy dated 28 November 2006 in the names of Dr Karam Dev Saggar c/o Balgay Property & Investment Services, 8 Westport, Dundee, DD1 5EP (signed by Colin Campbell, agent) and Johannes Rauscher.
- e. Lease extensions were signed on behalf of Dr Karam Saggar and latterly on behalf of Ms Neena Saggar.
- f. The former tenant continued to live in the House until June 2018. As a result of repair work required at the House he agreed to terminate the tenancy early and moved out on 20 June 2018.
- g. The Landlord's Representative and her agent have been notified of all the issues that form the basis of the Application.
- h. The external canopy above the front door is not watertight.
- i. The rear roof pitch is in an extremely poor state of repair and there are missing slates. The front roof pitch has some missing slates.
- j. There is condensation in the bathroom with mould on the wall and ceiling.
- k. There is an area of dampness below the door frame inside the kitchen.
- l. The front cast iron guttering is rusty in place and the joints are quite badly corroded.
- m. There has been a leaking gutter on the rear elevation of the House.
- n. The Kitchen French door is allowing water to penetrate into the area below the door causing an area of dampness.
- o. All four external doors are in poor condition and poorly housed within the frames. They are likely to be allowing wind and water to penetrate the House.
- p. The garage is in a state of disrepair and is not wind and watertight.
- q. The electrical meter is situated outwith the House, inside the property next door and in order to obtain a meter reading permission for access is required from the next door neighbour.



63. The tribunal is satisfied that in respect of the following items in the Application, as notified to the Landlord's Representative, the House does not meet the repairing standard:

**63.1. The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the 2006 Act).**

63.1.1. In particular the roof covering does not keep the House wind and watertight.

63.1.2. All four external doors allow wind and/or water to penetrate the House.

63.1.3. The external canopy above the front door is not watertight.

63.1.4. The garage is not wind and watertight.

**63.1.5. The structure and exterior of the House (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order (Section 13(1)(b) of the 2006 Act).**

63.1.5.1. The roof is not in a reasonable state of repair.

63.1.5.2. The four external doors are not in a reasonable state of repair and proper working order.

63.1.5.3. The external canopy above the front door is not in a reasonable state of repair.

63.1.5.4. The garage is not in a reasonable state of repair.

64. In respect of the remaining complaints in the Application, no order was made.

65. The tribunal observed that the location of the electrical meter for the House, in the next door property, was not an ideal arrangement.

### **Repairing Standard Enforcement Order ("RSEO")**

66. Because the tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Landlord to carry out the works necessary for meeting the

## **Right of Appeal**

**68. 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**

**69. 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.**

**S Tanner**

Signed  
Chairperson of the tribunal

....Susanne L M Tanner, Queen's Counsel

Date 15 August 2018

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



*This is the Schedule of photographs referred to in  
the foregoing Decision of the tribunal dated 15 August 2018.*

S Tanner

**Signed**

SUSANNE L M TANNER Name

15 August 2018 Date



**Property:** 60 LENG STREET, DUNDEE, DD3 6QY

**Ref no:** FTS/HPC/RP/18/0510

**Tribunal:** Susanne Tanner Q.C. and David Godfrey

**Inspection:** The property was inspected at 10.00 am Wednesday 25th July 2018.

**Access:** The Tenant, Mr Johannes Rauscher no longer resides in the property and was not present during the inspection.

The Landlord's Representative, Ms Neena Saggarr was present and provided access to the property.

## Photographs

1. Front pitch of roof
2. Rear pitch of roof
3. Rear pitch of roof detail
4. Rear elevation showing renewed rhones and downpipes
5. Staining to rear elevation from leaking rain water fittings
6. Rusted front rhones
7. Front door
8. Front door detail
9. Kitchen door
10. Kitchen door detail
11. Bedroom 2 door
12. Bedroom 3 door
13. Entrance canopy
14. Entrance canopy detail
15. Garage
16. Mastic seal/taping at Kitchen door (interior)
17. High damp meter readings below Kitchen door
18. Condensation on Bathroom ceiling
19. Condensation on Bathroom wall
20. Taping to interior of Bedroom 2 door
21. Electricity fuse box



1. Front pitch of roof



2. Rear pitch of roof



3. Rear pitch of roof detail





4. Rear elevation showing renewed rhones and downpipes



5. Staining to rear elevation from leaking rain water fittings



6. Rusted front rhones





7. Front door



8. Front door detail





9. Kitchen door



10. Kitchen door detail



11. Bedroom 2 door



12. Bedroom 3 door



13. Entrance canopy



14. Entrance canopy detail





15. Garage



16. Mastic seal/taping at Kitchen door (interior)



17. High damp meter readings below Kitchen door



18. Condensation on Bathroom ceiling

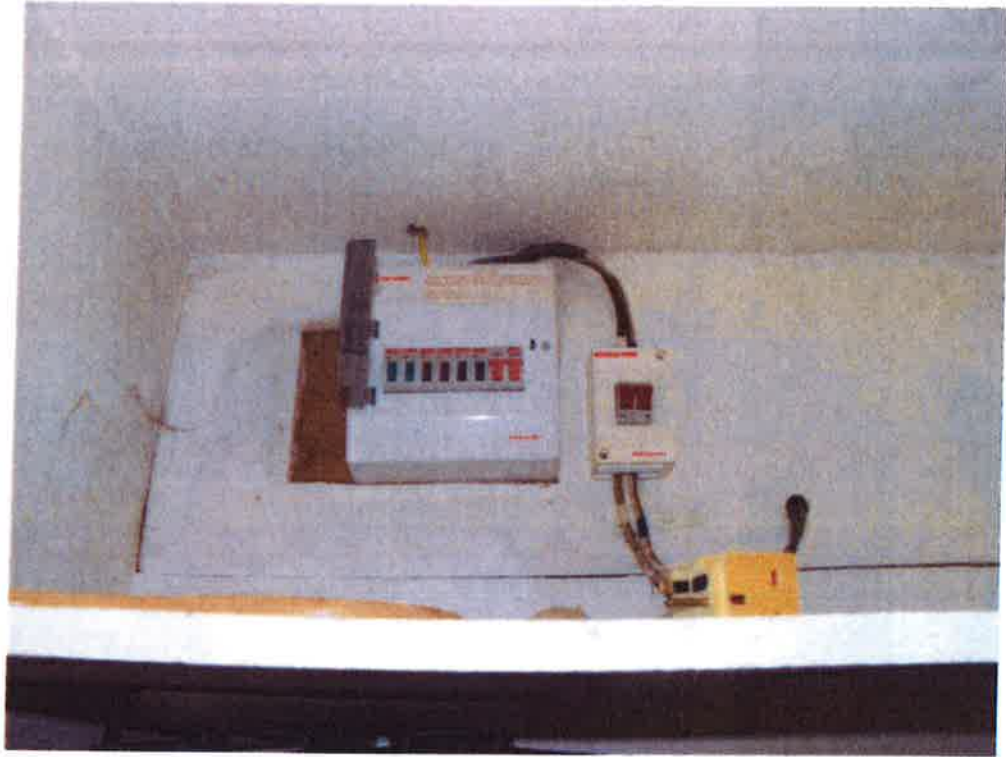


19. Condensation on Bathroom wall



20. Taping to interior of Bedroom 2 door





21. Electricity fuse box

David Godfrey, MRICS

25<sup>th</sup> July 2018