

# 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 (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: FTS/HPC/RP/19/0407**

**Title Number: ELN10476**

**25 Vert Court, Haldane Avenue, Haddington EH41 3PX  
("The Property")**

**The Parties:-**

**Ms Anna Stawarz, 25 Vert Court, Haldane Avenue, Haddington EH41 3PX  
(represented by her agent Mr Adrian Cierpikowski, 1916 Harewood Road,  
Edinburgh EH16 46F )  
("the Tenant")**

**Mr Michael David Carter and Mrs Rebecca Ewart Carter, 3 Barntongate Drive,  
Edinburgh EH4 8BE  
(represented by their agent Rent Locally, Unit 1, 109 Swanston Road,  
Edinburgh EH10 7DS  
("the Landlords")**

Whereas in terms of their decision dated // April 2019, The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlords have 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 Landlords have failed to ensure that:-

- (a) The house is 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 in a reasonable state of repair and in proper working order.

The Tribunal now requires the Landlords 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:-

1. To instruct suitable building maintenance contractors to inspect and report on the roof condition and rainwater drainage arrangements above the property and to provide the Tribunal with a copy of said report and to carry out any remedial works recommended by the said contractors to ensure that said drains, gutters and external or internal pipes are in a reasonable state of repair and in proper working order.
2. To instruct a suitable building contractor to rake out and repoint the external stonework at first floor level around the west, south and east elevations of the property and make good the stone mullion at the lounge window.

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



# Housing and Property Chamber First-tier Tribunal for Scotland

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

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

**Chamber Ref: FTS/HPC/RP/19/0407**

**25 Vert Court, Haldane Avenue, Haddington EH41 3PX  
("The Property")**

**The Parties:-**

**Ms Anna Stawarz, 25 Vert Court, Haldane Avenue, Haddington EH41 3PX  
(represented by her agent Mr Adrian Cierpikowski, 1916 Harewood  
Road, Edinburgh EH16 46F )  
("the Tenant")**

**Mr Michael David Carter and Mrs Rebecca Ewart Carter, 3 Barntongate  
Drive, Edinburgh EH4 8BE  
(represented by their agent Rent Locally, Unit 1, 109 Swanston Road,  
Edinburgh EH10 7DS  
("the Landlords")**

**Tribunal Members**

**Graham Harding (Legal Member)**

**Nick Allan (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 Landlords and the  
Tenant 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 7 February 2019 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 by the Tenant stated that the Tenant considered that the Landlords 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.
3. Specifically, the Tenant complained that there was extreme dampness in the property that was causing her daughter health problems and that there was missing grouting externally and the windows required to be replaced.
4. By letter dated 7 March 2019 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Tenant.
6. Following service of the Notice of Referral the Tenant's representative (by email dated 1 April 2019), made written representations to the Tribunal. The Landlords (by email dated 13 March 2019) and the Landlords' representative (by email dated 2 April 2019), made written representations to the Tribunal.
7. The Tribunal inspected the Property on the morning of 25 April 2019. The Tenant, her representative, the Landlord, Mr Carter and the Landlords' representative, Mr Steven Murray were present during the inspection. A schedule of photographs taken by the Ordinary Member of the Tribunal at the inspection is attached to this decision.
8. Following the inspection of the Property the Tribunal held a hearing at George House, 136 George Street, Edinburgh and heard from both the Tenant and her Landlords and the parties representatives. The Landlords were represented by Mr Steven Murray of Rent Locally and the Tenant was represented by Mr Adrian Cierpikowski.
9. The tenant submitted as follows:-

There had been a long standing problem with dampness in the property and the windows were not wind and watertight. The problem had been reported to the letting agents, Rent Locally on numerous occasions but without anything being done for some time. Eventually the window seals were replaced in February 2019 but the windows were still not wind and watertight.

Although there was no mould growing on the walls in the bedroom and the lounge at present that had not been the case only a few weeks ago and the Tenant referred the Tribunal to the photographs taken at the time and submitted to the Tribunal with the application.

The Tenant said that the mould had not been caused by lack of ventilation of the property on her part. She was aware of the need to keep the property properly ventilated. She said that the condition of the property had an adverse effect on the health of her daughter and this had resulted in hospital admissions.

The Tenant and her representative spoke of water pouring from an overflow above the top floor lounge window some weeks earlier that had soaked the stonework in the area of the lounge where the Tribunal had noted high moisture readings at the inspection. There had been no re-occurrence of water coming from the overflow in recent weeks.

The Tenant spoke of the grouting in the stonework around the windows of the property being loose and needing replaced. The Tenant believed the windows needed replaced.

The Tenant said that as far as she was aware the other flats in the block were dry and were not suffering from the same problems as hers.

10. The Landlords submitted as follows:-

According to Mr Murray there had been five different surveys carried out at the property, three by contractors instructed by Rent locally and two by the Factors of the block in which the property is situated, James Gibb. Mr Murray explained that the surveys carried out on his firms behalf suggested that common repairs to the stonework at the property was required but that whilst this had been partially accepted by the Factor it was not seen as a priority repair nor was it accepted by the Factor that it was the cause of the issues within the property. The property manager from James Gibb had refused to acknowledge there was a problem and had said that there were no issues with any of the other properties in the building. As a result, Mr Murray felt there was an impasse. He thought there was a limit to what work could be done inside the property until the external problems had been completed.

Mr Murray confirmed that there had been water pouring from an overflow above the lounge window of the property that had soaked the stonework but that when this had been reported to the Factor in February it had been attended to and as far as he was aware there had been no re-occurrence of the problem. He did not know what the overflow was for but thought it might have been from a communal tank. He had not sought clarification from James Gibb as to what had caused the overflow.

Mr Murray confirmed that the seals around the window frames had been replaced and there had also been new sills and mastic installed to make the windows wind and watertight.

Mr Carter commented that he had replaced the mastic around the bath in the bathroom the previous year and had noticed at the inspection that there were signs of mould there. For her part in response the Tenant indicated that the extractor fan in the bathroom was not working. Mrs Carter queried with Mr Murray whether during previous inspections of the property it had been noted that there had been a lack of ventilation in the

property. For his part Mr Murray said that while some windows had been closed others had been open and there had been no obvious signs of condensation. Mr Cierpikowski commented that any time he had visited the property it had been well ventilated.

11. The Tribunal raised with the parties the issues around Sections 16(4) and (5) of the 2006 Act and whether it could be said that if there were common repairs necessary the Landlords had taken all necessary steps to acquire the rights to have the works carried out. It was noted by the Tribunal that there was only one meeting of owners in November each year and this had not been attended by the Landlords and so the issues around the stonework had not been raised at that meeting. Mrs Carter said she had not known about the issues until the application to the Tribunal had been made. It would have been preferable if the Tenant had contacted her direct. For her part the Tenant explained that in terms of the Tenancy agreement she was obliged to go through the letting agents.

### **Summary of the issues**

12. The issues to be determined are whether the property is wind and watertight and in all other respects reasonably fit for human habitation and whether 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.

### **Findings of fact**

13. The Tribunal finds the following facts to be established:-
- The tenancy is a Private Residential Tenancy.
  - The property is a flat within a block of six flats in a sandstone building.
  - The Landlords have in February 2019 carried out repairs to the windows in the property by replacing the window seals and fitting new rubber seal gaskets, stripping out mastic around the windows and replacing with mastic and filling gaps below windows and sealing with mastic.
  - There has been mould growth in the west facing bedroom in the past. At the time of the inspection the damp level readings were within acceptable levels. There were signs of mould growth along the external bedroom wall. Paragraph no. 3 in the attached Schedule refers.
  - There were unacceptably high damp readings on the east elevation of the lounge wall that could create the potential for an outbreak of wood rot lead if not resolved.
  - The pointing to the stonework particularly in the areas around the lounge and bedroom windows is in poor condition. The stone mullion in the lounge window opening has eroded or been damaged.
  - The stonework on the east elevation has in the past been affected by water ingress.

## **Reasons for the decision**

14. The Tribunal was satisfied from the inspection and the evidence obtained at the hearing that the cause of the mould growth within the property and the high moisture readings in the lounge were unlikely to be as a result of condensation through lack of ventilation. The Tenant appeared to be well aware of the need to keep the property properly ventilated and the Landlord's representative did not indicate that there had been any issues in the past with regards to a lack of ventilation.
15. The Tribunal was pleased to note that the Landlords had taken some steps to attempt to remedy the problems by attending to the seals around the windows and although the Tenant remained of the view that the windows were still not wind and watertight and needed replaced it appeared to the Tribunal that the remedial works carried out by the Landlords were sufficient at this time.
16. There were unacceptably high damp readings in the eastern corner of the lounge, which if left untreated could lead to an outbreak of wood rot in the property. The Tribunal noted that this had been identified by McFadyen Preservation Ltd in their report dated 12 March 2019 and submitted to the Tribunal by the Landlords' representatives. It was therefore apparent that remedial works are required but of course the source of the problem also needs to be identified.
17. It was not clear to the Tribunal if the problem with the overflow noted by the parties and now apparently remedied was a single incident or had been ongoing for a long period of time. It was also not clear what caused the overflow and the Tribunal felt that further investigations in this area were required.
18. The Tribunal noted at the inspection from looking through binoculars at the pointing of the stonework at the property that it was in poor condition and in need of repair and again this had been noted by Active Roofing and Building Services in their quotation dated 22 March 2019 submitted by the Landlords representatives.
19. The Tribunal in determining whether to make a Repairing Standards Enforcement Order had to take account of Section 16(5) of the 2006 Act as repairs to the stonework of the property may be deemed to be common repairs requiring the consent of the majority of the owners in the block. Whilst it was accepted by the Tribunal that the Landlords' representatives had not been able to progress matters with the Property Factors James Gibb it did seem to the Tribunal that the other homeowners in the block had not been approached directly by the Landlords nor had all necessary steps been taken to identify the source of the problem. There had been no invasive investigations made from within the property nor did it appear that any substantive investigation had been carried out to the roof or drains.



The Tribunal was therefore not satisfied that the Landlords lacked the necessary rights in terms of Section 16(4) of the 2006 Act.

20. In reaching its decision the Tribunal had the benefit of the parties and their representatives written submissions as well as its own observations at the inspection and the evidence from the parties and their representatives at the hearing. After carefully considering all the evidence the Tribunal was satisfied that the property did not meet the repairing standard.

### **Decision**

21. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

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

23. The decision of the tribunal was unanimous.

### **Right of Appeal**

**24. 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**

25. 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                        Chairperson

Date                7 May 2019

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

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**Photograph Schedule  
25 Vert Court, Haldane Avenue, Haddington, EH41 3PX**

**Case Reference:** FTS/HPC/RP/19/0407

**Date of inspection:** 25/04/2019

**Time of inspection:** 10.00 am

**Weather conditions:** Dry and sunny

**Present:** Graham Harding – Legal Member  
Nick Allan – Ordinary Member  
Michael Carter – Landlord  
Steven Murray – Letting Agent  
Anna Stawarz – Tenant  
Adrian Ceirpikowski – Tenant’s Representative



**Photo 1 - 1<sup>st</sup> Floor subject property**



**Photo 2** - Light damp levels in bedroom



**Photo 3** - Mould on bedroom wall



**Photo 4** – Corresponding wall section



**Photo 5** - Dampness in Living Rm.



**Photo 6** – Corresponding wall section



**Photo 7** – Eastern elevation

Nick Allan – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber – 25<sup>th</sup> April 2019