

Housing and Property Chamber

First-tier Tribunal for Scotland



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/18/0602

**Southmost first floor flat, 13 North Ellen Street, Dundee, as more particularly
described in the disposition by Tayview Property Company Limited to James
Brown Thow and another, recorded in the General Register of Sasines 24
January 1983
("The House")**

The Parties:-

**Mr Aminul Islam, southmost first floor flat, 13 North Ellen Street, Dundee
("the Tenant")**

**Mrs Tahmina Ismail, 11 Alford Gardens, Broughty Ferry, Dundee, formerly
residing at 4 Westfield Place, Dundee
("the Landlord")**

represented by

**Mr Habib Chowdhury, Shampan Property, 11 Alford Gardens, Broughty Ferry,
Dundee, DD5, 1QY
("the Landlord's Representative")**

Tribunal members

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

**NOTICE TO Mrs Tahmina Ismail
(the LANDLORD)**

WHEREAS in terms of its decision dated 1 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.*
- (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, ...*
- (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. ...”*

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 treat and eradicate the insect infestation in the House and produce documentation to the tribunal to confirm that has been done.
2. To remove the areas of dampness on the wall in the rear bedroom.
3. To repair the pointing on the rear external wall of the tenement in which the House is situated and ensure that the House is watertight.
4. To repair or replace the two defective internal bedroom doors to ensure that both are securely hung in the door frames and can be opened safely and closed securely.
5. To relocate or replace the smoke and heat detectors to ensure that they comply with existing Scottish Government guidance about positioning and inter-linking of the same.
6. To produce an up to date Electrical Installation Condition Report prepared by a competent person showing that an inspection has

taken place after the relocation or replacement of the said smoke and heat detectors.

The tribunal orders that the works specified in this Order must be carried out and completed within 30 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 chairperson of the tribunal at Edinburgh

S Tanner

Chairperson

signed on 1 August 2018 (date) at Edinburgh

before this witness:-

Y McDougall

Witness

YVONNE McDOUGALL name in full

6 RATRAY WAY Address

EDINBURGH

EH10 5TU

Housing and Property Chamber

First-tier Tribunal for Scotland



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/18/0602

**Southmost first floor flat, 13 North Ellen Street, Dundee, as more particularly described in the disposition by Tayview Property Company Limited to James Brown Thow and another, recorded in the General Register of Sasines 24 January 1983
("The House")**

The Parties:-

**Mr Aminul Islam, southmost first floor flat, 13 North Ellen Street, Dundee
("the Tenant")**

**Mrs Tahmina Ismail, 11 Alford Gardens, Broughty Ferry, Dundee, formerly residing at 4 Westfield Place, Dundee
("the Landlord")**

represented by

**Mr Habib Chowdhury, Shampan Property, 11 Alford Gardens, Broughty Ferry, Dundee, DD5, 1QY
("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 is the southmost first floor flat, 13 North Ellen Street, Dundee, as more particularly described in the disposition by Tayview Property Company Limited to James Brown Thow and another, recorded in the General Register of Sasines 24 January 1983. It is known as Flat L, 13 North Ellen Street, Dundee.
5. The House is a first floor flat containing Hall, Living Room, Three Bedrooms, Kitchen and Shower Room. (See external and internal views in attached **Schedule of photographs**).

Parties and parties' supporters / representatives

6. The Tenant making the application is as designed above. He lives with his family in the House.
7. The Landlord is as designed above. The Landlord and her husband, Mr Habib Chowdhury, have formed a property business with the trading name "Shampan Property", based at their home address at 11 Alford Gardens, Broughty Ferry, Dundee, DD5, 1QY. The Landlord and the Landlord's Representative have engaged Lexy Group to manage maintenance of the House.

The Tenancy

8. The Tenant and his wife, Liala Islam, have a short assured tenancy for the House which started on 1 March 2015 for an initial period of one year until 28 February 2016. The Landlord is not named in the short assured tenancy agreement. It is in the name of the said Shampan Property. The tenancy has continued since 1 March 2016 by tacit relocation.
9. The rent is £450 per calendar month, payable in advance.

Procedural Background

10. On 15 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) to (f) of Section 13(1) of the 2006 Act. In Section 8, the Tenant listed the details of the alleged failures as being:
 - 11.1. "No shower for 8 months – shower faulty – no bath"
 - 11.2. "Electrics dangerous"
 - 11.3. "Infestation of numerous insects"
 - 11.4. "Landlord not replaced carpets"
 - 11.5. "Bedroom door unsafe – will not stay on frame"
 - 11.6. "Severe damp and walls wet"
 - 11.7. "Only 2 smoke detectors – not working – work not finished".
12. In Section 9 of the Application the Tenant listed the following work as being required:
 - 12.1. "Shower"
 - 12.2. "Electrics"
 - 12.3. "Infestation"
 - 12.4. "Doors"
 - 12.5. "Damp"
 - 12.6. "Not watertight".
13. The Tenant attached to the Application:
 - 13.1. The tenancy agreement dated 1 March 2015; and
 - 13.2. Copy letter of notification to the Landlord's Representative regarding the work which the tenant stated required to be carried out to meet the repairing standard, namely:
 - 13.2.1. "Replace shower"

- 13.2.2. "Electrics replaced / repaired"
- 13.2.3. "Treat infestation"
- 13.2.4. "Internal doors"
- 13.2.5. "Damp"
- 13.2.6. "Smoke / heat detectors"
- 13.2.7. "Make water tight"
- 13.2.8. The issue with the carpets was not notified to the Landlord.

13.3. Proof of posting of the notification letter on 14 March 2018 was provided by the Tenant. Royal Mail attempted to deliver the letter on 15 March 2018 and left a card at the delivery address. The mail was returned to the sender on 4 April 2018. On 10 April 2018, the tribunal's administration requested that the Tenant re-send the letter of notification to the Landlord by first class mail. The Tenant confirmed that this had been sent on 16 April 2018.

14. On 18 April 2018 the Application, comprising documents received between 15 March and 17 April 2018 was referred to the tribunal for determination. An inspection of the House and a hearing were fixed for 26 June 2018 at 11.15 and 15.00, 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.

Parties' wishes to attend Hearing and Written Representations

15. On 12 June 2018 the Tenant sent an email to the tribunal's administration:

- 15.1. confirming that he would allow access for the inspection on 26 June 2018;
- 15.2. stating that most of the repairs in the House had been carried out, namely:
 - "Shower has been repaired and replaced
 - Electrics repaired/replaced
 - Internal doors have been fixed
 - Damp
 - Smoke/heat detectors
 - Make water tight."

15.3. However, the Tenant indicated that nothing had been done to treat the infestation in the House and he did not think that it would be fixed.

15.4. The Tenant confirmed that he would attend the hearing on 26 June 2018.

16. The Landlord / Landlord's Representative did not submit written representations and did not state whether they wished to attend the inspection and oral hearing.

17. On 26 June 2018, the tribunal's administration wrote to the Landlord and Landlord's Representative and requested that they confirmed the authority of Shampan Property to enter into a lease with the Tenant given that the registered owner of the House is Tahmina Ismail. The Landlord / Landlord's Representative did not reply.

Summary of the Issue to be determined by the tribunal

18. 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 – 26 June 2018

19. The tribunal inspected the House on 26 June 2018 at 11.15.

20. The Tenant was present, as were his wife/co-tenant, Mrs Liala Islam and their daughter Nyorin Islam. The Tenant was assisted by Mr Mohamed Razak.

21. The Landlord was not present. The Landlord's Representative, Mr Habib Chowdhury, was present. Mr Graham Bradley, from Lexy Group, the management and maintenance company used by the Landlord/Landlord's Representative, was present. Mr Bob Anderson, a third party contractor who had recently carried out maintenance works on the instructions of the Landlord's Representative was also present.

Inspection and Schedule of photographs

22. The tribunal confined its inspection on 26 June 2018 to the repairs issues detailed within the notification to the Landlord's Representative and included in the Application.

23. Photographs were taken at the inspection, and a **Schedule of Photographs** is appended to and forms part of this Decision.

24. The weather at the time of the inspection was dry.

25. **Schedule of Photographs numbers 1 and 2** shows external views of the front and rear of the tenement building in which the House is situated. The House is a first floor property.

26. The tribunal proceeded with the inspection, in the presence of the Tenant, his representative, his family and the Landlord's Representative.

27. The inspection revealed the following with reference to each of the Tenant's complaints, with reference to the **Schedule of Photographs** where applicable:

27.1. "No shower for 8 months – shower faulty – no bath"

27.1.1. The Tenant had advised prior to the inspection that the shower had been repaired.

27.1.2. On inspection the shower appeared to be new and was operational.

27.1.3. The shower cubicle was tanked with wet wall and appeared to be watertight.

27.1.4. The shower electrical switch was operational.

27.1.5. During the inspection the shower curtain, which was held up by means of a tension rod, fell down.

27.1.6. **Schedule of Photographs, numbers 4 and 5**, show the wet wall in the shower which has recently been replaced and the shower fitting which was said by the Tenant to have been recently repaired or replaced.

27.2. "Electrics dangerous"

27.2.1. The Tenant had advised prior to the inspection that the problems with the electrics had been repaired.

27.2.2. On inspection the Tenant pointed out various sockets and light fittings which had been repaired / replaced.

27.3. "Insect infestation of numerous insects"

27.3.1. The Tenant had advised prior to the inspection that the insect infestation was persisting and had not been treated by the Landlord.

27.3.2. At the inspection the Tenant presented specimens of the insects which were infesting the House which had been placed in a bottle to be inspected by the Tribunal.

27.3.3. On inspection the Tribunal did not see any live insects in the House.

27.4. "Landlord not replaced carpets"

27.4.1. The Tenant had not included the issue with the carpets in his notification letter to the Landlord.

27.4.2. The Tribunal took photographs to record the condition of the carpets.

27.4.3. **Schedule of Photographs, numbers 6, 7, 8 and 9**, respectively, show: 6. Front bedroom carpet (1) (stained); 7. Front

Bedroom carpet (2) (rippled and stained); 8. Rear Bedroom (south) carpet; and 9. Living Room carpet (worn in places).

27.5. “Internal Doors – bedroom door unsafe, will not stay on frame”

27.5.1. The Tenant had advised prior to the inspection that the internal door repairs had been carried out.

27.5.2. On inspection one bedroom door was coming off its hinges. Another had no door closing mechanism so could not be closed securely.

27.5.3. **Schedule of Photographs, numbers 10, 11, 12 and 13**, respectively, show: 10. Rear Bedroom (south) door (1); 11. Rear Bedroom (south) door (2); 12. Front Bedroom door (1) (loose from frame); and 13. Front Bedroom door (2).

27.6. “Severe Damp and wet walls – not watertight”

27.6.1. The Tenant had advised prior to the inspection that repairs had been carried out and that the House was watertight.

27.6.2. On inspection the tribunal found only one area of dampness in a rear bedroom, on an area of wall below the window. It had a high reading on the damp meter. The cause was unknown. Externally, there is deficient pointing on the rear wall which may be causing or contributing to the internal dampness.

27.6.3. On inspection there was an area of damp staining on the shower room ceiling. It appeared to have been the result of an isolated incident, perhaps an escape of water, from the property above the House.

27.6.4. **Schedule of Photographs, numbers 14, 15, 16 and 17**, respectively show: 14. Back Bedroom (south) window (free from signs of dampness); 15. Damp staining on Shower Room ceiling; 16. Damp staining on Shower Room upper wall; and 17. Damp staining in corner of rear Bedroom (north).

27.6.5. **Photograph 3** shows an external view of the kitchen window including a piece of apparently new wood underneath the window frame. Mr Bob Anderson advised during the external inspection that he had carried out the repair works to the windows to make them watertight.

27.7. “Smoke / heat detectors – only two smoke detectors – not working – work not finished”

27.7.1. The Tenant had advised prior to the inspection that the smoke detectors had been repaired / replaced.

27.7.2. On inspection the tribunal observed that there were smoke detectors in the hall and living room and a heat detector in the kitchen. However, these were not positioned in the rooms in accordance with Scottish Government guidance.

- 27.7.3. **Schedule of photographs, numbers 18, 19 and 20, respectively** show: 18. Hall smoke detector 19. Living Room smoke detector and 20. Kitchen heat detector.

The Hearing

Attendance at hearing

28. The hearing took place at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB at 15.00h on the same day as the inspection.
29. The Tenant and his daughter, Nyorin Islam, attended the hearing. The Tenant stated that his daughter was present to assist him with English. The Tenant had not advised the tribunal's administration in advance of the inspection and hearing that he had any English language difficulties. The tribunal asked if he was content to proceed without an interpreter. The Tenant confirmed to the tribunal that he understood and could speak English but that he wished his daughter to assist him. The tribunal was prepared to proceed on that basis but advised the Tenant and his daughter to tell the tribunal Chair if the Tenant had difficulty understanding anything during the hearing.
30. The Landlord did not attend the hearing. The Landlord's Representative, Mr Chowdhury, attended the hearing. In response to an enquiry by the tribunal about the registered owner of the Property and the name "Shampan Property" which is on the tenancy agreement, he stated that Ms Ismail is his wife. He explained that "Shampan Property" is a trading name for his wife and himself. It is not a legal partnership. The address at 11 Alford Gardens Broughty Ferry, Dundee is their home address. Mr Chowdhury stated that his wife was aware of the inspection of the House and the hearing.
31. The Landlord's Representative was accompanied by Mr Graham Bradley, a partner in Lexy Group. Mr Bradley, explained that Lexy Group is a letting agency and property management and utility company which also carried out EICRs and other repairs – plumbing, electrical, gas safety. He stated that he takes instructions from Mr Chowdhury on the Landlord, Mrs Ismail's, behalf.

Documents produced late at the hearing – Landlord's representative

32. The Landlord's Representative produced three documents at the hearing which had not been lodged or intimated at least seven days before the hearing:
- 32.1. A photograph of page 1 of a letter from Neighbourhood Services Private Sector Services Unit, Dundee City Council, to the Landlord dated 5

April 2018 in which the Council notified the Landlord that the House did not meet the repairing standard and that work required to be carried out within a reasonable time to meet the repairing standard. Seven items of work were listed on page 1 of the letter:

- 32.1.1. *"1. The shower is not working this requires to be repaired or replaced by a suitably qualified Engineer.*
2. Light bulbs regularly blow and in particular in the front bedroom light fitting if more than one bulb is inserted this requires to be checked and repaired or replaced. The batten holder at the light fitting in the bathroom is brittle and damaged this requires to be replaced. There is no electrical installation condition report for the property. These works required to be carried out by a suitably qualified electrician.
3. All 3 bedroom windows have black spot mould to the ingoes and below the sills. The cause of this requires investigation by a damp specialist.
4. The windows generally require the external mastic pointing repaired
5. The door to bedroom 2 (front) does not operate properly due to the hinges being damaged and the door latch to bedroom 3 is missing these should be replaced.
6. The floorboards are damaged at the door going into bedroom 1 (rear) at the side of the radiator.
7. The wall in the shower room adjoining the kitchen has a hole. The tiling and grouting within the shower area has large areas of mould and the floor tiles in the shower room are broken. These should be checked and repaired or replaced. ..."

32.1.2. Subsequent pages were not produced.

32.1.3. There was handwriting on the letter which read *"Waiting on Pest control"*.

32.2. various documents relating to an enquiry made earlier that day in relation to pest control:

32.2.1. An email from "Harry Bradley" at Lexy Group to "Andy Law Pest Control" dated 26 June 2018 at 12.42 attaching photos of the insect specimens which had been collected by the Tenant and stating that he was looking to have this booked in as soon as possible;

32.2.2. an email from Andy Law Pest Control to "Harry Bradley" with the subject 13L North Ellen Street dated 26 June 2018 at 13.22.24 thanking the sender for providing pictures of the insect specimens which had been collected by the Tenant. The opinion was given that they were most likely Dermestes beetle. An opinion was given on treatment together with a quotation and availability.

32.2.3. A Certificate showing that Andy Law Pest Control is a full member of the British Pest Control Association until 28 February 2019;

32.2.4. A Hiscox Certificate of Professional Indemnity Insurance for Andy Law Pest Control.

32.3. An EICR dated 9 June 2018.

33. There was no objection by the Tenant to late lodging of the documents.

34. 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 pest control correspondence was dated earlier the same day, after the inspection and before the hearing. The tribunal took the view that the Council letter, and the EICR were both relevant to the issues in the hearing and there was no prejudice in allowing late lodging.

Oral submissions by Tenant and Landlord's Representative

35. The Tenant made oral submissions in relation to each item of the complaint and the Landlord's Representative had the opportunity to respond to each alleged failure:

35.1. "No shower for 8 months – shower faulty – no bath"

35.1.1. Tenant's Submissions

35.1.2. The Tenant advised that last May (2017) the electric shower just suddenly stopped working. At that point the family had been living in the house for two or three years. No water was coming out at all. The Tenant stated that they contacted the Landlord. He confirmed that their main point of contact if something is wrong is Mr Chowdhury. Throughout the period May 2017 to June 2018 they had no shower. For a year they went to their neighbours to shower. They boiled water in the kitchen and took it to the bathroom.

35.1.3. The Tenant and his family went away on holiday on 4 July 2017 for 4/5 weeks. When they came back, they heard nothing so they waited for a response. It took them until this year to realise nothing was going to happen. Nobody came to inspect or repair the shower. The Tenant was ill during this period.

35.1.4. The Tenant contacted the Council because Mr Chowdhury was not doing anything. Donald Graham got in touch with them and came to the House. He is employed by Private Sector Services Unit, Dundee City Council. The Tenant was advised by Mr Graham that he had sent a letter to the Landlord in about April 2018.

35.1.5. Four weeks ago someone came to fix the shower and it been fine since then. It was both repaired and replaced. The shower head was replaced. The Tenant is not sure if the shower unit was also replaced. The wall boards have been replaced. The electrical switch for the shower

has been replaced. All of the work in the House was carried out by the contractor who attended at the inspection this morning (Bob Anderson) and another contractor. The Tenant stated that he is satisfied that the shower is now working.

35.1.6. The tribunal raised the issue of the shower curtain and rod as it had fallen down that morning during the inspection. The Tenant advised that he was unaware of this as he had not been in the bathroom at the time.

35.1.7. **Landlord's Representative's submissions**

35.1.8. The Landlord's Representative stated that he has never had any complaint about the shower from the Tenant. He had never received a letter or any telephone calls. He said that he did not receive the notification letter from the Tenant.

35.1.9. He stated that with 5 or 6 people living in the flat it is hard to believe that they went up and down to the neighbour's house for a year or used pans of water.

35.1.10. He stated that he thought that the first time he heard about the shower problem was when the tribunal notified Shampan Property and his wife about the referral of the Tenant's Application.

35.1.11. He then made reference to the letter from Dundee City Council to his wife dated 5 April 2018 (lodged at the hearing) which said that various points of work needed to be done.

35.1.12. The Tribunal noted that the Tribunal administration wrote to Shampan Property and his wife on 17 May 2018 to advise that the Application had been referred and he then stated that the first notice must have been the Council's letter dated 5 April and not the tribunal's letter dated 17 May.

35.1.13. Once his wife received the Council's letter, he instructed Lexy Group to do all of the work listed in the letter. He was provided with a timescale by Lexy Group who said it would take one or two days to do the work. They had to phone the Tenant for a convenient time. The Tenant said he was going on holiday. That was in April or May 2018. The work was then scheduled in.

35.1.14. The tribunal asked Mr Bradley when Lexy Group was instructed. Mr Bradley replied that he thought it was in April or early May. He said that it was before the tribunal paperwork arrived. The bill was sent to the Landlord on 15 May 2018, so the work was done before 15 May. The bill listed the work that was done as well as the price. Mr Bradley said that he could scan and email a copy of the bill and the Landlord's Representative undertook to liaise with Mr Bradley after the hearing and provide the same to the tribunal's administration

35.1.15. Mr Bradley stated that he was satisfied that all of the items on the Council letter had been attended to. In relation to the shower, a new

shower unit was fitted and new wall panels were fitted. The original shower tray was retained.

35.1.16. In relation to the defective shower curtain rail a repair has been instructed and it will be done when the Tenant is available. The contractor will drill fixings on both ends so the rod is not just held up by tension.

35.1.17. Tenant's response

35.1.18. The tribunal asked the Tenant about a comment which had been made at the inspection that morning to the effect that there had been an issue in the last week with the shower which was fixed again yesterday.

35.1.19. The Tenant confirmed that there had been a problem when he was in the middle of a shower. Yesterday, or two days ago the same person who had fixed the shower, came again to look at it. Within one day the Landlord had arranged for it to be repaired. There was an issue with the electric switch in the circuit board which had turned off and that has been fixed now. If the fuse trips again they have been told to switch it back on themselves.

35.2. Electrics

35.2.1. Tenant's submissions

35.2.2. The Tenant stated that various switches had recently been replaced. The shower switch was replaced. In the bedrooms and the living room all bulbs were blowing. These have been replaced with pendant fittings with one bulb in each fitting. The repairs were carried out around two or three weeks ago.

35.2.3. Landlord's Representative's submissions

35.2.4. The Landlord's Representative stated electrical work was carried out and that the EICR was then carried out on 9 June 2018. All of the light fittings were changed and there were repairs / replacement of switches, sockets and the shower switch. He was not sure about the circuit board. He instructed the electrician to carry out the works and the EICR. He is satisfied that everything is fine as he has the certificate.

35.2.5. The Smoke detectors were fitted one and a half to two years ago. No smoke detectors have been fitted recently. In response to an enquiry from the tribunal, the Landlord stated that he did not know if smoke detectors were mentioned on page 2 of the Council letter. The smoke detectors are not part of the EICR.

35.2.6. Tenant's Response

35.2.7. The tribunal asked the Tenant if it was still his position as per the Application that there are only two and they do not work. The Tenant

stated that he thought that when the electrics were being checked the contractor attended to the smoke detectors as well.

35.2.8. Landlord's Representative's Further Response

35.2.9. Mr Bradley stated that it was not his company which did the work and agreed that it does not look like they were checked in the EICR. He said he had been informed by a colleague today that it is not part of the EICR to specifically check smoke detectors.

35.3. Insect Infestation

35.3.1. Tenant's submissions

35.3.2. The Tenant submitted that there had been an insect infestation in the House. Overall it is mainly at night, when it gets dark. The Tenant stated that they obviously clean the House and they do not think that the infestation relates to lack of cleanliness. Over the years there has been an increase in the amount of insects. The root cause has not been identified. The insects appear in the corners of rooms. It is increasing in the carpets. They appear to be beetles. The Tenant collected some specimens and put them in a bottle (as seen at the inspection). The Tenant has kept the specimens to be viewed by a pest control specialist. The Tenant advised that he has not spoken to anyone else in the tenement stairwell to establish if there is an issue in the other properties.

35.3.2.1. Landlord's Representative's Submissions

35.3.2.2. The Tribunal asked the Landlord's Representative when he / his wife were first notified about the infestation of insects. The Landlord's Representative replied that the first notice he received was the letter from the Council. The Tribunal considered the page of the letter which had been lodged and noted that there is no mention of insects, although it is only part of a letter so it may have been on the second page. The Landlord's Representative stated that the first notice may have been the tribunal paperwork in May.

35.3.2.3. Whenever he was notified, the Landlord's Representative stated that he had not instructed anyone to inspect or treat the issue until earlier on the day of the hearing. Over the last couple of weeks, he had initially tried to contact the Council to deal with it as they offer a service for £80 but he was kept on the phone for two hours and was then cut off.

35.3.2.4. The Landlord's Representative took photographs of the beetles at the inspection the same morning.

35.3.2.5. He forwarded the photos to Andy Law Pest Control and he has now instructed that company. He referred to the emails and other documentation lodged earlier in the hearing. It is an entirely separate company from Lexy Group. The pest control company agreed to attend the day after the hearing (27 June 2018).

35.3.2.6. The Tribunal advised the Landlord's Representative to keep the paperwork which is issued by the pest control company as that may be required by the Tribunal and he agreed to do so.

35.3.2.7. Tenant's response

35.3.2.8. The Tenant is happy for the first inspection/treatment to happen tomorrow.

35.4. Internal doors

35.4.1. Tenant's submissions

35.4.2. There are problems with two bedroom doors. One does not fit. The hinges have been re-screwed but there is still a problem. One does not have a door mechanism.

35.4.3. Landlord's Representative's submissions

35.4.4. The Landlord's Representative stated that a mechanism is going to be put in on the rear bedroom door whenever the Tenant wants it done.

35.4.5. The front door (which is not part of the Application) will get fixed at the same time.

35.5. Dampness / make watertight

35.5.1. Tenant's submissions

35.5.2. (i) The Tenant stated that the previous issue with multiple areas of dampness has been resolved since the recent work which has been done to the windows. The wallpaper has been replaced and they scraped off all the wallpaper and put new wallpaper in all the rooms that had mould. There is still dampness in one room.

35.5.3. (ii) There is damp staining on the bathroom ceiling.

35.5.4. Landlord's Representative's submissions

35.5.5. (i) Work has been carried out to all of the windows, three at the front and four at the back. It was carried out by Mr Anderson. The work has stopped water and draughts from getting in and there is no condensation any more.

35.5.6. The Tribunal asked the Landlord's Representative about the findings on inspection in relation to the dampness which was found in the

corner of one room when Mr Anderson, the third party contractor, was present. Externally there is pointing missing outside. This may be causing the problem internally but there may be another cause.

35.5.7. Mr Bradley said that it was a process of trial and error to identify the cause of the dampness and they will go through the process to identify and deal with it.

35.5.8. (ii). Bathroom ceiling. The Landlord's Representative stated that he thought that it was created inside the bathroom.

35.5.9. The Tribunal stated its opinion that it appeared to have been ingress from the flat above. If it was condensation it would be around the shower and that it looks like an isolated incident.

35.6. Smoke detectors

35.6.1. Tenant's submissions

35.6.2. The Tenant referred to previous submissions. There are now smoke detectors in the hall and lounge and a heat detector in kitchen. The Tenant is satisfied that they all work.

35.6.3. Landlord's Representative's submissions

35.6.4. The Landlord's Representative referred to previous submissions. Pulse fitted the detectors.

35.7. Carpets

35.7.1. The Tribunal noted that the carpet issue was included in the Application but had not been notified to the Landlord.

35.8. As it was not notified it cannot be considered by the tribunal for the purposes of a determination.

36. Closing submissions for both parties

36.1. Tenant

36.2. The Tenant stated that he had nothing to add to what had already been said.

36.3. Landlord's Representative

36.4. Mr Chowdhury stated that he had nothing else to say other than to mention again that he never received any complaints from the Tenant so had no notice of the issues before the letter from the Council. He stated that as soon as he received the letter he did the work.

36.5. In relation to the Tribunal's question about lack of investigation / treatment of the insect infestation, he stated that they did do an investigation which was carried out by Mr Anderson. He thought that the right thing was to

eradicate the problem properly. Mr Chowdhury accepted that a specialist third party has not been instructed until today but he stated that they contacted the company last week and he only got the beetle samples today. He expects it to be treated the day after the hearing (27 June 2018).

36.6. The Landlord's Representative enquired as to the position regarding repairs to common property such as the external walls. The Tribunal explained that any RSEO will be placed on the Landlord and it is an order requiring her to do the work whether or not the obligations are mutual; and a matter for the Landlord to take any necessary steps regarding instruction of and liability for any such works.

36.7. The Landlord's Representative further enquired of the Tribunal whether the dampness in the bedroom was caused by the window or defective pointing. He was advised by the Tribunal that it is not for the Tribunal to tell the Landlord's Representative what has caused the problem. If there is a finding of a failure to comply with the repairing standard and an RSEO it will specify that there is dampness present and that it is for the Landlord to rectify the problem of dampness (whatever the cause).

37. Tenant's Response

37.1. The Tenant stated that he does not agree that the first notification to the Landlord was when she received the Council's letter. The Tenant stated that he has texted the Landlord's Representative multiple times and has phoned on the same number. The Tenant had formed the view that the Landlord was clearly avoiding them.

37.2. The Chair agreed to note that there was a dispute about the date (not the fact) of notification but advised parties that it is not a matter that the tribunal requires to reach a determination on. The tribunal only requires to determine whether the House meets the repairing standard in relation to the items which have been notified and form part of the Application.

38. Landlord's representative

38.1. The Landlord's Representative and Mr Bradley stated that they would work with the community representative to make sure that there are no problems in the future.

39. The Tribunal advised the parties of the next stage in procedure and the hearing ended 16.13h.

Reasons for the Decision

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

- a. The Landlord is the registered owner of the House.
- b. The Landlord and the Landlord's Representative are husband and wife. They have a property business which is named "Shampan Property".
- c. A short assured tenancy exists between the Landlord (in the name of Shampan Property) and the Tenant which started on 1 March 2015 for a period of one year and has continued by tacit relocation.
- d. The Landlord and the Landlord's Representative have been notified of all the issues that form the basis of the Application.
- e. The shower unit has recently been replaced in April or May 2018 and the shower is in proper working order.
- f. The shower cubicle has recently been fitted with a "wet wall" surround in April or May 2018 and is watertight.
- g. The shower curtain is held up on a tension rod which falls from its position when the curtain is moved.
- h. A number of electrical switches, sockets and lights in the House have been replaced / repaired in April or May 2018 and an EICR dated 9 June 2018 has been produced.
- i. There is an insect infestation in the House which has not been inspected or treated by a specialist pest controller. They are most likely to be Dermestes beetles. An inspection and specialist treatment is required to remove the infestation.
- j. The internal doors on two bedrooms are defective and not in proper working order. One has damaged hinges and is insecure. The other has no door closing mechanism so cannot be securely closed.
- k. All windows in the House were repaired in around April or May 2015 and the windows are watertight.
- l. There is dampness on the wall around the window in the rear bedroom. The cause is unknown.
- m. The pointing on the external rear wall of the tenement in which the House is situated is damaged / defective.

- n. There is damp staining on the shower ceiling which appears to have been caused by an isolated incident.
- o. Smoke and heat detectors are situated in the hall, lounge and kitchen but they are not positioned in those rooms or interlinked in accordance with current Scottish Government guidance.
- p. The EICR dated 9 June 2018 does not include the smoke / heat detectors.

41. 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:

41.1. 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).

41.1.1. There is an insect infestation in the House which makes it not reasonably fit for human habitation. The infestation requires to be inspected and treated by a specialist pest controller in order to remove it.

41.1.2. There is dampness around the window in the rear bedroom which appears to be penetrating through an external wall. The House is not watertight in that regard.

41.2. 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 (Section 13(1)(b) of the 2006 Act).

41.2.1. There is defective pointing on the external rear wall of the House. The pointing may be allowing water to penetrate into the House, meaning that it is not watertight and may be the cause of the damage and dampness on the wall in the rear bedroom area.

41.2.2. Two internal bedroom doors are not in a reasonable state of repair and proper working order. One is insecure in its hinges and other has no door closing mechanism.

41.3. The installations in the House for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order (Section 13(1)(c) of the 2006 Act.)

- 41.3.1. The EICR which has been produced does not include the smoke / heat detectors. Reference is made to the tribunal's finding in fact that the detectors are not positioned or interlinked in accordance with existing Scottish Government guidance.
- 41.4. The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- 41.4.1. The two smoke detectors (hall and living room) and the heat detector (kitchen) are not positioned within those rooms and interlinked in accordance with existing Scottish Government guidance.
42. In respect of the remaining complaints in the Application, no order was made for the following reasons:
- 42.1. The windows had been repaired prior to the inspection and the House was found to be watertight (with the exception of the finding of the area of dampness in one rear bedroom, as specified above).
- 42.2. The electrical sockets, switches and light fittings had been repaired / replaced prior to the inspection and an EICR dated 9 June 2018 was produced at the hearing.
- 42.3. The shower unit had been replaced and was working at the inspection. The shower cubicle had been tanked with "wet wall" and was watertight. The tribunal noted that the rod holding the shower curtain is only held up by tension and it fell down at the inspection. It is not one of the Tenant's complaints but the Landlord's Representative stated at the hearing that he would arrange for it to be permanently affixed to the wall by means of screws to prevent this happening again.
- 42.4. The carpet complaint was not in the Application and was not considered by the Tribunal.
43. 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 repairing standard and have therefore issued a Repairing Standard Enforcement Order in terms of Section 24(2) of the 2006 Act.

Repairing Standard Enforcement Order (RSEO)

44. The tribunal made a RSEO.

Right of Appeal

46. 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

47. 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

SignedSusanne L M Tanner, Queen's Counsel
Chairperson of the tribunal

Date 1 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 1 August 2018.

S Tanner

Signed

SUSANNE L. M. TANNER Name

1 August 2018 Date

PHOTOGRAPHIC SCHEDULE



Property: FLAT L, 13 NORTH ELLEN STREET, DUNDEE, DD3 7DF

Ref no: FTS/HPC/RP/18/0602

Tribunal: Susanne Tanner and David Godfrey

Inspection: The property was inspected at 11.15 am Tuesday 26th June 2018.

Access: The Tenant, Mr Aminul Islam was present and provided access to the property. Mr Islam was also represented by Mr Mohamed Razak.

The Landlord, Miss Tahmina Ismail was not present but was represented by Habib Chowdhury, Graham Bradley and Robert Anderson.

Photographs

1. Front elevation of building
2. Rear elevation of building
3. External detail of Kitchen window
4. Shower (wet wall recently replaced)
5. Shower fitting (recently repaired)
6. Front Bedroom carpet (1) (stained)
7. Front Bedroom carpet (2) (rippled and stained)
8. Rear Bedroom (south) carpet
9. Living Room carpet (worn in places)
10. Rear Bedroom (south) door (1)
11. Rear Bedroom (south) door (2)
12. Front Bedroom door (1) (loose from frame)
13. Front Bedroom door (2)
14. Back Bedroom (south) window (free from signs of dampness)
15. Damp staining on Shower Room ceiling
16. Damp staining on Shower Room upper wall
17. Damp staining in corner of rear Bedroom (north)
18. Hall smoke detector
19. Living Room smoke detector
20. Kitchen heat detector



1. Front elevation of building



2. Rear elevation of building



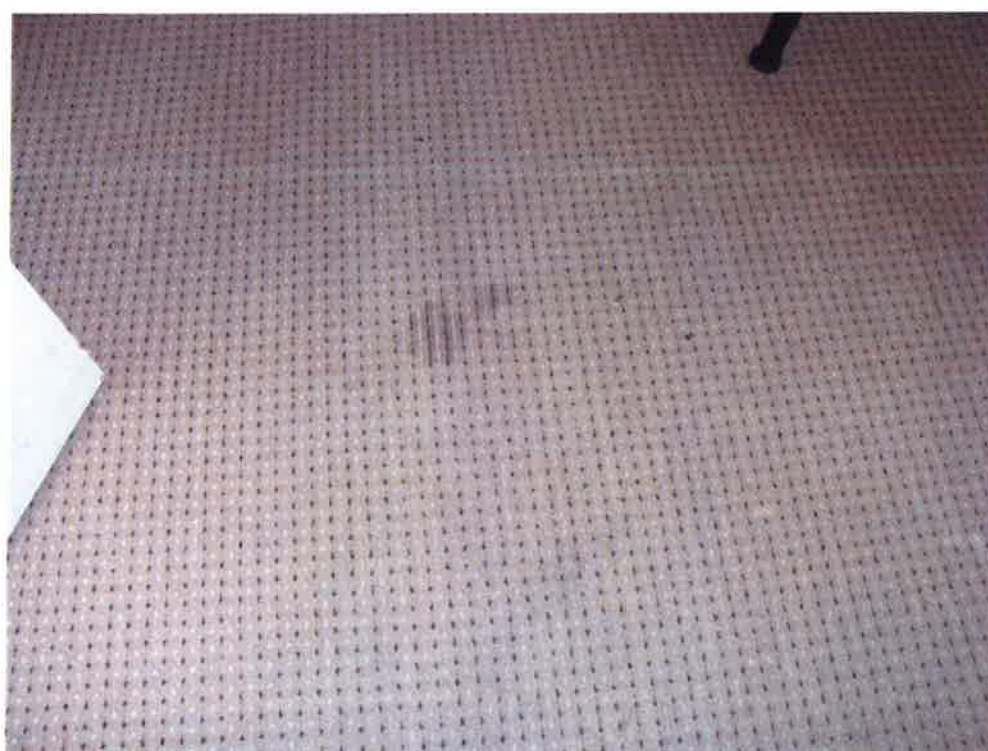
3. External detail of Kitchen window



4. Shower (wet wall recently replaced)



5. Shower fitting (recently repaired)



6. Front Bedroom carpet (1) (Stained)



7. Front Bedroom carpet (2) (Rippled and stained)



8. Rear Bedroom (south) carpet



9. Living Room carpet (worn in places)



10. Rear Bedroom (south) door (1)



11. Rear Bedroom (south) door (2)



12. Front Bedroom door (1) (loose from frame)



13. Front Bedroom door (2)



14. Back Bedroom (south) window (free from signs of dampness)



15. Damp staining on Shower Room ceiling



16. Damp staining on Shower Room upper wall



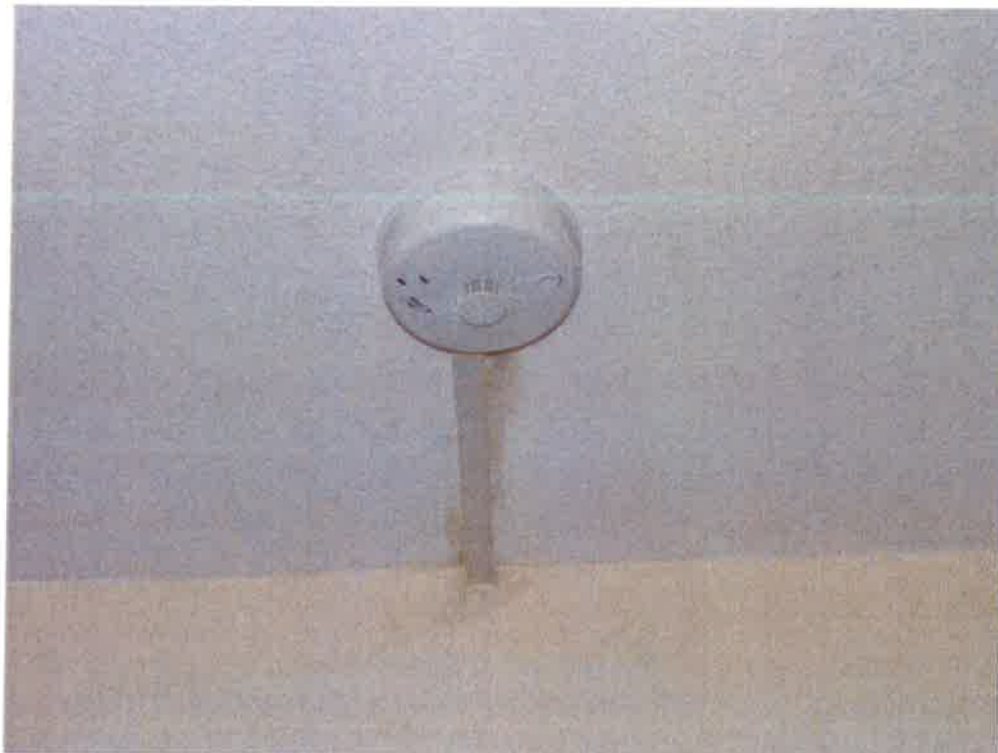
17. Damp staining in corner of rear Bedroom (north)



18. Hall smoke detector



19. Living Room smoke detector



20. Kitchen heat detector

David Godfrey, MRICS

26th June 2018