

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: RP/16/0270

**76 Church Court
Philpstoun
Linlithgow
EH49 6RB**

("The Property")

Title Number WLN21240

The Parties:-

**Ms Elena Bader, residing at 76 Church Court, Philpstoun, Linlithgow
EH49 6RB**

("the Tenant")

**Mrs Shona Mann, residing at 6 Sowdley Green, Wheaton Aston, Stafford, ST19
9QB**

("the Landlord")

Whereas in terms of their decision dated 23 December 2016, The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that the property is:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act; and
- (b) The structure and exterior of the house are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act; and

the tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the landlord:-

- (a) repair or replace the render to each of the external walls of the property to make the property wind and watertight
- (b) to investigate and eliminate the water ingress around the windows on the ground and first floors to the front of the property and ensure that every window in the property has a watertight seal.
- (c) when the property is wind and watertight, and the interior walls have dried out, to remove the damp staining from the interior walls of the living room and first floor front bedroom and to redecorate the living room and front bedroom when the remedial works are completed.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 8 weeks 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.

In witness whereof these presents type written on this and the preceding page are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the tribunal at Edinburgh on 5 January 2017 before Joseph Doyle 24 Haddington Place, Edinburgh

J Doyle _____ witness **P Doyle** _____ chairperson

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: RP/16/0270

**76 Church Court
Philpstoun
Linlithgow
EH49 6RB**

("The Property")

The Parties:-

**Ms Elena Bader, residing at 76 Church Court, Philpstoun, Linlithgow
EH49 6RB**

("the Tenant")

**Mrs Shona Mann, residing at 6 Sowdley Green, Wheaton Aston, Stafford,
ST19 9QB**

("the Landlord")

Tribunal Members

Paul Doyle	Legal Member
Susan Napier	Surveyor 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 Landlord and the Tenants 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 11 August 2016 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 Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act; and
 - (b) The structure and exterior of the house are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act; and
3. By letter dated 26 August 2016 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.
4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
5. Following service of the Notice of Referral neither party made any further written representations to the Tribunal.
6. The tribunal inspected the Property on the morning of 9 December 2016. The Tenant was present, but was not represented. The landlord was neither present nor represented.
7. Following the inspection of the Property the tribunal held a hearing at Linlithgow. The Tenant was present, but was not represented. The landlord was neither present nor represented.

Summary of the issues

8. The issues to be determined are whether the house is wind and watertight, and whether the exterior of the house is in a reasonable state of repair.

Findings of fact

9. The tribunal finds the following facts to be established:-
 - (a) On 30 November 2015, the landlord let the property to the tenant, and a short assured tenancy was created.
 - (b) The property is a two-bedroom end- terraced house with gardens front, side and rear. Property is brick built, with cement rendering to the external walls. A garden path leads to a glazed front door which provides access to

10. (a) Tribunal members inspected this property at 10:15am on 9 December 2016. It was a clear, damp, December morning. The landlord was neither present nor represented. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the windows, the walls and the external rendering of the property.

(b) Tribunal members inspected the living room walls and the living room window. On both the walls & the window there are clear signs of water staining. The surveyor member took damp meter readings from the interior surfaces of the living room walls. High damp meter readings were found around the window on the front wall. High damp meter readings were obtained from the interior face of the gable end wall.

(c) Tribunal members inspected the similar window in the front bedroom of the property. There they found similar signs of water staining to the interior surface of the window pane, to the windowsill and on the interior faces of the front and gable end walls. Once again, the surveyor member of the tribunal took damp meter readings from both the interior front wall and the interior gable end wall. Higher than normal damp meter readings were obtained.

(d) Tribunal members inspected the exterior of the property and could see that the rendering is cracked and bossed. It was obvious from tribunal members' inspection that there is significant water penetration, the most likely cause of which is cracked, bossed and defective rendering.

(e) A hearing took place at 11:30 am within Linlithgow Borough Hall, Linlithgow. The landlord was neither present nor represented. The tenant was present. After the tribunal members were reintroduced to the tenant, the tenant answered questions from tribunal members.

(f) The tenant explained that within two weeks of moving into the property she noticed significant water ingress around the front windows on the ground and first floors of the property. She said that the water penetration has continued throughout her tenancy, & that the extent of the water penetration varies according to the weather. The tenant described to the tribunal her attempts to stem the flow of water with bath towels, and her increased usage of the heating system in the house and the constant use of a dehumidifier, which collect is up to 10 L of water a day.

(g) The tenant told tribunal members that she has been in constant contact with the landlord's agent, and that the landlord has sent tradesmen to inspect the windows and the exterior render of the property. The rear ground floor window and the rear door to the property were replaced two months before the tribunal inspection. The tenant told tribunal members that repairs to the external render had been scheduled for 11 November 2016, but the repair works had not commenced.

(h) The tenant was an impressive witness. Her evidence goes without challenge and is entirely consistent with the documentary evidence produced and with tribunal members' own observations at inspection of this property.

The weight of reliable evidence indicates that the house is not wind and watertight, and that the structure and exterior of the house is not in a reasonable state of repair. The only conclusion that the tribunal can realistically come to is that the house does not meet the repairing standard set out in section 13 of the Housing (Scotland) Act 2006.

(i) Tribunal members could see that the property benefits from gas-fired central heating and that there is a gas boiler fitted to the wall of the kitchen. The tenant has not seen the gas safety certificate and has now been in the property for 13 months. The landlord will want to ensure that the annual gas safety check is carried out and should provide the tenant with a copy of the up-to-date gas safety certificate.

(j) The tribunal therefore make a repairing standard enforcement order requiring the landlord to

(a) repair or replace the render to each of the external walls of the property to make the property wind and watertight

(b) to investigate and eliminate the water ingress in around the windows on the first ground floors to the front of the property and ensure that every window in the property has a watertight seal.

(c) when the property is wind and watertight, and the interior walls have dried out, to remove the damp staining from the interior walls of the living room and first floor front bedroom and to redecorate the living room and front bedroom when the remedial works are completed.

Decision

11. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

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

13. The decision of the tribunal was unanimous.

Right of Appeal

14. 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

15. 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.

Signed **P Doyle**

Date 5/01/2017

Chairperson

PRHP/RP/16/0270

PHILPSTOUN – 76 CHURCH STREET EH49 6RB

INSPECTION FRIDAY, 9 DECEMBER 2016 AT 10AM



FRONT ELEVATION



FRONT ELEVATION LOOKING UP TO ROOF



SIDE ELEVATION



REAR ELEVATION



LIVING ROOM WINDOW AND WALL ABOVE



LIVING ROOM WINDOW AND EXTERNAL SILL



LIVING ROOM WINDOW AND WALL ABOVE, WITH VENT IN EXTERNAL WALL



DAMP METER READING TAKEN BELOW LIVING ROOM WINDOW



DAMP METER READING TAKEN ON MAIN BEDROOM EXTERNAL GABLE WALL