

# **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: PRHP/RP/16/0307**

**Property Description: ALL and WHOLE the Flat 2/2, 100 Dundrennan Road, Battlefield, Glasgow, G42 9SH being part and portion of the tenement of houses at the block known as 100 Dundrennan Road, all as more particularly described in the Disposition to John Thom recorded in the Division of the General Register of Sasines for the Barony and Regality of Glasgow on 14 September 1912**  
**("The House")**

**The Parties:-**

**Mrs Stella Taylor, residing at the House**  
**("the Tenant")**

**York and District Investment Company Limited, having its registered office at 137 Scalby Road, Scarborough, North Yorkshire, YO12 6TB, a subsidiary company of Broadland Properties Limited which is related to Nevis Property Company Limited, having its registered office at 56 George Street, Edinburgh, EH2 2LR, also a subsidiary company of Broadland Properties Limited, the title to the property remaining in the name of the said Nevis Property Company Limited**  
**(represented by their agent Edzell Property Management)**  
**("the Landlord")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising : Joan Devine (Legal Member); Carol Jones (Ordinary Member)**

**NOTICE TO: York and District Investment Company Limited ("the Landlord")**

**Whereas in terms of its decision dated 4 January 2017, the Tribunal determined that the Landlord had failed to comply with the duty imposed on it by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the house meets the repairing standard in that:**

- the House is not wind and watertight and in all other respects reasonably fit for human habitation;**

- 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; and
- the fixtures, fittings and appliances provided by the Landlord under the tenancy are not 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 purpose 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 before the date specified in this order.

In particular the Tribunal requires the Landlord to:

1. replace all windows throughout the House, in order to ensure that the property is wind and watertight and in all other respects reasonably fit for human habitation;
2. repair or replace the stairhead windows on each landing of the tenement as necessary to ensure that they are in a reasonable state of repair and proper working order and in particular to stop any water ingress when it rains;
3. repair or replace the hot water tap to the basin in the bathroom to ensure that it is 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 the period of six 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 2 preceding pages are executed by Joan Devine, solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Charing Member of the Tribunal at Glasgow on 5 January 2017 before this witness:-

**J Devine**

Charing Member

**L McCabe**

witness

LAURA MCCABE name in full

107 WEST REGENT STREET Address

GLASGOW

# **Housing and Property Chamber**

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

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

**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Chamber Ref: PRHP/RP/16/0307**

**Property Description: ALL and WHOLE the Flat 2/2, 100 Dundrennan Road, Battlefield, Glasgow, G42 9SH being part and portion of the tenement of houses at the block known as 100 Dundrennan Road, all as more particularly described in the Disposition to John Thom recorded on 14 September 1912 ("The House")**

**The Parties:-**

**Mrs Stella Taylor, residing at the House  
("the Tenant")**

**York and District Investment Company Limited, having its registered office at 137 Scalby Road, Scarborough, North Yorkshire, YO12 6TB, a subsidiary company of Broadland Properties Limited which is related to Nevis Property Company Limited, having its registered office at 56 George Street, Edinburgh, EH2 2LR, also a subsidiary company of Broadland Properties Limited, the title to the property remaining in the name of the said Nevis Property Company Limited  
(represented by their agent Edzell Property Management, 1008 Pollockshaws Road, Glasgow G41 2HG)  
("the Landlord")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") comprising: Joan Devine (Legal Member); Carol Jones (Ordinary Member)**

### **DECISION – 2/2, 100, DUNDRENNAN ROAD**

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the House and taking account of all the available evidence determines that the Landlord has failed to comply with the duty imposed on it by Section 14(1)(b) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

## **Background**

1. By application dated 19 September 2016, the Tenant applied to the Private Rented Housing Panel for a determination that the Landlord had failed to comply with his duties under Section 14(1) of the Act. With effect from 1 December 2016 the Private Rented Housing Panel has been incorporated into the Tribunal.
2. In this application, the Tenant stated that she believed that the Landlord had failed to comply with his duty to ensure that the property met the repairing standard as set out in Sections 13(1)(a), (b), and (d) of the Act. Her application stated that the Landlord had failed to ensure that:
  - the House was wind and watertight and in all other respects reasonably fit for human habitation;
  - 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; and
  - the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order
3. The Tenant made the following complaints in her application and in her notification letter to the Landlord :
  - the windows are draughty. The Tenant has to keep towels along the top and put kitchen paper down where the window cords are and put Sellotape around other parts. The sills are rotting. Some of the windows do not open.
  - the stair head windows are in a poor state of repair;
  - the hot water tap on the sink in the toilet is unusable.
4. On 30 September 2016, the Convenor of the Private Rented Housing Panel issued a Minute of Decision stating that she considered that in terms of Section 23(3) of the Act, there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the Tenant comprising documents received between 20 September and 28 September 2016; and intimating her decision to refer the application to the Committee (as it then was) for determination.
5. The Clerk to the Private Rented Housing Panel wrote to the Tenant and to the Landlord's agent, Edzell Property Management, on 26 October 2016 notifying them under and in terms of the Act of the decision to refer the application under Section 22(1) of the Act to a Committee of the Private Rented Housing Panel and that an inspection and a hearing would take place on 5 December 2016.

Written representations were received from the Tenant dated 10 November 2016. No written representations were received from the Landlord.

### **The Inspection**

6. The Tribunal inspected the House on the morning of 5 December 2016. The weather conditions at the time of the inspection were cold and dry. The Tenant was present at the House during the inspection. Her sister, Jacqueline Mitchell was in attendance. Richard Taylor, a Solicitor with Edzell Property Management, the Landlord's agent, was also present at the inspection. Photographs were taken during the inspection and are attached as a Schedule to this decision.

### **The House**

7. The House is a second floor flat within a four storey red sandstone tenement estimated to be in the region of 115 years old. The House comprises: the hallway, living room, bedroom, dining room/kitchen and bathroom. It is located in a predominantly residential area within the Battlefield district of Glasgow and around 3 miles south of the city centre.

### **The Hearing**

8. Following the inspection, the Tribunal held a hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. The Tenant was represented at the hearing by her sister Jacqueline Mitchell. The Landlord was represented by Mr Taylor of Edzell Property Management.

### **The Evidence**

9. The evidence before the Tribunal consisted of:
  - the application form completed by the Tenant;
  - Sasine Search Sheet (no. 2016-03451749) relating to the House;
  - letter of notification from the Tenant to the Landlord's agent notifying it of the various issues complained about in her application together with certificate of posting dated 8 August 2016;
  - representations received from the Tenant dated 10 November 2016 when she said in addition, since her application, there is water ingress in the sitting room which results in the carpets and furniture being waterlogged
  - the Tribunal's inspection of the property;
  - the oral representations of the parties.

### **Summary of the Issues**

10. The issue to be determined was whether the House meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on it by Section 14(1)(b).

### **Findings in Fact**

11. The Tribunal made the following findings in fact:

- the Tenant had lived in the House since 1981. She entered into a Tenancy Agreement at that time with Nevis Property Company Limited. The Landlord is now York and District Investment Company Limited. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply;
- The registered Landlord for the House is York and District Investment Company Limited, which is a subsidiary company of Broadland Properties Limited. The search provided by the Registers of Scotland was unclear, but made reference to a Deed of Conditions granted by Nevis Property Company Limited in respect of the tenement at 100 Dundrennan Road, and made reference to a description of the property in a Disposition by John Thom recorded on 14 September 1912. The Tribunal determines on the basis of the evidence before it, including the Sasines Search Sheet, that the title to the House remains in the name of Nevis Property Company Limited, which is also a subsidiary of Broadland Properties Limited;
- the tenancy of the House is managed by the Landlord's agent, Edzell Property Management, 1008 Pollockshaws Road, Glasgow, G41 2HG;
- the Tribunal in its inspection carefully checked the items which were the subject of the application. The Tribunal observed the following:
  - (a) the windows throughout the House, while not the original ones were of some considerable age and were in a relatively poor state of repair. The timber frames are generally intact but have not been painted or treated for some time and they are draughty. The external sill to the right side window in the kitchen is rotting and the left side window in the kitchen could not be opened;
  - (b) the stair head windows on each landing of the tenement were in a very poor state of repair. Where cords existed they had perished and were beyond their useful life making the windows insecure and impossible to open safely. Some glazing was cracked or loose and the windows on the top landing were showing signs of rot. The plasterwork to the ceiling on the middle landing has been patched.
  - (c) the hot water tap in the basin in the bathroom could not be properly turned off so as to stop the flow of water.



### **Reasons for Decision**

12. Following its inspection and the hearing, the Tribunal determined that:

- the property is not wind and watertight and in all respects reasonably fit for human habitation;
- the structure and exterior of the property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;
- the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order

13. The complaints before the Tribunal as set out in the Tenant's application and the Tribunal's determinations in relation to each of these are set out below.

#### **Windows**

14. Mrs Mitchell representing the Tenant told the Tribunal that the windows are draughty, rotting and cannot be opened. The problems with the windows had caused water ingress in the sitting room. In her view, the House was not wind and watertight.
15. Mr Taylor told the Tribunal that a combination of blockage in the gutters and the disrepair to the windows had caused water ingress. He told the Tribunal that new windows were planned and the gutters (which were common) had been cleared. Mr Taylor told the Tribunal that a company had been instructed to replace the windows. The work could be done within a matter of weeks. The windows would be replaced with UPVC windows. Mr Taylor told the Tribunal that over the next few days he expected to have a date fixed for the windows to be measured.
16. On the basis of its inspection and the other evidence before it, the Tribunal found that the windows throughout the House are not in a reasonable state of repair and in proper working order. It also finds that the House is not wind and watertight and in all other respects reasonably fit for human habitation.

#### **Landing Windows**

17. The Tribunal observed that some of the windows on the stair head landings were rotted. Where cords existed, they had perished and were beyond their useful life. A number of the panes of glass were loose. The Tribunal were of the view that this rendered the windows unsafe.
18. Mrs Mitchell told the Tribunal that the windows in the tenement let in wind and rain. Her sister, the Tenant, was concerned that the windows in the stairwell were unsafe. Some years ago, part of the ceiling to the middle landing had



fallen in due to water ingress at the top landing window. This was a safety issue. In her view, the stair head windows were not in a reasonable state of repair. Mr Taylor said that when he had spoken with the Tenant, she had not mentioned the stair head windows as being a problem. He said that the Landlord's focus would be to replace the windows inside the House. He had not reported the stair head windows to the factor, but would do so.

19. On the basis of the evidence before it, including its inspection, the Tribunal determines that the stair head windows in the tenement require to be repaired or replaced to ensure that they are wind and watertight, that the rot is eradicated and that they are safe and secure.

#### Hot Water Tap

20. Mrs Mitchell told the Tribunal that the hot water tap in the bathroom sink could not be used. The Tenant could not turn it off properly to stop the flow of water. This was a waste of hot water. The Tribunal observed at the inspection that the hot water tap could not be properly closed off to prevent the flow of water.
21. On the basis of the evidence before it, including its inspection, the Tribunal determines that the hot water tap to the wash hand basin in the bathroom requires to be repaired or replaced so that it can be properly closed off to prevent the flow of water.
22. Section 15 of the Act states:  
  
*"(i) where a house forms part only of any premises, the reference in Section 13(1)(b) [i.e. the requirement to ensure that the structure and exterior of a house is in a reasonable state of repair and in proper working order] includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burdens or otherwise;*  
  
*(ii) nothing in sub-section (i) requires the landlord to carry out any work unless any part of the premises or anything in the premises which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order."*
23. The effect of this is that the landlord is required to ensure that the structure and exterior of the premises which include a flat which it owns is in a reasonable state of repair and in proper working order where it has a responsibility to maintain the common parts of those premises. This applies where any part of those premises which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.
24. The Landlord has a legal obligation to maintain the landing windows. The disrepair or failure to keep those common parts in a reasonable state of repair and in proper working order has resulted in part of the property which the Tenant is entitled to use, i.e. the close and the stairwell being adversely affected.

25. The Landlord has a duty to comply with a repairing obligation regardless of the fact that others share the responsibility to carry out and pay for common repairs. While the Landlord is entitled to pursue the other owners in a tenement to pay for their share of the repairs, this is a matter for the Landlord and does not affect its legal responsibility to ensure that the property meets the repairing standard.

### **Observations by the Tribunal**

26. The Tribunal observed that there was one smoke alarm in the hallway. This provision does not comply with current statutory requirements for rented properties. The repairing standard includes a requirement under Section 13(1)(f) of the 2006 Act that the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires, and for giving warning in the event of fire or suspected fire, Section 13(5) of the Act states that regard is to be had to any building regulations or any guidance issued by the Scottish Ministers in these matters.
27. The current Scottish Government statutory guidance states that there should be at least:
- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes;
  - one functioning smoke alarm in every circulation space, such as hallways and landings;
  - one heat alarm in every kitchen; and
  - all alarms should be interlinked.
28. The Tribunal also observed that it would be open to the Tenant to make a further application to the Tribunal in respect of the absence of smoke alarms within the property, should this not be addressed by the Landlord.
29. The Landlord should also be aware of the extension of the repairing standard to require the installation of carbon monoxide warning detectors from 1 December 2015.
30. The guidance states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:
- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling;
  - a fixed combustion appliance in an interconnected space, for example an integral garage;

- a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) – the CO detector should be sited outside the room, as close to the appliance as possible, but allowing for the effect humid air might have on the detector when the bathroom door is open.
31. The Tribunal noted that there was only one smoke alarm situated in the hall, and that whilst there was a CO detector, it was located behind the door in the living room. This was not in accordance with the Scottish Government guidance. Further, the Tribunal noted that there was no heat detector present in the kitchen.

### **Summary of Decision**

32. The Tribunal determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that:
- the House is not wind and watertight and in all respects reasonably fit for human habitation;
  - 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;
  - the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order
33. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

## Right of Appeal

34. 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.

# J Devine

.....  
Signed  
Joan Devine, Charing Member

.....  
Date 4 January 2017

In witness whereof these presents type written on this and the 8 preceding pages are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Charing Member of the Tribunal at Glasgow on 4 January 2017 before this witness:-

## L McCabe

\_\_\_\_\_ witness

LAURA MCCABE \_\_\_\_\_ name in full

107 WEST REGENT STREET \_\_\_\_\_ Address

GLASGOW  
\_\_\_\_\_  
\_\_\_\_\_

**Scottish Courts  
and Tribunals Service**



Schedule of photographs taken during the inspection of 2/2, 100 Dundrennan Road,  
Glasgow G42 9SH by the tribunal members on the 5 December 2016.

Reference Number : PRHP/RP/16/0307



External view - Front elevation of property





Living Room - Bay - towels on top rails of lower sash windows



Living Room - Bay Window - left side - showing tape applied by tenant to block draughts



Living Room - Bay Window - right side



Living Room - Bay Window - towel on top rail of lower sash



Living Room - Bay Window - towels on sill



Bedroom Window





Bathroom Window - kitchen towel used to block draughts/plastic sheet covering entire internal surface



Bathroom Window - kitchen towel used to block draughts/plastic sheet covering entire internal surface



Kitchen Window - right side - rot to external sill



Kitchen window - left side - towels on top rail of lower sash and not possible to open.



Bathroom - wash hand basin - defective hot water tap



Top landing - close window showing rot



Top landing window - loose lower sash/missing cords.



Middle landing window and tiling



Middle landing - plaster to ceiling above window patched.



Middle landing window - perished cords



Lower landing window



Lower landing window - perished cords