

# 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/17/0084**

**Title no: Subjects being the top floor flat at 21 Court Street, Dundee, DD3 7QS  
registered under title number ANG10143**

**Property at Top Floor, 21D Court Street, Dundee, DD3 7QS  
("The House")**

**The Parties:-**

Lynne Findlay, residing at Top Floor, 21D Court Street, Dundee, DD3 7QS ("the Tenant")

Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX ("the Tenant's Agent")

Samantha Whittington, formerly known as Samantha Hall residing at Strathearn, Findon Road, Findon, Worthing, West Sussex, BN14 0RD ("the Landlord")

**The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr Nick Allan	-	Ordinary Member

Whereas in terms of their decision dated 14 June 2017, 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:-

- (a) The house is wind and watertight and in all respects reasonably fit for human habitation.

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 to:-

- (a) Instruct an independent chartered building surveyor to undertake a full survey report of the house to identify where possible the causes of water ingress and damp and carry out the works recommended in the report to ensure the house is watertight;
- (b) Make good any internal decoration following completion of the works required at (a); and
- (c) Where the works required at (a) cannot be completed for any reason, provide evidence of reasonable steps taken to carry out the works;

The Tribunal order that the works specified in this Order must be carried out and completed within the period of three months from the date of service of this Notice.

**A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal 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(s) are executed by Ruth O'Hare, Chairperson, 7 Mossbeath Grove, Glasgow, G71 7UU, chairperson of the tribunal at Glasgow on 14 June 2017 before this witness:-

T O'Hare

R O'Hare

\_\_\_\_\_ witness

\_\_\_\_\_ chairperson

Thomas O'Hare  
7 Mossbeath Grove  
Glasgow  
G71 7UU

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Determination under section 24(1) of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/17/0084**

**Title no: Subjects being the top floor flat at 21 Court Street, Dundee, DD3 7QS registered under title number ANG10143**

**Property at Top Floor, 21D Court Street, Dundee, DD3 7QS  
("The House")**

### **The Parties:-**

Lynne Findlay, residing at Top Floor, 21D Court Street, Dundee, DD3 7QS ("the Tenant")

Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX ("the Tenant's Agent")

Samantha Whittington, formerly known as Samantha Hall residing at Strathearn, Findon Road, Findon, Worthing, West Sussex, BN14 0RD ("the Landlord")

### **The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr Nick Allan	-	Ordinary Member

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

### **Background**

1. By application dated 2 March 2017 the Tenant's Agent applied to the Tribunal for a determination of whether the landlord has failed to complied with the duties imposed by Section 14(1)(b) of the Act.

2. The application stated that the Tenant considered that the Landlord had failed to comply with her 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.

3. In summary, the Tenant submitted that there was damp throughout the house, in particular in the lounge, two of the bedrooms and the kitchen, and that there were problems with water ingress.
4. By Minute dated 6 April 2017 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 96 of the Housing (Scotland) Act 2014, intimated her decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Tenant's Agent.
5. Following service of the Notices of Referral the Tribunal received written representations from Gary Whittington on behalf of the Landlord and from the Tenant.
6. In summary Mr Whittington submitted that the Private Sector Services Unit of Dundee City Council had instructed a surveyors report which had identified a number of areas where the property did not meet the Repairing Standard. The report recommended various works to address the issues. All of the works had now been carried out including repairs to the roof by a reputable contractor. There were however works required to communal pipes pertaining to properties owned by a local housing association. Mr Whittington had contacted the housing association to advise them of the issue and the Private Sector Services Unit of Dundee City Council were providing assistance. Mr Whittington further advised that the Landlord intended to install a new boiler at the house.
7. In summary the Tenant submitted in her representations that repairs had been carried out to the roof but she had concerns that they were not of a satisfactory standard. She did not believe the house was watertight. A down pipe connection was required at the front of the house to remedy the issue.
8. The Tribunal attended the Property on the morning of 31 May 2017. The weather was dry and sunny. The Tenant was present and allowed access. The Tribunal proceeded to inspect the property.

### **The Inspection**

9. During the inspection the Tribunal members examined the various areas of complaint raised by the Third Party Applicant.
10. In the lounge the Tribunal noted excessive damp readings of between 400 and 600 within an open mirrored press.

11. In the kitchen the Tribunal noted evidence of historic water penetration on the wall near the ceiling and sections of wallpaper that had peeled away. The Tribunal found excessive damp readings of between 400 and 999 on an area of tiled wall next to the sink. The wall surface area above the kitchen units did not produce any damp readings.
12. In the three bedrooms, no damp readings of any consequence were recorded.
13. The Tribunal proceeded to an external inspection of the house. It was noted that the adjoining property to the North had a missing downpipe on its front elevation, and that the rainwater run-off from its roof was discharged into the guttering of 21 Court Street via a short section of pipe that has been fitted by way of an addition. In addition, there was evidence from street level of a potential blockage at this junction of pipe/guttering.
14. The Tribunal proceeded to the rear of the property. It was noted that the guttering on the adjoining properties to the South and North on their rear elevations appeared to be blocked, or clogged, with debris/vegetation. It was also noted that the guttering section on 21 Court Street above the kitchen window of Flat D, had been extended via a small downpipe to discharge into the guttering of the adjacent property.
15. The Tribunal further noted that the flashing detail to the chimney head on the South gable/front elevation appeared to have been incorrectly fitted, with gaps between the tiles and flashing clearly visible.
16. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs together with accompanying note is attached to this decision.
17. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

### **The Hearing**

18. The hearing took place in Caledonian House, Greenmarket, Dundee. The Landlord was not present nor represented. The Tenant was present.
19. The Tenant advised that she had obtained a damp report from a specialist which could be produced. The Tribunal considered whether to receive the report into the proceedings. The Tribunal noted that the Landlord had not had sight of the report and considered there would be prejudicial to the Landlord if Members were to consider it. In any event the Tribunal was satisfied that it had all the necessary information to make a determination of the application before it. The Tenant was content to proceed in the absence of the report.
20. In summary, the Tenant's submissions were as follows:-

- a. The Tenant has resided in the house since 2002. The Landlord's husband Gary Whittington manages the tenancy on her behalf. The Tenant has no direct contact with the Landlord – all communications were with her husband. The Landlord did not carry out regular inspections of the property. The Tenant advised that neither the Landlord nor her husband had been in the property since her tenancy began.
- b. Approximately 8 years ago the Tenant had raised issues with damp and water ingress at the property. No action had been taken by the Landlord. Eventually in the winter of 2016 the Tenant had engaged Dundee Law Centre to act on her behalf. She has also instructed her own survey of the house. The surveyor had found damp within the house. He had also indicated that vents would require to be installed in the kitchen and the bathroom to allow for effective ventilation. There was a vent in the kitchen which was currently exposed. It had previously been covered up.
- c. After the Law Centre got involved Mr Whittington had arranged for a roofer to carry out repairs. However the roofer had not inspected inside the house and in the view of the Tenant there was no assurances that the repairs had resolved the issues. There were clear problems with the gutter arrangements. The Tenant has been advised by a roofer that an additional downpipe is required in order to ensure effective drainage of rainwater and there are problems with the rhones. The Landlord didn't keep on top of cleaning the rhones nor the gutters. The Tenant further advised that there had been no spells of heavy rain since the repairs were completed in March 2017. The problems with water ingress seemed to occur when there was heavy rain. The Tenant surmised that water could be collecting somewhere over a period of time. It had been around a year since there had been water ingress to her daughter's bedroom and around six months since there had been water ingress in her daughter's playroom. Mr Whittington had also sent decorators to the house however they were unable to do anything until the issues with damp and water ingress were resolved.
- d. The Tenant understood that Mr Whittington had faced some difficulty in obtaining payment from the other owners in the block in order to complete common repairs to the roof. The Tenant had previously gotten involved in collecting payment however now considered this to be the Landlord's responsibility. The majority of the owners in the block were cooperative in arranging the repairs.
- e. Dundee City Council had become involved after becoming aware that the Landlord was not registered through the private landlord registration scheme. An officer from the Private Sector Services Unit had attended the property to carry out an inspection. The Tenant had not heard further from the Council following the inspection.
- f. The Tenant advised that the boiler had recently been replaced and a gas safety certificate provided. The Tenant clarified that the boiler did not form part of the issues raised in her application to the Tribunal.

## **Findings in fact**

21. Having considered all the evidence the Tribunal found the following facts to be established:-

- The tenancy was a short assured tenancy between the Landlord and the Tenant. The tenancy commenced on 1<sup>st</sup> June 2002.
- The Property consists of a flatted dwellinghouse within a three storey block. The accommodation comprises three bedrooms, kitchen, bathroom, water closet, living room, kitchen and two hall cupboards.
- There is evidence of damp within the property.
- The property is not wind and watertight.

## **Reasons for the decision**

22. The Tribunal determined the application having regard to the terms of the application, the findings of their inspection, and the submissions and documents from the Landlord and the Tenant.

23. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

24. The Tribunal concluded primarily from its inspection that the property did not meet the Repairing Standard. The readings taken evidenced damp within the walls of the house and the Tribunal could reasonably assume that the house was not presently watertight.

25. The Tribunal had concerns regarding the Tenant's submission that the Landlord had failed to carry out inspections of the house. The Tribunal had found the submissions of the Tenant to be entirely credible and had no reason to doubt her statement in this regard. The Tribunal further noted from the Tenant's verbal submissions that the contractor who had recently carried out repairs to the roof had not inspected the interior of the house and had not therefore carried out a full assessment of the issues of disrepair. The Tribunal was not therefore persuaded that the repairs that had been completed had resolved the issues with water ingress, particularly in light of the damp readings taken within the property.

26. The Tribunal also had concerns regarding the provisions for rainwater drainage in light of the layout of the gutters and rhones. The Tribunal had particular concern regarding the arrangement whereby the rainwater run-off from the roof of the adjoining block to the North was discharged into the guttering of 21 Court Street via a short section of pipe that has been fitted by way of an addition. It was questionable if this arrangement, and the guttering on 21 Court Street, could satisfactorily cope with the combined heavy rainwater run-off from both roofs. It did appear therefore to the Tribunal that there was the potential for the gutters to become overwhelmed by heavy rain and that this could be a cause of water ingress. The Tribunal also noted the potential for problems caused by the size of

the downpipe on the rear elevation and the flashing detail to the chimney head which appeared to have been incorrectly fitted.

27. However it was impossible for the Tribunal to reach any clear conclusions within the confines of the inspection. Accordingly the Tribunal considered that the Landlord would require to undertake further investigations in order to identify the probable cause of the water ingress and carry out any work required thereafter. What was clear from the Tribunal's inspection was that the house did not presently meet the Repairing Standard.
28. Mr Whittington on behalf of the Landlord had stated in his written representations that he had been attempting to liaise with the housing association that owned the adjacent block of flats. He had so far had no response from the housing association. The Tribunal was conscious that there may be a requirement for works to be undertaken to the adjacent block of flats and that it must take into account any efforts by the Landlord in facilitating these as well as any obstructions. The Tribunal was also conscious that whilst some of the works required may be communal in nature the responsibility to comply with the Repairing Standard still remained with the Landlord regardless.
29. However the issue for the Tribunal was the lack of conclusive evidence as to the cause of the water ingress. Despite the works carried out by the Landlord further to the report by Dundee City Council, there remained areas of concern and evidence of dampness arising from the Tribunal's findings during the inspection. Whilst the Landlord had surmised that the issues with the adjacent block could be a source of the water ingress, this was only one probable cause and other issues had been highlighted during the Tribunal's inspection. The Tribunal therefore considered that a full investigation by an independent building surveyor would provide the necessary assurances as to what works were required and therefore give the Tribunal confidence that the cause of the water ingress would be properly identified and resolved. It was of particular concern to the Tribunal that neither the Landlord nor Mr Whittington had been in the house to inspect it at any point during the tenancy. The Tribunal could not therefore be satisfied that either of them were in a position to give an informed view as to the causes of the water ingress at the house.
30. The Act states that where a Tribunal decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
31. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.
32. As comment, the Tribunal noted that a gas boiler had recently been installed at the property. Whilst the Tribunal was aware that issues with the boiler did not form part of the application, it would respectfully request that the Landlord provide a current gas safety certificate to the Tribunal for its records.



## Decision

33. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house is not presently wind, watertight and in all respects reasonably fit for human habitation.

34. The decision of the Tribunal was unanimous.

**A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal 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.

R O'Hare

Signed 

Ruth O'Hare  
Chairperson

14 June 2017

# Housing and Property Chamber First-tier Tribunal for Scotland



## Part 1 - Photograph Schedule

### **Inspection of**

**Top floor flat, 21D Court Street, Dundee, DD3 7QS**

**Case Ref: PRHP/RP/1/0084    31st May 2017 @ 10am**

**WEATHER CONDITIONS** – Sunny and dry.

**PHOTOGRAPHS** – All photographs were taken at the time of the inspection.

**DESCRIPTION OF SUBJECTS** – The subjects comprise a top floor flat within a three-storey block of flats. The internal accommodation extends to 4 apartments (Lounge + 3 bedrooms), kitchen, bathroom + WC



(Ph1) – Front elevation



(Ph2) Corner of Lounge – Front elevation



(Ph3) Location of high dampness levels



(Ph4) Corner of kitchen – Rear elevation



(Ph5) Previous water damage + wall vent



(Ph6) Point of highest dampness readings



(Ph7) Bedroom 3 – Rear elevation



(Ph8) Bedroom 2 – Front elevation



(Ph9) Bed 1 – Gas boiler in cupboard



(Ph10) Adjoining property – Rear/South gable



(Ph11) Kitchen window – Vegetation



(Ph12) Adjoining property – Rear/North gable



(Ph13) Guttering – Front/North gable



(Ph14) Flashing detail – South gable chimney head

## Part 2 - Inspection notes

**Top floor flat, 21D Court Street, Dundee, DD3 7QS**

**Case Ref: PRHP/RP/1/0084    31st May 2017**

**Present: -    Mrs Ruth O'Hare – Legal Member**

**Mr Nick Allan - Ordinary Member**

**Miss Lynne Findlay - Tenant**

1. A dual function dampness meter capable of determining levels of moisture below surfaces, and deeper within building materials was used to check specific areas within the Lounge, kitchen and Bedrooms 2 + 3, where the Tenant advised that there had been an ongoing issue with water penetration over a period of some considerable time. The Tenant advised that the water penetration issues occurred in each of the four corners of the flat.

NB - The meter scale extends from 0-999, with readings over 200-250 indicating a threat to timber, if within close proximity.

2. The moisture readings results were as follows: -

a) **Lounge** - Readings ranging between 400-600 were obtained at a wall height level of approximately 1.5-2m. These readings were obtained within the open mirrored press shown in Photograph 3 above. These readings indicate a serious level of moisture present below the internal wall surface.

b) **Kitchen** – Readings between 400-999 were obtained at a wall height level of approximately 1-1.4m. These readings were obtained from the internal wall to the left of the sink unit where the tiled surface has become detached. The area in question is shown in Photograph 6 above. These readings indicate a significant level of moisture present below the internal wall surface. The wall surface area above the kitchen units, where the wallpaper has partly peeled off due to a previous water penetration issue, did not produce any dampness readings. The

existence of a wall vent below the detached wallpaper suggests the presence of a cavity, possibly a former press.

c) **Bedroom 2** – No dampness readings of any concern were recorded in this room.

d) **Bedroom 3** – No dampness readings of any concern were recorded in this room.

3. It was noted that the adjoining property to the North has a missing downpipe on its front elevation, and that the rainwater run-off from its roof is discharged into the guttering of 21 Court Street via a short section of pipe that has been fitted by way of an addition. It is questionable if this arrangement, and the guttering on 21 Court Street, could satisfactorily cope with the combined heavy rainwater run-off from both roofs. In addition, there is evidence from street level of a potential blockage at this junction of pipe/guttering. Please refer to Photographs 1 + 13 above.
4. It was noted that the guttering on the adjoining properties to the South and North on their rear elevations appears to be blocked, or clogged, with debris/vegetation. It was also noted that the guttering section on 21 Court Street above the kitchen window of Flat D, has been extended via a small downpipe to discharge into the guttering of the adjacent property. Please refer to Photographs 10 + 12 above.
5. It was noted that the flashing detail to the chimney head on the South gable/front elevation appears to have been incorrectly fitted, with gaps between the tiles and flashing clearly visible. Please refer to Photograph 14.
6. It was noted that a new gas boiler had been installed very recently and that the Gas Safety Certification held on file related to the previous boiler.

Nick Allan FRICS

Ordinary Member - First-tier Tribunal for Scotland

15/06/2017