

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

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

**Reference Number: FTS/HPC/RP/17/0376**

**RE: Property at 16 Abbey Mill, Stirling FK8 1QS**

**(hereinafter referred to as “the Property”).**

**Title Number: STG28372 in the Land Register of Scotland**

**The Parties:-**

**Adeline Kinsella, 16 Abbey Mill, Stirling FK8 1QS**

**(“the Tenant”)**

**And**

**Helen Boyd Mack, Saudi Archirodon Limited, PO Box 2987, Jeddah 21461, Saudi Arabia**

**(“the Landlord”)**

**NOTICE TO**

**Helen Boyd Mack, Saudi Archirodon Limited, PO Box 2987, Jeddah 21461, Saudi Arabia**

**(“the Landlord”)**

**Whereas in terms of their decision dated 3<sup>RD</sup> January 2018, the First-tier 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 wind and water tight and in all other respects reasonably fit for human habitation.**

**The First-tier Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard under section 13(1) of the Act and that any damage caused by carrying out of any work required under this Order is made good.**

**In particular, the First-tier Tribunal requires the Landlord:-**

- To instruct a specialist Building Surveyor who should be a member of and registered with the Royal Institution of Chartered Surveyors to carry out a full and detailed survey of the roof area and roof structure above the Property to identify the cause of any water ingress (if any) and to advise on any remediation works as a result of their findings.
- To carry out all works identified in the Building Surveyor's report in order to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation.

The Building Surveyor's report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.

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

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 of 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 Repairing Standard Enforcement Order (RSEO) commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (including any successor in title) also commits an offence if he or she or they enter into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to a house. This is in terms of Section 28(5) of the Act.

IN WITNESS HEREOF, these presents typewritten on this page and the preceding two pages are executed by Rory A. B. Cowan, Legal Member of the First-tier Tribunal: Housing and Property Chamber at Glasgow on 3<sup>rd</sup> January 2018 before this witness:

Signed

..... **R Cowan**

Date: 3<sup>rd</sup> January 2018

Rory A. B. Cowan

..... **A Pirie**

..... Witness

Date: 3<sup>rd</sup> January 2018

..... ANDREW PIRIE

..... Name of Witness

.....  
..... c/o 16 ROYAL EXCHANGE SQ,

..... Address of Witness

..... GLASGOW G1 3AG

# **Housing and Property Chamber**

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

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

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

**Chamber Ref: FTS/HPC/RP/17/0376**

**Property at 16 Abbey Mill, Stirling FK8 1QS**

**("The Property")**

**The Parties:-**

**Adeline Kinsella, 16 Abbey Mill, Stirling FK8 1QS**

**("the Tenant")**

**Helen Boyd Mack, Saudi Archirodon Limited, PO Box 2987, Jeddah 21461, Saudi Arabia**

**("the Landlord")**

**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 written representations by the Tenant, those on behalf of the Landlord and the inspection, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**The Tribunal consisted of:**

**Rory A.B. Cowan – Legal Member**

**Sara Hesp – Surveyor/Ordinary Member**

**Sinead O'Connor - Clerk**

## Background

- By application received on 5<sup>th</sup> October 2017 the Tenant applied to the First-tier tribunal: 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").
- The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - **the house is wind and water tight and in all other respects reasonably fit for human habitation.**
- By letter dated 2<sup>nd</sup> November 2017 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.
- The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord, her agents Slater Hogg & Howison of 44-46 Port Street, Stirling (the Agents) and the Tenant.
- Following service of the Notice of Referral, written representations were received on behalf of the Landlord from the Agents.
- The tribunal inspected the Property on the morning of 15<sup>th</sup> December 2017. The Landlord was not present, but was represented by a Gavin Chalmers and a John Hempstead of the Agents. The Tenant was present at the inspection.
- Following the inspection of the Property, the tribunal held a hearing at Wallace House, Maxwell Place, Stirling FK8 1JU. The Tenant was present along with a supporter Siobhan Jess. The Landlord was not present, but was represented by Mr. Hempstead and Mr. Chalmers of the Agents.
- On behalf of the Tenant it was submitted as follows:
  - That the Tenant had moved into the Property on or around May 2013. At that time there was a 'spot' on the ceiling in the second bedroom at that point. That the Agents had told her at that time there had been a previous roof leak that had been repaired and they were waiting for it to dry out. She was told to 'keep an eye on it'.
  - At some point between June 2013 and August 2013, the 'spot' on the ceiling in the second bedroom expanded and the Tenant was not able to use the built-in wardrobe in the second bedroom due to water damage. This was reported to the Agents by telephone.
  - Repairs were carried out via the property factors, Ross & Liddell Limited (the Factors) and tiles were replaced on the roof.

- Approximately 1 month after these repairs were carried out, roofers instructed by the Factors attended and carried out further repairs to a different section of the roof above the Property.
- Neither of these repairs stopped the water ingress.
- The ceiling to the second bedroom was repainted late 2014.
- That the leak only occurs in storm conditions. General rain on its own does not lead to water ingress.
- That "a couple of months" after the ceiling was repainted a leak occurred in the second bedroom in the same place. That roofers attended and removed the front panel of the dormer windows. Inside and behind the panel, the wood was wet and "rotten". That the roofers suggested they thought the leak may be coming through the dormer window and as such the panel was put back in place and re-sealed.
- That by early 2015, the same leak occurred.
- That, as the maintenance of the communal roof at the Property is controlled by the Factors the Tenant could not be sure of all the repair attempts or the full extent of the work carried out to the roof. The Tenant indicated that by June 2016 she was contacted by painters who indicated the roof had been repaired and were seeking access to carry out internal redecoration. However, no access was obtained, and no redecoration took place.
- That on or around August 2016, the Property suffered a further leak in the same place in the second bedroom.
- Further repairs were carried out via the Factors which involved 3 roof vents being installed to the roof structure. This took place in October/November 2016.
- By 28<sup>th</sup> December 2016 it was established that water was 'pooling' above the door to the built-in wardrobe in the second bedroom. A bucket was placed under the affected area and was filled with water which was coming through cracks in the ceiling.
- That the ceiling in the second bedroom contained damp patches and that there was back mould in places (especially in the built-in wardrobe).
- That since October/November 2016 no further repairs have been carried out to the roof above the Property although roofers have been out to investigate and quote for works.
- That roofers instructed by the Factors could not identify the source of the leak.
- That the ceiling has leaked since, the last time being "a few weeks" before the inspection.
- That on 5<sup>th</sup> December 2017 the Agents instructed a 'track and trace' to be carried out to identify the source of the leak. The ceiling within the built-in wardrobe within the second bedroom was replaced and a hole was cut into the ceiling within the second bedroom itself. Damp and mould was evident at that time. The Agents have kept the Tenant updated.
- On behalf of the Landlord it was submitted as follows:
  - That they broadly agreed with the Tenant's narrative of the history of the leak and its effect on the Property and did not dispute it.
  - That, Mr. Hempstead, the team manager based in the Glasgow, had recently become involved in this matter.
  - That, as the roof above the Property was communal to the other dwellings that form part of the overall development within which the Property is located,



repairs are controlled and managed by the Factors and that, following complaints of water ingress, the Factors had carried out various repairs over the period complained of.

- That all internal repairs to the Property will be carried out once the source of the leak is identified and repairs are carried out to remediate same.
  - That the Agents had been dealing with the Factors to resolve the issue and that in May 2017 the Factors had advised the Agents to make a claim on the insurance policy applicable to the Property to remediate the internal damage to the Property.
  - That prior to that the Factors had 2 roofers attend the Property to quote for repairs. 1 of the roofers they had instructed had suggested that "50/50" the issue was caused either by a leak or by condensation. This led to the Factors advising the Agents that it was not a leak and that they should claim via the insurance for the internal damage.
  - Acting on the instructions of the Factors, the Agents submitted a claim on or around 15<sup>th</sup> November 2017. This claim was "shut down" by the insurers on the basis the damage was caused by condensation.
  - That the Agents, with the consent of the Landlord, subsequently commissioned a report into the issue and whether the damage was caused by a leak or by condensation. A copy of the report by Rapid Response Roofers dated 5<sup>th</sup> December 2017 was produced and a copy given to the tribunal.
  - That the problem was caused by water ingress and the recommendation in the said report was further investigation of the leadwork and tiling along the front of the dormer window above the second bedroom should be undertaken to try and identify the source of water ingress.
  - That a copy of this report was sent to the Factors on or around 7<sup>th</sup> December 2017 and that on 8<sup>th</sup> December 2017 the Factors have been in contact with the Agents and have indicated that they will obtain 3 quotes for the recommended investigation works.
- The Tenant responded as follows:
    - That the Factors had claimed the issue was caused by condensation since 2016 and this had led to the 3 vents being fitted into the roof above the Property.
  - The Agents further commented on behalf of the Landlord as follows:
    - That they could not confirm the timescales within which further work would be carried out via the Factors and that the work that is being quoted for and anticipated was merely investigatory at this stage and was to gain access to the roof space and trace the cause of the water ingress.
    - That there were no issues of access and that the Landlord could access the roof to carry out repairs, but that the Factors were responsible for repairs to the communal parts of the building within which the Property sits.
    - That the photographs taken at the property visit in March 2017 were produced and showed a "Large area of ceiling and wall water stained".
    - That the insurance claim for the internal damage was still open to allow the internal remedial works to be carried out.

## **Summary of the issues**

- The issues to be determined are whether:
  - the house is wind and water tight and in all other respects reasonably fit for human habitation.

## **Findings of fact**

- The tribunal finds the following facts to be established:-
  - The Tenant is a tenant for the purposes of section 14(1) of the Act.
  - That the tenancy commenced on or around May 2013.
  - That the lease document produced with the application received on 5<sup>th</sup> October 2017 is dated as commencing on 17 November 2016 expiring on 17 November 2017 and is a continuation of tenancy that started in May 2013.
  - The Property is a duplex apartment situated within the top 2 floors of a modern brick building with a concrete tiled roof with lead flashings and valley guttering. The Property forms part of a larger development of privately owned apartments that was built circa 1991.
  - The Property comprises of two bedrooms, a smaller bedroom/office, a kitchen and a separate living room. All accessible off an internal hallway, stairs and landing.
  - The Property has a gas supply and gas boiler and central heating.
  - That there was evidence of significant water ingress in the second bedroom.
  - That a portion of the ceiling has been cut out and screwed back into place as part of the investigations on 5<sup>th</sup> December 2017.
  - The ceiling above the built-in wardrobe within the second bedroom is bowed, there is evidence of water ingress and a large section of the plaster board within the said wardrobe has been removed and replaced with new plaster board. As such there was no immediate evidence of mould.
  - Damp meter readings within the second bedroom did not show abnormally high levels of moisture.
  - That there was further evidence of damp staining within the third bedroom/office which appeared to follow the line of the steel beam that supported the dormer window above.
  - That the Property shows signs of earlier repairs being attempted through replacement tiles and the fitting of roof vents.
  - That the steel beam within the attic space above the Property showed signs of damp staining, but did not appear wet at the time of inspection.
  - That the Property suffers from water ingress during certain weather conditions.
  - That there are no restrictions on the Landlord preventing her from accessing the roof and roof space to carry out repairs.
  - That the Property is not wind and water tight.

## **Reasons for the decision**

- The tribunal was not satisfied that the Property was wind and water tight and in all other respects reasonably fit for human habitation for the following reasons:



- That there was clear and unchallenged evidence of significant historical incidents of water ingress particularly to the ceiling in the second bedroom within the Property. That this water ingress seemed to occur during storm conditions and high winds. That notwithstanding various attempts to repair the roof above the Property this issue persists.
- That although the Property forms part of a development that has property factors appointed to deal with communal repairs, there are no access restraints preventing the Landlord from carrying out the required investigation and repairs to the roof above the Property.
- The Landlords' duty under section 14(1) of the Act requires the Landlords' to ensure the Property meets the repairing standard at the beginning and throughout the tenancy. Whilst there are exceptions to this where a landlord lacks the necessary rights of access or otherwise, the fact that the development within which the Property sits is factored is not such an exception. That being the case, the duty on the Landlord is was to ensure any necessary repairs are carried out within a reasonable period of time. However harsh it may seem, that may mean that the Landlord requires to carry out the repairs and in due course seek to recoup the sums expended to the communal parts.

### **Decision**

- The tribunal accordingly determined that the Landlord has failed to comply with her duties imposed by Section 14 (1)(a), (b) and (c) of the Act.
- The tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- The decision of the tribunal was unanimous.
- The Surveyor/Ordinary Member of the tribunal took several photographs which form the schedule attached to this decision.

### **Observations**

- Whilst not part of the Application, it was noted that the smoke alarms did not meet current standards. Something that was accepted by Mr Hempstead and the hearing. The Property had only a battery powered smoke detector fitted to the downstairs hallway (the current requirement being hard-wired and interlinked alarms). There was no smoke detector fitted to the living area and none fitted to the upstairs landing. Had the smoke detection equipment formed part of this Application, a Repairing Standard Enforcement Order would likely have been made in that regard too. However, the tribunal can only consider matters contained in the Application and no such order can be made at this time. It was particularly disappointing to note this in circumstances where the Property had been managed by the Agents for a number of years and had been subject to regular inspection by them (the last being in March 2017) and yet the Property was still non-compliant.

## Right of Appeal

- In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

Signed

**R Cowan**

Date

.....3<sup>rd</sup> January 2018.....

Chairperson

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



**FTS/HPC/RP/17/0376**

**Schedule of photographs taken during inspection of  
16 Abbey Mill, Stirling on 15 December 2017**



*Photograph 1: Front elevation of block 1 – 16 Abbey Mill (Number 16 is top floor centre)*

*Glasgow 3rd January 2018  
This is the schedule of photographs  
referred to in the Decision dated  
3rd January 2017*

**R Cowan**

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**FTS/HPC/RP/17/0376**

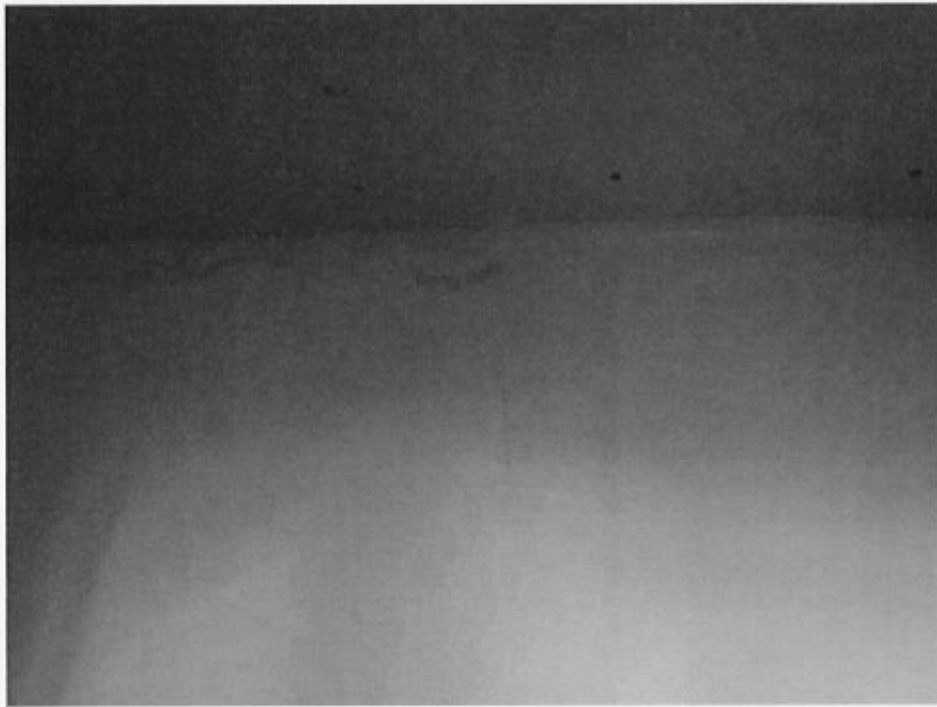


*Photograph 2: Bedroom 2 ceiling and wall above mirrored wardrobe*



*Photograph 3: Bedroom 2 – ceiling and walls*





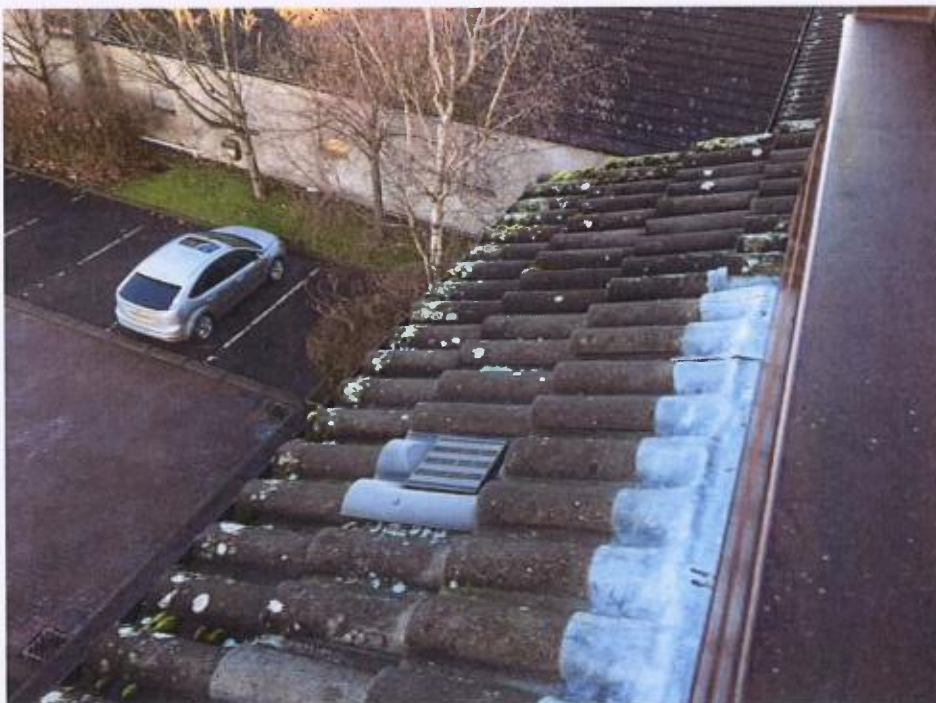
*Photograph 4: Bedroom 2 - inside mirrored wardrobe – replacement ceiling and wall*



*Photograph 5: Office – ceiling*



*Photograph 6: Attic*



*Photograph 7: From Bedroom 1: roof below dormer with vent*





*Photograph 8: From Bedroom 1: roof below dormer with vent*



*Photograph 9: From ground level: dormer and roof above number 16*