

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

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

**Chamber Reference FTS/HPC/RP/17/0256**

**Property at 1/L, 75 High Street, Lochee, Dundee, DD2 3AT ("the Property")**

**The Parties:-**

**Iain MacDonald, formerly residing at 1/L, 75 High Street, Lochee, Dundee, DD2 3AT ("The Tenant")**

**Mr James McCash, c/o Remax Lettings, Flemington Road, Glenrothes, Fife, KY7 5QF as Executor Dative of the late Sarah McCash ("the Landlord")**

**The Tribunal comprised of:-**

**Mrs Ruth O'Hare – Legal Member**

**Mr David Godfrey – 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 received on 10 July 2017 the Tenant applied to the Tribunal for a determination as to whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the property meets the repairing standard. In summary, the Tenant submitted that there were issues with the gutters pertaining to the property, the out-buildings were in disrepair, there were problems with the front windows, issues with the electrics and the cooker, the floor in the bathroom

was in a state of disrepair, the sink taps and cistern were faulty, the bedroom floor was at a slant, the kitchen was falling apart and it was hard to control insects.

3. By Minute dated 22 August 2017 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 23A of the Housing (Scotland) Act 2006, intimated her decision to refer the application 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 Landlord's Representative and the Tenant.
4. Following service of the Notices of Referral the Tribunal received written representations from the Tenant and from Derek McCash, the brother of the Landlord who was representing him in the matter. The Tenant produced email correspondence between himself and the Landlord's Agent Remax Lettings regarding repairs issues as well as photographs as evidence of the issues at the property and correspondence with a local Member of Parliament. Derek McCash provided a copy of an up to date Electrical Installation Condition Report dated 15 July 2017 together with email correspondence between Remax Lettings, the Tenant and contractors as evidence of works having been done at the property.
5. On 3 November 2017 the Tribunal received confirmation from Derek McCash that the Tenant had left the property on the same date and the tenancy had been terminated. Attempts by the Tribunal to contact the Tenant to confirm the position were unsuccessful.
6. On 17 November 2017 the Tribunal carried out an inspection of the Property. The Landlord was present and allowed access. The Property was unoccupied. The weather was overcast and dry. The Tribunal proceeded to inspect the property.

### **The Inspection**

7. During the inspection the Tribunal members examined the various areas of complaint raised by the Tenant.
8. The Tribunal inspected the front windows in the lounge. The windows could not be opened due to no locking keys being available. The Landlord stated that he did not have keys. The southmost top casement window was also far out of line and therefore it could reasonably be assumed was not wind and watertight.
9. The Tribunal inspected the kitchen. The cooker was turned on and appeared to be working properly. The kitchen cupboard door under the sink had been removed and was resting against the unit base.
10. The Tribunal inspected the bathroom. The cistern did not appear to be in proper working order, taking an extended length of time to refill and running continuously. The floor appeared in a reasonable state of repair and the sink taps were both operational.

11. The Tribunal inspected the bedroom. The floor was at a slant. The carpet appeared in a reasonable condition. The light switch did not work when tested.
12. The Tribunal noted smoke alarms within the property which were interlinked and hard wired. The Tribunal further noted the electric meter and fuse box which appeared in a reasonable state of repair.
13. Externally the rhones to both the front and rear of the property were choked with debris. The outbuildings to the rear of the property were in a state of disrepair with a missing door and broken window. The Tribunal noted a communal door entry system which appeared secure and operational.
14. Photographs were taken by the Ordinary Member and a schedule of photographs from the inspection is attached to this decision.
15. During the inspection, the Landlord disclosed to the Tribunal that the Property had been owned by his parents James and Sarah McCash who were both deceased. It was his understanding that the property had subsequently transferred to himself and his two brothers however he was unclear regarding the legal basis upon which the transfer had taken place, and who therefore was the present owner of the property. The Landlord further confirmed that he would not be attending the hearing.
16. The inspection was concluded and the Tribunal members travelled to the hearing venue.

### **The Hearing**

17. Neither the Landlord nor the Tenant nor any representatives attended the heading.

### **Decision to Continue and Adjourn**

18. The Tribunal accepted on the basis of the Landlord's information and their inspection of the property that the tenancy had terminated. There was no evidence before the Tribunal to the contrary. The Tribunal therefore had to determine whether not to continue with the application. In view of the condition of the property as witnessed by the Tribunal and the seriousness of the issues of disrepair complained of, the Tribunal considered it necessary to continue with the application.
19. Furthermore, the Tribunal noted the information provided by the Landlord regarding the question over ownership of the property. The Tribunal further noted a lack of clarity with regard to communal parts which were purported to pertain to the property and the duties incumbent on the landlord in respect of same. The Tribunal considered it would be unable to make a determination on the application without further information regarding the aforementioned points.

20. Accordingly by Minute of Continuation and Adjournment dated 7 December 2017 the Tribunal determined to continue with the application but to adjourn the hearing for further inquiries into the points raised above.
21. For the avoidance of doubt, following the inspection and hearing it transpired that the Tenant had sent a letter to the Tribunal on 15 November 2017. The letter confirmed that the Tenant had vacated the property and the tenancy had been terminated.

### **Further Inquiries**

22. By email dated 23 December 2017, Derek McCash provided a copy of Confirmation dated 18 March 2010 in respect of the estate of the late Sarah McCash. The inventory therein contained the Property amongst other items. Sarah McCash had died intestate as the survivor of her husband James McCash and the Executor Dative as appointed by a Decree granted at Dundee Sheriff Court on 1 February 2010 was the Landlord, James McCash.
23. The Tribunal also obtained copies of the title deeds for the property which confirmed a duty in common on the owner of the property with other owners in the block at 75 High Street to maintain the rhones and the outbuildings.
24. Having regard to the outcome of its inquiries, the Tribunal considered it now had sufficient information to make a determination of the application. The Tribunal did not consider a further hearing was required in the matter. The opportunity had been given to parties to attend the previous hearing and address the Tribunal however they had not availed themselves of the opportunity. The Tribunal did not require to be addressed on any of the issues that had arisen as a result of its inquiries.

### **Findings in fact**

25. Having considered all the evidence the Tribunal found the following facts to be established:-
- The tenancy is a short assured tenancy which commenced on 2 October 2013 and terminated on 3 November 2017.
  - The Property consists of a first floor flatted dwellinghouse. The accommodation comprises a hallway, bathroom, bedroom, living room and kitchen.
  - In the living room the front windows are not in a reasonable state of repair and in proper working order.
  - In the kitchen, the cupboard under the sink is not in a reasonable state of repair.
  - In the bedroom the light switch is not in proper working order. Whilst there is an Electrical Installation Condition Report dated July 2017, the electrical

installations within the property cannot therefore within the confines of the inspection be said to be in proper working order.

- In the bathroom the cistern is not in proper working order.
- Externally the rhones and the outbuildings are not in a reasonable state of repair.
- There is satisfactory provision for the detection of smoke and fire within the property through hard wired smoke and heat detectors.

### **Reasons for the decision**

26. The Tribunal determined the application having regard to the terms of the application, the findings of their inspection and subsequent inquiries, and the submissions and written representations from the parties.
27. 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. Further, whilst there were a number of issues raised in correspondence from the Landlord, Derek McCash and the Tenant, the Tribunal based its decision primarily on its own inspection of the property and the findings from same.
28. The Tribunal witnessed a number of items within the property which did not meet the Repairing Standard. The cupboard in the kitchen under the sink, the light switch in the bedroom, the cistern in the bathroom and the front windows all required repair. Further, externally the rhones to both the front and rear of the property required to be cleared and were not in a reasonable state. The outbuildings also required repair and were of particular concern to the Tribunal as they presently posed a hazard to any occupant through the presence of broken glass. Through its perusal of the title deeds for the property, the Tribunal was satisfied that the Landlord has a duty in common in respect of both the outbuildings and the rhones to maintain same.
29. The inoperable light switch in the bedroom was of some concern to the Tribunal, despite the Landlord having produced an electrical installation condition report dated July 17. Accordingly the Tribunal would require sight of an updated report once the light switch has been repaired to satisfy itself that the electrical installations within the property are in proper working order.
30. The Tribunal was also satisfied through its inquiries and consideration of the Confirmation provided by Derek McCash that James McCash is the Landlord of the property at present, as Executor Dative for the late Sarah McCash, who was the survivor of her spouse James McCash. A copy of the Confirmation is produced herewith.

31. 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".
32. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.
33. The Tribunal is conscious that the property is currently unoccupied, however steps could be taken by the Landlord to relet at any time. Accordingly it is the Tribunal's duty to ensure that the property is compliant with the Repairing Standard in respect of any future tenants.

### **Decision**

34. 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.
35. In respect of section 13(1)(b) 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 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.
36. In respect of section 13(1)(d) 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 fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.
37. 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.

Ruth O'Hare

Signed

Ruth O'Hare

Chairperson

17 April 2018

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### PHOTOSHEET



**Property:** FLAT 1/L, 75 HIGH STREET, LOCHEE, DUNDEE, DD2 3AT

**Ref no:** FTS/HPC/RP/17/0256

**Tribunal:** Ruth O'Hare and David Godfrey

**Inspection:** The property was inspected at 10.00 am Friday 17th November 2017.

**Access:** The property is presently unoccupied. James McCash (Landlord) was present and provided access to the property.

### Photographs

1. Front Elevation
2. Choked front rhones (1)
3. Choked front rhones (2)
4. Rear elevation
5. New Security Entry Door
6. Missing door and damaged window to outbuildings
7. Misaligned Lounge window fitting
8. Loose toilet seat and defective cistern
9. Taps at wash hand basin in bathroom
10. Loose cupboard door in Kitchen
11. Electric meter and fuse box





Front Elevation



Choked front rhones (1)



Choked front rhones (2)



Rear elevation



New Security Entry Door



Missing door and damaged window to outbuildings





Misaligned Lounge window fitting



Loose toilet seat and defective cistern



Taps at wash hand basin in bathroom



Loose cupboard door in Kitchen



Electric meter and fuse box

David Godfrey, MRICS

17th November 2017