

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)**

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

**Chamber Ref: FTS/HPC/RP/21/1786**

**37 William Street, East Wemyss, Kirkcaldy, KY1 4PG (Title number FFE79779)  
 (“the Property”)**

**The Parties:-**

**Hurrikane Properties Limited, incorporated under the Companies Acts  
 (Registered Number SC655545), having its registered office at 14 City Quay,  
 Dundee, United Kingdom, DD1 3JA (“the Respondent”)**

**Tribunal members**

**Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair**

**Mr. David Godfrey, Ordinary Member**

### **DECISION**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having made such enquiries as are fit for the purposes of determining whether the Respondent has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”) in relation to the Property, and taking account of the written documentation included with the Application and the parties' written representations, determined that the Respondent has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

### **The House**

1. The Title number for the Property is FFE79779.
2. The Property is a first floor two bedroomed flat (see images in attached **Schedule of Photographs taken at inspection on 3 February 2022**) as follows:
  - 2.1. Internal: hall, lounge, kitchen, two bedrooms, shower room.
  - 2.2. External: private garden.

### **Parties and representatives**

3. The former tenant who made the Application moved out of the property in or about December 2021 and is no longer a party to the Application. There was a new tenant in the Property at the time of inspection on 3 February 2022, who is not a party to the Application.
4. The Respondent company is the proprietor and landlord. It was formerly represented by a letting agent who withdrew from acting after the Application was made. Prior to its withdrawal, the former representative made written representations and provided supporting evidence to the tribunal. Since the former representative withdrew from acting the Respondent has not engaged with the tribunal process, has not attended any inspection or Case Management Discussions or Hearings in connections with the Application and has not complied with Directions issued by the tribunal.

### **Procedural Background**

5. On 22 July 2021, the former tenant made an application to the tribunal alleging that the Property does not meet the repairing standard (“the Application”).
6. The former tenant alleged that the elements of the Repairing Standard with which the Respondent has not complied are:
  - “(a) *The house is wind and watertight and in all other respects reasonably fit for human habitation;*

*(b) 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; ...*

*(d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; ...*

*(h) The house does not meet the tolerable standard.”*

7. The former tenant listed allegations as to how he considered that the Respondent has failed to meet the repairing standard:

*“Since moving in, March 2021, we have had to wait over 2 months for a leak in the roof to be repaired. We have also had to wait over a month for our bathroom to be replaced, after the work was ‘completed’ the wall and floor still needed to be fixed, and still do as of 22/07/2021. Our back garden fence was promised to be repaired before or just after we moved in March and we still have not been told if or when it will be fixed. Our kitchen flooring is loose and a slip/trip hazard, to which a joiner kicked it back into place and told us it was fixed. During the roof leak our furniture was getting soaked and our lights had to be disconnected in our livingroom and bedroom and we are still waiting to have them reconnected. And the leak has left a massive crack in our ceiling, the ceiling is sunken/bulging and has a massive water mark. All of these things make living in the house very difficult. There is no reason these repairs should still be needing done.”*

8. The former tenant alleged that the nature of the work which needs to be done was as follows:

*“Flooring and wall in bathroom need repaired. Lights in livingroom and bedroom need refitted. Kitchen floor needs replaced. Washing machine needs repairs. Garden fence needs repairs. Living room ceiling needs repaired. Bedroom ceiling needs repainted after the leak.*

9. The former tenant lodged documents with the Application:

9.1. Private residential tenancy agreement; and

9.2. Copy of the notification to the landlord’s agent of the work required.

10. On 27 August 2021, the Application was accepted for determination by the tribunal.

11. A Case Management Discussion (“CMD”) was fixed for 14 October 2021 at 1000h by teleconference. Both parties were notified of the date, time and arrangements for the CMD. The Respondent was notified by letter dated 9 September 2021. The Respondent was notified that any written representations it wished to make or a request to make oral representations had to be returned to the tribunal’s offices by 30 September 2021.

12. The Applicant did not lodge any further representations or confirm that he wished to attend the CMD.
13. The Respondent lodged written representations and supporting documents and confirmed that they did not wish to attend the CMD to make oral representations.
14. Neither party attended the CMD and it proceeded in their absence in terms of Rule 29 and 24(1) of the 2017 Rules. Reference is made to the Notes of the CMD which were produced by the tribunal and circulated to parties afterwards.
15. From the information available at that time, it appeared to the tribunal that the former tenant's tenancy may have ended.
16. The outcome of the CMD was that Directions (1) dated 14 October 2021 were issued to parties in relation to certain matters. Parties were notified that if the tenancy has ended, the tribunal will require to make a determination as to whether to continue its determination of the Application and a decision will be issued to parties; an inspection and hearing were to be scheduled and the date(s) and arrangements notified to both parties; and/or, if the tribunal determines, that it will not continue its determination of the Application, the inspection and hearing will be cancelled and the proceedings will be at an end.

### **Directions (2) and (3) and responses**

17. Further Directions (2) were issued on 26 October 2021.
18. On 4 November 2021, the Respondent's former Representative provided a response to part of the tribunal's Directions. Information was provided relative to repairs which had been carried out and still required to be carried out.
19. The Respondent's former Representative stated:
  - “2.1.1 Roof leak. The roof leak repair was completed 28th June 2021.*
  - 2.1.2 Bathroom wall. We have no record of an issue with the bathroom wall, however, a new shower encloser [sic] was installed on 12th May 2021.*
  - 2.1.3 Bathroom floor. Following the installation of the shower encloser [sic], new flooring was required to be installed due to the alterations in floor area. Invoice for work completed on the flooring was received 30th April 2021.*

*2.1.4 Rear Garden fence. An entirely new garden fence was erected by the landlord prior to the tenants residing at the property. This fence was to segregate the individual gardens areas from neighbouring properties. The section of missing fence in question runs along the far rear of all the neighbouring properties as well as number 37, this fence was erected by Fife Council and not owned by the landlord. We have reached out to them on rectifying the issue.*

*2.1.5 Kitchen flooring Our joiner attended to repair the kitchen floor on and invoice for completed work was received 30TH April 2021. Invoiced with 2.1.3.*

*2.1.6 Disconnected ceiling light in lounge. 2.1.7 Disconnected ceiling light in bedroom. Due to the leak from the roof the ceiling lights were required to be disconnected as a safety precaution. We confirmed with the tenants confirming that use of lamps via the plug sockets would be acceptable until roof repairs were completed, and redecoration was carried out.*

*2.1.8 Living room ceiling condition and décor. 2.1.9 Bedroom condition and décor Following the roof repair and subsequently the entire roof replacement as a join repair with Fife Council there has been redecoration work instructed to be carried out to make right the condition after the water damage. Works are currently underway at the property to regarding redecoration including extensive damage caused by the previous tenants.*

*2.1.10 Washing machine. We have no record of report that the washing machine has any issue, and the appliance is still present and working at the property. Please refer to the photo of the appliance in the sign out inspection photographs.*

*I hope all these points have been addressed to satisfaction and I have also included a copy of our final property inspection report which shows the damage cause by the previous tenants.”*

20. Documents were attached to the former representative's response including a final inspection report following the previous tenancy.

21. Further Directions (3) were issued on 6 November 2021.

22. On 16 November 2021, the Respondent's former Representative confirmed that the tenancy ended on 21 September 2021. The former Representative also advised that as of 15th November 2021, they no longer manage the above property and that the Respondent has requested any future correspondence is sent to him directly. Separately the tribunal received returned mail from the correspondence

address of Mr Sean Kane, a Director of the Respondent stating, “*addressee gone away*”.

23. The tribunal’s administration confirmed that the registered office of the Respondent had changed to 14 City Quay, Dundee, United Kingdom, DD1 3JA.

### **Decision to continue its determination**

24. Having received written notice from the Respondent’s former representative that the Applicant’s tenancy of the Property had terminated, the Tenant’s application to the tribunal (“the Application”) was deemed to be withdrawn in terms of the Schedule 2, paragraph 7 of the 2006 Act.

25. The tribunal considered whether it should continue to determine the Application or whether it should abandon its consideration of the Application in terms of Schedule 2, Paragraph 7 of the 2006 Act; and decided to continue to determine the Application.

26. On 19 November 2021, the tribunal made a decision to continue its determination of the Application.

27. The former tenant is no longer be a party to the Application.

### **Inspection of the Property – 3 February 2022**

28. The tribunal inspected the Property on 3 February 2022, as a fact finding exercise.

29. The Respondent was not present during the inspection.

30. A tenant was present in the Property provided access for the inspection and was present during the inspection. She advised the tribunal that she had moved into the Property in or about December 2021. She is not a party to the Application.

31. The ordinary member of the tribunal prepared a schedule of photographs during the inspection, which was sent to the Respondent after the inspection.

### **Directions (4)**

32. Further Directions (4) were issued on 6 February 2022. Reference is made to the full terms of the Directions.

33. The Respondent did not comply with the tribunal's Directions.

### **Hearing – 20 April 2022, by teleconference**

34. A hearing took place on 20 April 2022, by teleconference.

35. The Respondent did not attend the hearing and it proceeded in its absence in terms of Rule 29. The Respondent had been notified by letter dated 23 March 2022 which was delivered on 1 April 2022.

36. The tribunal adjourned to reach a determination on the Application on the basis of all the information before it.

### **Summary of the Issue to be determined by the tribunal**

37. The issue to be determined is whether the Property meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

38. All repairs in the Application were notified to the Respondent / its former representative by the former tenant. The Respondent / his representative had a reasonable period within which to effect repairs.

### **The tribunal made the following findings-in-fact:**

39. The Respondent is the registered proprietor of the Property.

40. The former tenant was the Respondent's tenant in the Property at the time the Application was made.

41. The Respondent's former representative was notified by the Applicant of all the repairs issues in the Application.

42. The roof has been repaired or replaced since the Application was made and is a reasonable state of repair and in proper working order.

43. The living room ceiling has been repaired and redecorated since the Application was made and is in a reasonable state of repair.

44. The bedroom ceiling has been repaired and redecorated since the Application was made and is in a reasonable state of repair.

45. The flooring and wall tiling in the bathroom has been repaired or replaced since the Application was made and is in a reasonable state of repair.
46. The kitchen flooring has been repaired or replaced since the Application was made and is in a reasonable state of repair.
47. The living room and bedroom lights have been reconnected since the Application was made.
48. There is no 'Minor Works Certificate' in respect of the installation and there is no EICR for the Property.
49. The living room and bedroom lights are not in proper working order.
50. The washing machine which was in the Property at the time the Application was made was removed from the Property by the Respondent, or on his behalf, after the former tenant moved out of the Property on or about 21 September 2021 and was not in the Property at the time of inspection on 3 February 2022.
51. There is no PAT certificate for the portable electrical appliances provided by the Respondent in the Property.
52. The garden fence is in a state of disrepair, with some sections missing and other sections being unstable and is not in a reasonable state of repair or in proper working order.
53. The Respondent has taken no steps since notification of the said repairs issues to remedy the outstanding issues.

**Discussion regarding the issues and the repairing standard, paragraphs (1)(a), (b), (d) and (h)**

54. Section 13(1) of the Housing (Scotland) Act 2006 provides:

*“(1) A house meets the repairing standard if—*

*(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*

*(b) 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,*

*...*

*(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, ... and (h) the house meets the tolerable standard.”*



55. The definition of a house meeting the tolerable standard, as referred to in Section 13(1)(h) of the 2006 Act, is defined in Section 86 of the Housing (Scotland) Act 2007, as follows:

*“(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—*

*(a) is structurally stable;*

*(b) is substantially free from rising or penetrating damp;*

*(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;*

*(ca) has satisfactory thermal insulation;*

*(d) has an adequate piped supply of wholesome water available within the house;*

*(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;*

*(f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;*

*(fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;*

*(g) has an effective system for the drainage and disposal of foul and surface water;*

*(ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply; “the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances; “the relevant requirements” are that the electrical installation is adequate and safe to use;*

*(h) has satisfactory facilities for the cooking of food within the house;*

*(i) has satisfactory access to all external doors and outbuildings;*

*and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly.”*

56. In the present Application the former tenant complained that the House fails to meet the repairing standard, section 13(1)(a), (b), (d) and (h), in respect of the repairs issues complained of by the former tenant.

## **(1) Roof**

57. The tribunal was satisfied on the evidence that the roof has been repaired or replaced since the Application was made and is in a reasonable state of repair and in proper working order.

58. The tribunal was therefore satisfied that there is no failure to meet the repairing standard paragraphs (1)(a), (b), (d) or (h) in respect of the roof.

## **(2) Living room ceiling**

59. The tribunal was satisfied on the evidence that the living room ceiling has been repaired or replaced since the Application was made and is in a reasonable state of repair.

60. The tribunal was therefore satisfied that there is no failure to meet the repairing standard paragraphs (1)(a), (b), (d) or (h) in respect of the living room ceiling.

## **(3) Bedroom ceiling**

61. The tribunal was satisfied on the evidence that the bedroom ceiling has been repaired or replaced since the Application was made and is in a reasonable state of repair.

62. The tribunal was therefore satisfied that there is no failure to meet the repairing standard paragraphs (1)(a), (b), (d) or (h) in respect of the bedroom ceiling.

## **(4) Bathroom flooring and wall tiling**

63. The tribunal was satisfied on the evidence that the bathroom flooring and wall tiling has been repaired or replaced since the Application was made and is in a reasonable state of repair.

64. The tribunal was therefore satisfied that there is no failure to meet the repairing standard paragraphs (1)(a), (b), (d) or (h) in respect of the bathroom flooring and wall tiling.

## **(5) Kitchen flooring**

65. The tribunal was satisfied on the evidence that the kitchen flooring has been repaired or replaced since the Application was made and is in a reasonable state of repair.

66. The tribunal was therefore satisfied that there is no failure to meet the repairing standard paragraphs (1)(a), (b), (d) or (h) in respect of the kitchen flooring.

## **(6) Living room and bedroom ceiling lighting**

67. The tribunal was satisfied on the evidence that the living room and bedroom lights have been reconnected since the Application was made.

68. However, there is no 'Minor Works Certificate' in respect of the installation and there is no EICR for the Property. The Respondent was directed by the tribunal to provide both documents and has failed to comply with the orders. The tribunal was not satisfied that the living room and bedroom lights are in proper working order.

69. The tribunal observed that in the absence of a Minor Works Certificate in respect of the installation and an EICR, there are safety concerns about the Property, particularly given that it is believed to be currently occupied by a tenant who was present at the tribunal's inspection on 3 February 2022.

70. The tribunal was therefore satisfied that there is a failure to meet the repairing standard paragraphs (1)(a) and (h) in respect of the living room and bedroom ceiling lighting. There is also a failure to meet the repairing standard paragraph (1)(c), although this sub-paragraph was not included in the former tenant's Application. There is no failure to meet the repairing standard paragraphs (1)(b), and (d) in respect of the living room and bedroom ceiling lighting.

## **(7) Washing machine**

71. The tribunal was satisfied on the written representations of the former tenant and the Respondent's former representative that the washing machine was an appliance provided by the Respondent in the previous tenancy.

72. The tribunal was satisfied on the evidence that the washing machine which was in the Property at the time the Application was made was removed from the Property by the Respondent, or on his behalf, after the former tenant moved out of the Property on or about 15 September 2021. It was not in the Property at the time of inspection on 3 February 2022. There was a washing machine in the Property at the time of the inspection. However, it is believed that it belonged to the current tenant who advised the tribunal during the inspection that there was a washing machine in the Property at the time she viewed the Property but there was no washing machine in the Property at the start of her tenancy; and that she had purchased the washing machine which was observed by the tribunal. On the basis of that information the tribunal did not further inspect the washing machine which was in the Property at the time of inspection.

73. Following the inspection, the Respondent was directed to provide a copy of the inventory for the Property and a copy of the Portable Appliance Test Certificate for the portable appliances provided by the Respondent in the Property. The Respondent has failed to comply with the tribunal's orders.
74. There is no PAT certificate for the portable electrical appliances provided by the Respondent in the Property. It is not known which appliances have been provided by the Respondent. The tribunal observes that in the absence of a PAT Certificate, there are safety concerns about the portable appliances provided by the Respondent in the Property (although the present washing machine appears to be the property of the current tenant), particularly given that the Property is believed to be currently occupied by a tenant who was present at the tribunal's inspection.
75. The tribunal is unable to determine on the basis of the evidence if the washing machine provided by the Respondent in the previous tenancy was removed from the Property after the previous tenancy because it was not in a reasonable state of repair or not in proper working order or for some other reason.
76. The tribunal was not satisfied that there is a failure to meet the repairing standard paragraphs (1)(a), (b), (d) and (h) in respect of the washing machine.

#### **(8) Garden fence**

77. The tribunal was satisfied on the evidence that the garden fence is in a state of disrepair, with some sections missing and other sections being unstable. It is not in a reasonable state of repair or in proper working order.
78. It is believed that repairs have been instructed to the fence but there is no evidence that these have taken place and that the garden fence is in a reasonable state of repair and proper working order. The Respondent has been directed to provide evidence of the same but has failed to comply with the tribunal's orders.
79. The tribunal was satisfied that there is a failure to meet the repairing standard paragraphs (1)(a), (b) and (d) in respect of the garden fence. There is no failure to meet the repairing standard paragraph (1)(h) in respect of the garden fence.

#### **Repairing Standard Enforcement Order (RSEO)**

80. Because the tribunal determined that the Respondent has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Respondent to carry out the works necessary for meeting the

repairing standard and has therefore made a Repairing Standard Enforcement Order (“RSEO”) in terms of Section 24(2) of the 2006 Act.

81. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of twenty eight days having regard to the length of time for which repairs have been outstanding, the nature of the repairs and the likely length of time to instruct and carry out the required works and provide supporting evidence of the same.

### **Right of Appeal**

**82. 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**

83. 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.

S Tanner

Signed .....  
Ms. Susanne L M Tanner, Queen’s Counsel  
Legal Member / Chair of the tribunal

Date 20 April 2022