

# 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: Section 24 (1) of the Housing (Scotland) Act 2006, as amended**

**Chamber Ref: FTS/HPC/RP/17/0424**

**Title no: FFE5170**

**20B Buchanan Street, Dunfermline KY12 7PG ("The Property")**

**The Parties:-**

**Mr Campbell Crowe, residing at 20B Buchanan Street, Dunfermline KY12 7PG ("the Tenant")**

**Mr Hope-Vere Anderson, residing at Barbeth House, New Abbey, Dumfries DG2 8DB ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and David Lawrie (Ordinary Member (Surveyor))**

### **Decision**

The Property does not meet the Repairing Standard. The Landlord has not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

### **Background**

1. By way of application received on 14 November 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 24(1)(b) of the Act in respect of the property.
2. The application was accompanied by a copy of the Short Assured Tenancy Agreement, email exchanges between the Applicant and Fife Letting Service, the letting agents, and photographs.
3. In the application the Tenant states that the Landlord has failed to ensure that the property meets the repairing standard in respect of

those issues contained within Section 13(1)(a) and (b) in the following terms:-

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
  - Whether 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.
4. Notices of referral were issued to parties on 11 December 2017.

### **Inspection**

5. The Tribunal inspected the property on 16 January 2018 at 10.00 am. The Tenant was present and invited the Tribunal Members into the Property and directed them around. Also present was his fiancé, Chenille Whitehead. The Landlord and the Landlord's letting agent had been invited but did not attend.

### **Hearing**

6. Following the inspection of the Property, the Tribunal convened a hearing later the same day at 11.30 am in St Leonards Church Hall, 2 Brucefield Avenue, Dunfermline. The Tenant and his fiancé attended to give evidence in support of the application. The Landlord's interests were represented by Donna Skelton of Fife Letting Service, the Landlord's letting agents.

### **Summary of Issues**

7. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
8. The central issue raised within the application relates to water penetration/damp within the Property. Damp is present within the walls of the living room and adjoining bedroom from ceiling height down. Additionally, damp and mould is present within the main bedroom of the Property adjacent to the window at sill height.

### **Findings in Fact**

9. The Tribunal makes the following findings in fact:-

1. The Title to the subjects known as 20B Buchanan Street, Dunfermline KY12 7PG is held by Mr Hope-Vere Anderson, residing at Barbeth House, New Abbey, Dumfries DG2 8DB. Their interest is registered in the Land Register of Scotland under Title number FFE5170.
2. The Property which is the subject of this application is a two bedroom upper first floor flat within a traditional building.
3. The Property comprises of a living room with spare bedroom off, main bedroom, kitchen and bathroom.
4. The parties entered into a Short Assured Tenancy Agreement on 14 July 2017.
5. The inspection of the Property by the Tribunal revealed:-
  - i. Damp was visible and detected within the upper walls of the living room and adjoining spare bedroom, in the corner sites which face one another. The high levels of moisture detected suggest an ongoing problem.
  - ii. An area of damp (and mould) was identified in the main bedroom of the Property to the left of the window at sill height. The site of this damp is on the opposite elevation of the Property from the damp detected in the living room and spare bedroom.
  - iii. Externally there is nothing remarkable or noteworthy which may explain the sources of the moisture identified within the Property. A section of guttering adjacent to the living room and spare bedroom has been recently replaced. It was noted that it is possible that there was a historical leak from this guttering which may have caused the water penetration to the living room and spare bedroom. There was notable evidence of a choked downpipe at the rear elevation of the Property.
  - iv. There are hardwired smoke detectors situated in the living room and main bedroom and a hardwired heat detector is situated in the kitchen. A carbon monoxide detector is installed.

Reference is made to the schedule of photographs taken at the time of the Tribunal's inspection which are attached herewith and referred to for their terms.

6. There is a valid up-to-date Gas Safety Certificate in respect of the Property which is dated 11 July 2017. There is a satisfactory up-to-date Electrical Installation Condition Report (EICR) dated 15 May 2017.
7. Works were carried out to replace the guttering adjacent to the living room and spare bedroom in November 2017 by Morris Walker, contractor, Dunfermline. It is unclear whether the scope of the works and the completion of these have rectified the difficulties which appear to be ongoing in the living room and spare bedroom areas of the Property. No dehumidifier has been utilised.
8. The Landlord instructed Peter Cox, Property Preservation, who undertook a survey of the internal aspects of the Property on 3 January 2018. The recommendations are to carry out works involving the provision of a dry room lining system with relative re-plastering in the Property.

#### **Reasons for Decision**

10. The Tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the Tribunal by the Landlord at the hearing.
11. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing on 16 January 2018.
12. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
13. Reference is made to the Tribunal's earlier Findings in Fact upon which the decision is based.
14. The Landlord's representative, Donna Skelton, accepted at the hearing that the Property is suffering from water penetration/damp/mould within the areas detected by the Tribunal at the time of their inspection. She equally agreed that despite the works carried out by Morris Walker, contractor, in November 2017 that further investigations do require to be made in order to resolve the underlying issues and that the internal works to be carried out by Peter Cox also require to be instructed.

15. The Tribunal was satisfied that the property is not currently wind and watertight and, as a consequence of the water penetration, that the Property breaches the repairing standard. The roof fixtures require attention. The Tenant's enjoyment of the Property is significantly adversely affected. The damp in the Property has had the effect of destroying certain personal belongings of both the Appellant and his fiancé.
16. It may be that the works carried out by Morris Walker, contractor, in November 2017 have resolved the underlying difficulty which had caused water penetration to the living room and spare bedroom area. It is premature to conclude this. There has been no provision of dehumidifiers to date to extract the excessive moisture which may well have remained in the walls, even if the underlying problem has been successfully fixed. Given the Tribunal's inspection, the whole roof, gutterings, downpipes and rhones require to be assessed in order to identify all relevant problems in order that these can be rectified. Only once this happens can the internal works recommended by Peter Cox be undertaken. Dehumidifiers have not been provided and should be now. The Tribunal would recommend to the Landlord that the additional electricity costs which will arise should be met by him.
17. The Repairing Standard Enforcement Order simultaneously issued by the Tribunal is made to ensure that the necessary works are carried out and within a reasonable timescale.

### **Decision**

18. The Tribunal, having made enquiries 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 property, determined that the Landlord has failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

### **Right of Appeal**

19. 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.
20. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 17 January 2018 before this witness:-

Richard Mill

Legal Member

Margaret Murray

Witness

MARGARET JONASTONE MURRAY Name

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