

# Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act

Chamber Ref: FTS/HPC/RP/21/1169

367, Glasgow Road, Hamilton, ML3 0QZ (“the Property”) registered in the Land Register of Scotland under title sheet number LAN199722

The Parties:-

Mr. Iounut Andrei Llisei residing at the Property (“the Tenant”)

And

Mrs. Lorna Abercrombie care of Rannoch Property, 1024, Maryhill Road, Glasgow G20 9JA (“the Landlord”) per her agent, Ms. Jacqui Lamb of the said Rannoch Property (“the Landlord’s Agents”)

**Tribunal Members:** Karen Moore (Chairman) and Greig Adams (Ordinary Member)

## **Decision**

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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (h) of the Act and that for the reasons set out below.

## **Background**

1. By application received between 18 and 21 May 2021 (“the Application”), the Tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord has failed to comply with the duty imposed on it by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1) (h) of the Act. The Application was referred to the Tribunal by Notice of Acceptance dated 25 May 2021.
2. A Case Management Discussion (CMD) was arranged for 13 July 2021 at 10.00 by teleconference, in order to discuss further procedure in the case and to ascertain if an inspection is required or if other evidence is available or can be agreed. At that CMD which was attended only by Ms. Lamb on behalf of the Landlord, Ms. Lamb explained to the Tribunal the difficulties encountered by the Landlord in having works carried out due to the other owners in the block not

responding and there being lack of clarity in respect of factoring. In the circumstances, the Tribunal continued the CMD to allow the Applicant to attend and to allow Ms. Lamb, on behalf of the Landlord, to submit the correspondence which she has had with South Lanarkshire Council, which she did.

3. A further CMD was held on 7 September 2021 at 10.00. The Applicant did not attend. The Landlord did not attend and was represented by Ms. Lamb and Mr. Gary Russell of the Landlord's Agents. As there appears to be an ongoing issue in respect of dampness, the Tribunal advised Ms. Lamb that it would require to inspect the Property to make an assessment and determination in respect of the Repairing Standard and so continued the Application to a later date for an Inspection and Hearing.
4. An Inspection of the Property was then arranged for 26 October 2021 and a Hearing for 16 November 2021.

### **Inspection**

5. The Inspection took place on 26 October 2021 at 10.00 a.m. at the Property. The Tenant and Ms Lamb of the Landlord's Agent were present. The Landlord was not present.
6. The Tribunal inspected the parts of the Property referred to in the Application namely the dampness throughout the Property and the guttering and downpipes at the Property.
7. At the Inspection, the Tribunal took digital photographs which were issued to the Parties before the Hearing.

### **Hearing**

8. A Hearing was held on 16 November 2021 at 10.00 by telephone conference call. Ms. Lamb of the Landlord's Agent took part. Neither the Tenant nor the Landlord took part.
9. The Tribunal took Ms. Lamb through the photographs and its findings at the Inspection.
10. In particular, the Ordinary Member of the Tribunal explained the way in which the Inspection was carried out with reference to the photographs and the methods used. A "qualitative assessment" was undertaken utilising a Moisture Profiling technique providing a sub-surface/at depth moisture reading, with a particular focus on the various areas of mould complained of by the Tenant. infra-red images were recorded utilising a Thermal Camera to ascertain heat within the structure. The outcome of the Inspection was that the Property in the main suffers from Condensation given mould growth present within various different areas and generally within internal corners of the various rooms inspected. Condensation is a form of dampness typically affecting the surface of materials. In simple terms, water vapour condenses when it comes into close contact with a surface that is at or below the 'dew point' temperature of the internal air, depositing liquid water on

the surface. It is not penetrating or rising damp. With the exception of one area which is noted in the following paragraph, the mould in the Property has formed as a result of Condensation.

11. The Ordinary Member of the Tribunal explained that the Inspection found one area of unreasonable and elevated moisture readings within the Front Left Bedroom at the internal corner abutting the wall of the common close and the common entrance steps. Ms. Lamb advised the Tribunal that this particular area of dampness had not been reported to the Landlord before.
12. Although the Tribunal noted and the Landlord accepted that the external rainwater system has not been adequately maintained with vegetation growth noted to gutters and splits to the cast iron circular section downpipe, there does not appear to be water ingress to the Property from this system.

### **Summary of the Issues**

13. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (h) of the Act at the date of the Inspection and Hearing.

### **Findings of Fact**

14. Mrs. Lorna Abercrombie is the owner of the Property in terms of title sheet number LAN199722 which is subject to a private residential tenancy between the Parties.
15. From the Inspection, the Tribunal found that, with the exception of the Front Left Bedroom in the Property, the mould in the Property was the result of Condensation. The Tribunal found there to be penetrating dampness in the Front Left Bedroom and found the external rainwater system to be in disrepair.

### **Decision of the Tribunal and reasons for the decision.**

16. The Tribunal's decision is based on the Application with supporting documents, the Landlord's responses to and compliance with the Directions, the Inspection and the Hearing.
17. In respect of the complaint in terms of Section 13 (1) (h) of the Act that the Landlord has failed to ensure that the Property meets the Tolerable Standard the Tribunal found that at the date of the Inspection and Hearing the penetrating dampness within the Property and the poor condition of the external rainwater system is such that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Tribunal noted Ms. Lamb's comments that this area of dampness had not been specifically notified but took the view that the Application was not specific to the location of the dampness complained of and that it was open to the Tribunal to take account of it in its findings and decision.
18. The decision is unanimous.

### **Repairing Standard Enforcement Order**

19. Having determined that the Landlord have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make an RSEO as required by Section 24 (1) of the Act.

### **Note to the Tenant**

20. The Tenant's attention is drawn to the Tribunal's comments in respect of Condensation. The Tenant is advised that the placement of furniture, the fridge-freezer and stored items at close proximity to internal corners and the drying of clothing in the Property, coupled with a lack of direct heat and lack of ventilation is allowing Condensation to occur.

### **Appeal**

21. 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.

# K Moore

Karen Moore, Chairperson

2 December 2021