

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

**Chamber Ref: FTS/HPC/RP/22/0061**

**Re: Property at Ground Floor, 14 Jackson Terrace, Aberdeen, AB24 5LP (“the Property”)**

### **Parties:**

Ms Lydia Gahr, Ground Floor, 14 Jackson Terrace, Aberdeen, AB24 5LP (“the Tenant”)

Mr Jack Milne, c/o 2<sup>nd</sup> Floor Chattan Mews, 18 Chattan Place, Aberdeen, AB10 6RD (“the Landlord”)

### **Tribunal Members:**

Ruth O'Hare (Legal Member) and Robert Buchan (Ordinary Member)

### **Background**

1. Reference is made to the decision of the Tribunal dated 27<sup>th</sup> April 2022 in terms of which the Tribunal made a Repairing Standard Enforcement Order (“RSEO”) requiring the Landlord to:-
  - (i) Instruct a damp specialist to investigate the source of damp within the property and submit to the Tribunal for further consideration; and
  - (ii) Instruct Home Energy Scotland to carry out an assessment of the property and submit to the Tribunal for further consideration.

The Tribunal gave the Landlord a period of six weeks to produce the reports.

2. By email dated 5 June 2022 the Landlord’s representative submitted three reports, two from damp specialists and one from Home Energy Scotland. The reports from the damp specialists confirmed the presence of damp within the basement, living room and bedroom and suggested remedial works. The report from Home Energy Scotland confirmed that 72% of heat was currently being lost from the walls of the

property and 12% from the floor. It recommended improvements which could be made to bring the energy performance certificate rating up from a G to a potential E or D and that these improvements could more than halve the annual fuel bill from the current estimate of over £4000.

3. Given the nature of the actions stated in the RSEO, which required the production of reports as opposed to the carrying out of works at the property, the Tribunal determined not to hold a re-inspection and fixed a hearing to consider the submissions from the parties regarding the reports.
4. The hearing took place on 12<sup>th</sup> July 2022 by teleconference. Dr Sarah Milne and Mrs Claire Young appeared on behalf of the Landlord. Ms Lydia Gahr was present and supported by her parents. The Tribunal explained the purpose of the hearing and asked the parties to make comment on the reports submitted by the Landlord.
5. Mrs Young explained that the Landlord had not commenced any works yet but had a damp specialist on hold. She was a bit unclear on what was required regarding the insulation. She confirmed that the energy performance certificates ("EPC") for other properties on the street, which had been mentioned at the previous hearing as having higher EPC ratings, showed that those properties were not end terraced blocks as this one is but did have gas central heating. She was looking for guidance from the Tribunal on what works to carry out to the property, as it would not be possible to implement all of the recommendations from Home Energy Scotland for financial reasons. The Tribunal noted that the works to eradicate the damp would require removal of plaster and redecoration and the Landlord may therefore wish to consider whether it would be possible to instal insulation at the same time. Mrs Young advised that putting in insulation would not improve the EPC banding by much, nor improve things for the tenant, and would be costly. Gas central heating was the critical factor but the Landlord did not have sufficient budget to do everything and was looking to do the most effective works to raise the EPC rating to the required standard. Mrs Young confirmed that no landlord loans would be available, as had been stated at the previous hearing.
6. Ms Gahr explained that she was confused as to why Mrs Young had stated that it would not be possible to bring the property up to the tolerable standard. The Home Energy Scotland report set out how to do this without installing gas central heating. It did seem like an opportune moment to instal insulation at the same time as the damp works. Ms Gahr made reference to the presence of asbestos in the property, however the Tribunal confirmed that no findings had been made in that respect, albeit it may be a consideration for any contractors given the nature of the property. Ms Gahr explained that she thought the report from Home Energy Scotland was comprehensive and as expected, albeit she was surprised that so much heat was being lost through the wall as opposed to the floor.
7. Comments were made by the parties regarding the prospect of the works requiring the tenant to move from the property. Ms Gahr noted that she would be expecting the landlord to relocate her, or present other options. Mrs Young advised that she understood the landlord had no responsibility to do this, and instead they would have to seek recovery of possession of the property through the service of the Notice to Leave. The Tribunal advised that these were matters ancillary to the

application which the Tribunal could not advise upon. Ms Gahr was advised to seek her own independent legal advice in respect of these issues.

8. The Tribunal concluded the hearing and advised that it would issue its decision in writing. The Tribunal subsequently determined to vary the Repairing Standard Enforcement Order dated 27<sup>th</sup> April 2022 to require the landlord to carry out works to eradicate the damp and insulate the floors and walls within the property such as to meet the tolerable standard and raise the band of the energy performance certificate to at least Band E.
9. Following the hearing the Tribunal received confirmation from the parties that the former Tenant had been served with a Notice to Leave and had left the property. The Tribunal therefore concluded that the tenancy had been terminated. In view of the nature of the repairs and the outstanding RSEO the Tribunal issued a Minute of Continuation in order to continue its determination of the application.
10. On 6<sup>th</sup> January 2023 the Tribunal undertook a reinspection of the property. The Tribunal noted that the dampness had been eradicated following works undertaken by a specialist. Damp readings taken were normal. The walls within the property had been insulated. The floors had not however been insulated due to the presence of asbestos. A new storage heater had been installed and the interior had been redecorated. A new Energy Performance Certificate had been produced by the Landlord showing a rating of band D. A copy of the reinspection report is attached hereto and referred to for its terms.

### **Reasons for Decision**

11. In reaching its decision the Tribunal took into account the findings of the initial inspection and the reinspection together with submissions from parties at the hearing and the reports produced by the Landlord.
12. The Tribunal was satisfied based on the outcome of the reinspection that the works required by the RSEO had been completed and the Landlord had therefore complied with their duty to ensure the property met the Repairing Standard which includes the tolerable standard.
13. 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.**

R O'Hare

Chairperson of the tribunal

Signed

Ruth O'Hare  
Legal Member

26 January 2023