

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/23/0075

Title no: PTH26840

Property at 23K Speygate, Perth PH2 8PJ (“The Property”)

The Parties:-

- **Mr Ross McDonald, 23K Speygate, Perth PH2 8PJ (“the Tenant”)**
- **Mr Gary John Cummings, t/a Easy Investments, 8 Atholl Crescent, Perth PH1 5NG (“the Landlord”)**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Robert Buchan	-	Ordinary Member

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘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) in relation to the Property and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application dated 8th January 2023, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

3. The application by the Tenant stated that it was considered that the Landlord had failed to comply with his duty to ensure that the Property met the Repairing Standard. The application stated that the House was not wind and watertight and in all other respects reasonably fit for human habitation. In particular, the complaints consisted of:-
 - a) That the Landlord had not repaired or replaced windows in the rear of the Property which consist of the kitchen window and two bedroom windows.
4. On 2nd March 2023 Lettings Direct emailed the Housing and Property Chamber lodging a submission stating that the Landlord would not be making any representations and would not be attending the hearing. On 7th March 2023, the Landlord contacted the Housing and Property Chamber giving authority for Lettings Direct to represent him.

The Inspection

5. The Tribunal attended the Property on the morning of 5th April 2023. Only the Tenant was present. The Tribunal was let into the Property by the Tenant. It was clear, dry and of mild temperature on the day of the inspection.
6. The Property is a top floor flat in a traditional tenement thought to be about 200 years old and subject to major works in or around 1984. The building is 4 storeys in height. There are three UPVC framed double glazed windows dated 2007 fitted in a slate clad dormer window at the rear of the building.
7. The window in bedroom 1 was inspected. There was mould around the ceiling directly above the window and around the window frame. The vent was broken and the window was not able to be closed or locked. The Tenant said that a slate had fallen from the roof and hit his partner on the hand when the window was open. Looking at the outside above the window a repair could be seen to have been carried out. There were loose slates sitting below the window which appear to have fallen off the dormer window.
8. Looking at the exterior of the dormer window the repair that had been carried out looked at best to be temporary. A metal strip had been fixed below and, in part, on to, the fascia board of the dormer window with a screw holding part of it in place.
9. The windows in bedroom two and in the kitchen were inspected and found to meet the repairing standard.
10. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
11. The inspection was concluded and the Tribunal reconvened in the afternoon for the hearing conducted by teleconferencing.

The Hearing

12. The hearing was held on 5th April 2023 at 2pm by teleconferencing. The Tenant attended. Neither the Landlord nor his letting agent attended.
13. The Tribunal discussed the windows detailed in the application. The Tribunal was concerned that part of the issue with the windows related to a repair to the outside of the Property.
14. The Tenant noted that there had been a repair done just above the windows on the outside of the building in or around January 2023 and this had already deteriorated. This was seen by the Tribunal. It was noted that it did not look secure and could be damaged by the wind. The Tenant said that the back of the Property, where the windows concerned are located, can be subject to strong winds. The Tenant said that he has not met the Landlord. The Letting Agent has not been to see the work needing to be done. The repair was undertaken by a tradesman climbing a ladder onto the roof and hanging over the roof to make the repair. The Tenant said that cleaning the mould is a continuous job to try to clear it away.
15. It was explained to the Tenant that the Tribunal had the option of making a RSEO should they believe that there was merit to do so.

Summary of the issues

16. The issues to be determined are: -
 - a) Whether the House is wind and water tight and in all other respects reasonably fit for human occupation and whether the structure and exterior of the house are in a reasonable state of repair and in proper working order.

Findings of fact

17. Having considered all the evidence, the Tribunal found the following facts to be established: -
 - a) The tenancy is a Private Residential Tenancy between the Landlord and the Tenant. The tenancy commenced on 4th May 2021.
 - b) The window catch in bedroom one does not enable the window to be closed or locked. The window vent has come off and is lying on the window sill. There is condensation and mould affecting the window surrounds and ceiling of bedroom one.
 - c) There is condensation and mould affecting the window surrounds of bedroom two and the kitchen.
 - d) There are loose slates lying on the roof below the dormer window.

Reasons for the decision

18. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Tenant at the hearing.
19. 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.
20. The Tribunal was in no doubt, from its inspection, that the Property did not meet the Repairing Standard.
21. There is clear evidence of significant condensation and associated mould which the tenant is trying to tackle. Accordingly, the house is not wind and watertight and in all other respects reasonably fit for human occupation. The window catch and the vent in bedroom one are such that the window is not in a reasonable state of repair or in proper working order. The exterior of the dormer window has been subject to a recent repair but this has not been successful and the testimony of the tenant supports the evidence that the condition of the dormer window is inadequate and will continue to deteriorate. Accordingly, the structure and exterior of the house are not in a reasonable state of repair and in proper working order.
22. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord was in breach of the duty to comply with the Repairing Standard.
23. The Act states that where a Tribunal decides 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”.
24. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order (“RSEO”) as required in terms of section 24(2) of the Act.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

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.

G Miller

G Miller, Chair

24th April 2023