

Housing and Property Chamber
First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/22/4346

Property at Flat 5/L, 84 Commercial Street, Dundee, DD1 2AP ("the Property")

The Parties:-

**Mr Conor McConville, Flat 5/L, 84 Commercial Street, Dundee, DD1 2AP
("the Tenant")**

**Sale Developments Limited, Westburn House, North Dunning, Perthshire, PH2 0QY
("the Landlord")
(Represented by Rockford Properties Limited, 50 Castle Street, Dundee, DD1 3AQ)**

Tribunal Members:

Gillian Buchanan (Chair) and David Godfrey (Ordinary Member)

Decision

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 documentary and oral evidence given by the parties, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application comprising various documents received on 6 December 2022 the Tenant applied to the tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The house is wind and watertight and in all other respects fit for human habitation.
 - (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

(c) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purposes for which they are designed.

(d) The house meets the tolerable standard.

3. By letter dated 19 December 2022 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
4. The tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant and the Landlord.
5. Following service of the Notice of Referral the tribunal received the following additional written representations from the parties:-

From the Tenant:-

Emails dated 10 February 2023.

From the Landlord:-

- i. Email dated 9 February 2023; and
- ii. 3 March 2023.

6. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr David Godfrey, Ordinary Member, inspected the Property on the morning of 14 March 2023. The Tenant was in attendance. The Landlord was represented by Mr Calum Jenkins of Rockford Property. Photographs were taken and are contained in the attached Pre-inspection summary and schedule of photographs ("the Schedule of Photographs").
7. At the time of the inspection it was warm and dry.

Hearing

8. Following the inspection of the Property the tribunal held a hearing by telephone conference on the afternoon of 14 March 2023. At the hearing the Tenant was present. The Landlord was not in attendance but was represented by Mr Jenkins.
9. The parties submitted as follows by reference to the undernoted headings:-

Kitchen Wall/Sloping Ceiling

10. The Tenant stated that he emailed his concerns to Rockford Properties Limited at the start of 2021. No one attended in response. The situation escalated resulting in the collapse of the ceiling at the end of 2022. The situation is still not fully resolved. The Tenant noticed the cracking in the plaster the day after the remedial works were undertaken. This was around 3 March 2023. The discolouration also appeared the day after the remedial works were completed. Hazel Young of Rockford Properties Limited indicated to the Tenant that the area would still be drying.
11. Mr Jenkins for the Landlord stated that McGregor Roofing previously attended and assessed the roof. McGregor Roofing could not find where the roof was permeable to water and concluded that the roof had been overwhelmed. Measures were therefore taken to introduce alternative drainage. The roofer attended on 25 November 2022 after substantial rainfall. Mr Jenkins did not have a copy of the report from McGregor Roofing's inspection and believed his colleague,

Hazel Young, had that report. He said he believed McGregor Roofing did the work required. He did not have any invoice from McGregor Roofing to hand in respect of those works. He did not know what work McGregor Roofing undertook. He referred to an email from Ms Young dated 29 November 2022 at 17:13.

Kitchen Windows

12. The Tenant stated that before moving into the Property Ms Young confirmed the windows would be replaced in emails to the Tenant's partner. He referred to emails exchanged on 17 November 2020 and 5 October 2021. The windows have slowly got worse.
13. Mr Jenkins for the Landlord stated that remedial works to the windows were instructed on 2 March 2023. The works are being done by Timber Ridge, Invergowrie. The windows will be refurbished, not replaced. He said the contractor would attend and take measurements, the window unit would be removed and the void boarded up. The windows would then be refurbished and reinstalled. The estimated time frame is 2-3 months. Works are due to start imminently.

Bedroom Windows

14. The Tenant stated that the crack in the window pane had been present before he moved into the Property. The windows had otherwise deteriorated over time as per the kitchen windows.
15. Mr Jenkins for the Landlord stated that the position for the bedroom windows is the same as for the kitchen windows. He said Ms Young acknowledged that the windows needed repaired or replaced but not in time for the Tenant and his partner moving in.

Summary of the issues

16. The issues to be determined are:-
 - (a) Whether the windows in the kitchen and bedroom are wind and watertight, in a reasonable state of repair and in proper working order, and open and close correctly.
 - (b) The cause of the water ingress into the kitchen which caused the plaster on the wall and sloping ceiling to collapse in November 2022 and whether the cause of that collapse has been resolved.
 - (c) Whether the roof of the Property is wind and watertight and in a reasonable state of repair such that water cannot permeate the Property.

Findings of fact

17. The tribunal finds the following facts to be established:-
 - (a) The Landlord is the heritable proprietor of the Property.
 - (b) That the Property has been leased by the Landlord to the Tenant since around 9 December 2020 in terms of Private Residential tenancy Agreement dated 11 and 12 November 2020.
 - (c) That it is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.
 - (d) In the kitchen the sloping area of ceiling and the adjacent wall near to the north west dormer

projection have recently been repaired and decorated but the new plaster is cracking and is showing discolouration the cause of which is not known.

- (e) The kitchen window frame is rotten and there is a substantial gap between the glazing and the window sill where the frame has rotted away entirely.
- (f) The kitchen window sash cords are broken.
- (g) The bedroom window frame is rotten and a pane of glass is cracked.
- (h) The windows in the kitchen and in the bedroom do not meet the Repairing Standard.

Reasons for the Decision

- 18. The Property is an attic flat on the 5th floor of a stone tenement building.
- 19. In considering this application the tribunal has had regard to the age and character of the Property and the locality in which the Property is located all in accordance with Section 13(3) of the Housing (Scotland) Act 2006.
- 20. On the day of the inspection of the Property by the tribunal, the Tenant took the tribunal around the Property identifying the various issues highlighted in the application.
- 21. On inspecting the kitchen the tribunal found the sloping ceiling and adjacent wall by the north west dormer projection had recently been repaired and decorated but the new plaster is cracking and is showing discolouration the cause of which is not known. At the Hearing Mr Jenkins for the Landlord was not able to explain in any detail the cause of the water ingress which caused the plaster to collapse in November 2022 or advise of or evidence to the tribunal the nature of the remedial works undertaken. In the absence of evidence to substantiate the position, the tribunal is not persuaded that the cause of the water ingress is resolved.
- 22. In the kitchen the windows are in a dreadful condition. The window frames are entirely rotten and the sills have disintegrated altogether leaving a significant gap beneath the lower edge of the glazing open to the elements. The sash cords are also broken.
- 23. In the bedroom, the window frame is rotten and a glazed panel is cracked.
- 24. The windows do not meet the Repairing Standard.

Decision

- 25. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- 26. In particular the tribunal determined that the Landlord had failed to comply with Section 13(1)(a) of the Act by failing to keep the Property wind and water tight and in all other respects reasonably fit for human habitation. The tribunal did not find there to be a breach of sub-sections 13(1)(d),(e) and (h) of the Act.
- 27. The tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).

28. The decision of the tribunal was unanimous.

Right of Appeal

29. 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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Effect of section 63

30. 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 Buchanan

Signed

Date : 14 March 2023

Legal Member and Chairperson