

# 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: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Ref: FTS/HPC/RP/21/1933**

**3/1, 5 Couper Street, Glasgow, G4 0DP (“the Property”)**

**Parties:**

**James Gye, (“the Tenant”)**

**Outland Properties Ltd (“the Landlord”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Lori Charles (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) of the Housing (Scotland) Act 2006 (“the 2006 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.**

**Background**

1. On 11 August 2021, the Tenant lodged an application with the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Tenant stated that the Landlord has failed to meet the repairing standard in relation to the property. In particular, two bedrooms in the property are affected by water ingress and dampness. Documents, including photographs, were lodged in support of the application.
2. Under normal circumstances the Tribunal would have arranged for the Tribunal to carry out an inspection of the property to assist in the determination by the Tribunal of the application. Unfortunately, this was

delayed, due to the continuing effects of the COVID 19 pandemic. In the circumstances, a case management discussion (“CMD”) was arranged, to discuss procedure in the case and to ascertain if an inspection was required or if other evidence was available or could be agreed.

3. On 13 October 2021, the Landlord notified the Tribunal that repairs had been carried out and the Tenant had been compensated. On 15 October 2021, the Tenant notified the Tribunal that he wished to “remove” his application and stated that he was “trusting the landlord and letting agency that the issue has been resolved”. The Tribunal decided to cancel the CMD and asked for further information about the repairs. The Landlord provided further information on 19 and 20 October 2021. They said that the Property Factor had arranged roof repairs and the Landlord had arranged for a window repair to be carried out. A further leak had been reported but this was a new issue which affected a different room and was not connected to the application. The Tenant did not respond to the Tribunal’s request for further information. The Tribunal considered the Tenant’s withdrawal of his application and determined that it would continue to consider the application in terms of Paragraph 7(3) of Schedule 2 of the 2006 Act.
4. The Landlord was notified that an inspection would take place on 9 December 2021 at 10.30am and that a hearing would take place by telephone conference call on 16 December 2021 at 10am.
5. The Tribunal inspected the property at 10.30am on 9 December 2021. Access was provided by one of the tenants, Mr Briody. The Landlord’s representatives Ms McMillan and Mrs Waters attended. The hearing took place by telephone conference call on 16 December 2021 at 10am.

### **The Inspection**

6. The Tribunal inspected the property on 9 December 2021 at 10.30am. The property is a third floor flat over two levels, occupied by four students. The Tribunal inspected the two bedrooms located on the lower level which are the subject of the application. In both bedrooms the Tribunal noted evidence of water ingress on the ceiling at the window and around the window. Moisture readings varied between high and normal. A damp, sunken section of flooring was also noted in the second bedroom. The Tribunal was advised that this was a new issue, caused by a leak from the bathroom, and not part of the application. A report, including photographs, was issued to the Landlord following the inspection.
7. Following the inspection, the Landlord’s representatives lodged written representations, an email from the Property Factor and a chronology of

events from 8 March 2021 to date. The email from the Property Factor is dated 25 November 2021. It states that a roof repair was carried out on 24 November. The contractor had identified an area above the ingress where the OBS Board/Felt had completely deteriorated. This had been replaced. The chronology indicated that there had been a window repair in the first bedroom on 5 October 2021, a further report of water ingress from the tenant of the second bedroom on 18 October 2021, a roof repair (three broken tiles replaced) on 20 October 2021, a further report of water ingress in relation to the second bedroom on 28 October 2021 and a roof repair on 24 November 2021. The submissions state that the Landlord has discovered that the roof is defective but that the various proprietors in the block refused to agree to pay for this to be repaired in 2017 as it was going to cost £70,000.

## **The Hearing**

8. The hearing took place by telephone conference call on 14 July 2021. The Tenant did not participate as he was no longer a party to the application. The Landlord was represented by Mrs Waters and Ms McMillan (the agents”).
9. The agents advised the Tribunal that there have been several roof repairs over the last year. In addition, a window repair was carried out to the window in the 1<sup>st</sup> bedroom on 5 October 2021. This involved applying black mastic to create a seal. This appears to have “held”. The last roof repair was at the end of November 2021. The agents referred to a copy of an email from the Property Factor dated 25 November 2021 which provides details of the most recent roof repair. The agents advised that this repair also appears to have “held” with no reports of further water ingress since that date. Some damaged roof tiles were replaced prior to this. Dehumidifiers are to be installed at the property for a period of seven days. This has been delayed as one of the tenants has COVID 19. After the 7 day period they will arrange for moisture readings to be taken and for the affected areas to be re-decorated.
10. In response to questions from the Tribunal, the agents advised that the Landlord is satisfied that the various repairs which have been carried out have addressed the water ingress which has affected both bedrooms. However, as it now appears that the entire roof is defective, there is concern that further leaks may develop. The Landlord has therefore decided not to re-let the property when the current tenants move out at the end of December and will seek legal advice on the issue. The Property Factor recently advised that they obtained a quote for a major repair to the roof in 2017 but the flat owners in the block would not agree to carry out the work. Instead, they have opted for repairs to be carried

out as and when any issues arise. The Landlord was not made aware of the defective roof when she purchased the property.

### **Findings in Fact**

11. The ceiling and walls around the windows in the bedrooms on the lower floor of the property are affected by water ingress and dampness.
12. Roof repairs were carried out in October and November 2021.
13. A repair to the window in the first bedroom on the lower floor was carried out on 5 October 2021.

### **Reasons for decision**

14. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the Landlord.
15. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 3 of the 2006 Act “The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it” The Tribunal is satisfied that the former Tenant notified the Landlord of the repairs issues at the property prior to lodging the application. Section 24(2) states, “Where the First-tier tribunal decides that the landlord has complied with that duty it must by order (“a repairing standard enforcement order”) require the landlord to carry out such work as is necessary for the purpose of ensuring..” that the property meets the repairing standard and that any damage caused by the repair work required by the order is made good.
16. The Landlord does not dispute that both bedrooms on the lower level of the property have been affected by water ingress. The first bedroom has been affected since February 2021 and the second since July 2021. It is also not in dispute that the ceiling and walls around both windows recorded high moisture levels when the Tribunal inspected on 9 December 2021. The Tenant is no longer a party to the application, so no information was provided by him regarding the first bedroom. The tenant who occupies the second bedroom provided access for the inspection and stated that he has had no water ingress since the last repair which had been carried out a few weeks before. The agents advised the Tribunal that no further reports from either tenant have been received since the latest roof repair. This suggests that the repairs may

have been successful. However, the Tribunal notes that both repairs were carried out recently and it may be too early to say that the problems have been fully resolved. It is significant that several previous repairs were carried out and were not successful. Furthermore, although the rooms are both occupied and presumably heated, high moisture readings were detected in both rooms during the inspection by the Tribunal. The Tribunal is therefore not persuaded that the repair work carried out by the Landlord has fully addressed the water ingress.

17. The Tribunal is therefore satisfied that the Landlord has failed to comply with the repairing standard as set out in Sections 13(a) of the Act.

### **Decision**

18. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

19. The decision of the Tribunal is unanimous.

### **Right of Appeal.**

**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.**

In terms of Section 63 of the Act, 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.

# J. Bonnar

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Josephine Bonnar, Legal Member

23 December 2021