

# 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/20/2256**

**Title number: ANG2122**

**Re: Property at (G/L) 111 Arbroath Road, Dundee, DD4 6HS (“the Property”)**

**The Parties:**

**Ms Anita Pajaczek (“the former tenant”)**

**Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX (“the former tenant’s representative”)**

**Brian Stewart T/A B.S. Properties, Mr Brian David Grahame Stewart, 23 South Tay Street, Dundee, DD1 1NR; 17a, Reform Street, Kirriemuir, DD8 4BS (“the Landlord”)**

**Ms Stacey Latham, B.S. Properties, 23 South Tay Street, Dundee, DD1 1NR (“the Landlord’s Representative”)**

**Tribunal Members:**

**Susan Christie (Chairing /Legal Member)**

**David Godfrey (Ordinary/Surveyor Member).**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), having made such enquiries as it saw fit for the purpose 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, and taking account of all of the available evidence, determined that the Landlord has complied with the duty imposed by Section 14(1) (b) of the Act.**

**Background**

1. By Application accepted by the tribunal on 17 November 2020, the former tenant’s representative applied to the tribunal under section 22(1) of the Housing (Scotland) Act 2006 for a determination of whether

the Landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Housing (Scotland) Act 2006 ('the Act').

2. The Application specifically stated that the former tenant considered that the Landlord had failed to comply with the duty to ensure that the Property meets the repairing standard and thought the Property did not meet the repairing standard set out in Section 13(1) sub sections (a),(b) and (h).The complaint was made that the living room ceiling in the Property had collapsed on 13 January 2020 that a substantive repair had not been carried out, and that the former tenant suspected this was linked to an external crack on the building.
3. Written Representations were due by 25 December 2020.Information and documentation was submitted by the Landlord's Representative.
4. A Case Management Discussion took place on 13 January 2021, and it was determined that as there was an unresolved factual dispute, an Inspection was required to enable the Tribunal to properly determine the application.
5. An inspection date and hearing date were to be afterwards identified and intimated to the Parties. Meantime, a further universal date was fixed for review due to the restrictions imposed by Covid-19 regulations around inspections.
6. Following on from the tribunal receiving intimation and confirmation that the former tenant had left the Property and the tenancy had been terminated, under Schedule 2 Paragraph 7 (1) of the 2006 Act, the tenant is to be treated as having withdrawn the application. The Tribunal thereafter decided to continue to determine the application under Schedule 2 paragraph 7(3) of the 2006 Act.
7. An Inspection of the Property was assigned for 23 June 2021 at 11.30am.

### **The Inspection**

8. On the morning of 23 June 2021, the Tribunal attended at the Property. The Tribunal inspected the Property in the presence of the Landlord's Representative. The weather conditions at the time of the Inspection were dry and bright. Photographs were taken during the Inspection, and these are attached as a Schedule to this Decision.
9. The Property is a two bedroom ground floor tenement flat.
10. The Property is now occupied by others, neither of whom were present but had given permission for the inspection to proceed in their absence.
11. The living room ceiling was inspected, and it was noted that it had been repaired at the bay window area.

### **The Hearing- 7 July 2021**

12. The Hearing took place today by conference call. The Landlord's Representative participated.
13. The detail of this application was discussed. It was agreed that the ceiling within the living room of the Property had come down around the bay window area on 13 January 2020, and that had been reported to the Landlord who had inspected it sometime after that date. A contractor

has been instructed to carry out the repair thereafter. There had been a dispute with the former tenant around what was in fact needed to carry out a good repair and there were issues in relation to the contractor obtaining access to the Property. The Landlord's Representative had noted that the former tenant had been carrying out redecoration works in the living room that they had been unaware of. This was around the time of the ceiling coming down. There had been consideration as to whether a leak had caused the ceiling to come down, but nothing was found. It was repaired with plasterboard and finishing by plaster skim.

14. The Tribunal's preliminary findings of the Inspection were relayed to the Landlord's Representative. There were no signs of any bowing or cracking around the repair, such as would cause any concern over its stability. There was no cracking apparent in the external walls around the area complained of that would have been linked to the area where the ceiling had been repaired. The Surveyor Member took the view that the repair was consistent with what would be expected of a localised repair.

### **Findings in fact**

The Tribunal finds the following facts to be established:

- I. The Landlord is the registered owner and Landlord of the Property.
- II. The tenancy between the Landlord and the former tenant is a tenancy to which the repairing standard applies.
- III. The repair to the living room ceiling in the Property had been satisfactorily carried out, prior to the inspection by the Tribunal.

### **Reasons for Decision**

It is undisputed that part of the living room ceiling in the Property came down unexpectedly around 13 January 2020 and that this was reported to the Landlord by the former tenant. The exact cause of that occurring could not be determined by the Tribunal.

By the time an inspection could be safely carried out by the Tribunal, the repair had been carried out.

There were no signs of any bowing or cracking around the repair, such as would cause any concern over its stability. There was no cracking apparent in the external walls around the area complained of that would have been linked to the area where the ceiling had been repaired. The Tribunal took the view that the repair as carried out, was consistent with what would be expected of a localised repair.

The Landlord has therefore not failed to comply with the duty imposed by section 14 (1) (b) of the Act and has ensured that the Property meets the repairing standard under sections 13(1) (a), (b) and (h) of the Act in respect of the matters complained of in the Application as at the date of this Decision. It is based on the findings of the visual inspection as well as the information given at the Hearing.

The decision of the Tribunal is 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.**

**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.**

Signed:

**S Christie**

Legal Member,  
7 July 2021.