

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: HPC/RP/21/0387

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 7 April 2021, 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 bedroom ceiling in the Property had collapsed on 11 December 2020 and that the repair carried out thereafter had caused further cracks and blowing up in the ceiling area surrounding it.
3. 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tenancy had been terminated, under Schedule 2 Paragraph 7 (1) of the 2006 Act, the tenant is to be treated as having withdrawn the application.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.
4. An Inspection of the Property was assigned for 23 June 2021 at 11.30am.

The Inspection

5. 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.
6. The Property is a two bedroom ground floor tenement flat.
7. The Property is now occupied by others, neither of whom were present but had given permission for the inspection to proceed in their absence.
8. The ceiling in the back bedroom of the Property was inspected, and it was noted that it had been repaired.

The Hearing- 7 July 2021

9. The Hearing took place today by conference call. The Landlord's Representative participated.
10. The detail of this application was discussed. It was agreed that part of the ceiling had come down in the back bedroom of the Property on 11 December 2020 and it had been inspected by the Landlord around 15 December 2020. Repairs had been done around 21 to 23 December 2020. It was repaired with plasterboard and finishing by plaster skim. This repair had been done around the same time as the repair needed to the living room ceiling in the associated application HPC/RP/20/2256.
11. The Tribunal's preliminary findings of the visual Inspection were relayed to the Landlord's Representative. There were no signs of any bowing or cracking on the ceiling, 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 back bedroom 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 back bedroom ceiling in the Property came down unexpectedly around 11 December 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 on the ceiling, 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 matter 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.