

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act 2006 section 24(2)**

**Title number: Subjects registered in the Land Register of Scotland under title number FFE127516**

**Chamber Reference: FTS/HPC/RP/21/0747**

## **The Parties**

**Mrs Orietta Pili, 35 Hoggan Crescent, Dunfermline, KY11 4PU (“The Tenant”)**

**Mrs Janina Winski, c/o The Morgan Law Partnership, 33 East Port, Dunfermline, KY12 7JE (“The Landlord”)**

**Subjects: 35 Hoggan Crescent, Dunfermline, KY11 4PU (“the Property”)**

## **NOTICE TO**

**Mrs Janina Winski, c/o The Morgan Law Partnership, 33 East Port, Dunfermline, KY12 7JE**

Whereas in terms of their decision dated 26<sup>th</sup> August 2021, the First-tier Tribunal for Scotland (Housing and Property Chamber) has determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that:

1. The Property is wind and watertight and in all other respects reasonably fit for human habitation;
2. The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
3. The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord to:-

1. Take reasonable steps to investigate the leak in the living room chimney breast and to have said leak repaired;
2. Repair or replace all faulty or leaking windows to ensure they are in a reasonable state of repair and in proper working order;
3. Repair or replace the living room radiator to ensure it is in a reasonable state of repair and in proper working order.

The Tribunal order that the works specified in this Order must be carried out and completed within a period of eight weeks from the date of service of this Notice.

**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.**

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.

**Please note that in terms of section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a Property at any time during which a RSEO has effect in relation to the Property. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents typewritten on this and the preceding page are executed by Helen Forbes, solicitor, chairperson of the tribunal at Inverness on 28<sup>th</sup> August 2021 before this witness Ishbel Wright, 20 Ardhorn Place, Inverness

**I Wright**

witness

**H Forbes**

chairperson

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

**Chamber Reference: FTS/HPC/RP/21/0747**

**Title number: Subjects registered in the Land Register of Scotland under title number FFE127516**

## **The Parties**

**Mrs Orietta Pili, 35 Hoggan Crescent, Dunfermline, KY11 4PU (“The Tenant”)**

**Mrs Janina Winski, c/o The Morgan Law Partnership, 33 East Port, Dunfermline, KY12 7JE (“The Landlord”)**

**Subjects: 35 Hoggan Crescent, Dunfermline, KY11 4PU (“the Property”)**

## **Tribunal Members**

Ms H Forbes (Legal Member)

Mr Angus Anderson (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 Landlords have complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b).

## **Background**

1. By application dated 22<sup>nd</sup> March 2021, made under section 22 of the Act, the Tenant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The Tenant considered that the Landlord has failed to comply with her duty to ensure that the Property meets the repairing standard, in that the Property is not wind and water tight and in all other respects reasonably fit for human

habitation; the structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; and the Property does not meet the tolerable standard

3. The Tenant listed the issues as follows:

*The Property is not wind and watertight – reference made to roof and windows*

*There is visible penetrating damp and mould*

*Water comes in through the windows*

*The radiator pipes are switched making them inefficient*

4. As part of the Application, the Tenant enclosed copy correspondence between the Tenant and the Landlord, and copy tenancy agreement.
5. The Tenant provided formal notification to the Landlord on 25<sup>th</sup> March 2021.
6. A decision to refer was made by a legal member with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber) on 9<sup>th</sup> April 2021.
7. By email dated 4<sup>th</sup> May 2021, the Landlord made written representations.
8. A Case Management Discussion (“CMD”) took place by telephone conference on 26<sup>th</sup> May 2021. The Tenant was in attendance. The Landlord was not in attendance and was represented by Mr Russel McPhate, Solicitor. An interpreter was in attendance.

## **Roof**

9. The Tenant said that repairs had been carried out to the roof in February 2021. The roofer has since reattended but could not work out where the problem is, as the roof looks fine from the outside. There is a crack on the living room ceiling. The wallpaper is stained with mould in the living room and kitchen and the situation is worse when there is heavy rain.
10. Mr McPhate confirmed that the roof was attended to in December 2020 and February 2021 after reports of leaks. Repairs were carried out initially, and the roofer did not find any additional problems on the second visit. The Landlord’s position is that the roof is water tight. A report from the roofers has been requested. The roof is a flat roof. It was reported by experts that the mould problems inside are due to condensation. The Tenant was given advice on ventilation and heating, and provided with a dehumidifier. Extractor vents are to be installed in the windows in June 2021.

## **Damp and mould**

- 11.** The Tenant said there are problems with mould in the kitchen, living room, bedrooms, stairs and on the external wall. The walls are sometimes completely wet. There is mould on the bed and on clothes kept in the wardrobe and under the bed. The walls in her son's bedroom are completely wet. The Tenant has to clean everything with bleach every two weeks. At the start of the tenancy, there was a budget given to improve matters. An attempt was made to decorate, but the wallpaper would not stick to the walls because they were so wet.
- 12.** The Tenant has been told to open the windows and leave them open for 15 minutes at a time. This is difficult in cold weather. The Tenant has been told to keep the heating on all the time at a low heat. This is not appropriate due to cost and the fact that two of the heaters do not work at a low heat. There were problems with the first dehumidifier provided. It was old and did not work. The second dehumidifier is only suitable for areas of 18 square metres. The Tenant has been using the dehumidifier and it collects large amounts of water. It has been used continuously for 15 days, as instructed. The Tenant said it is ridiculous to suggest keeping heating on all day every day. The temperature in the flat never rises above 17 or 18 degrees.
- 13.** Mr McPhate said two experts had checked the Property and found no damp in the walls. There was mould and it was put down to condensation. The experts suggested improved ventilation, low constant warmth, and a dehumidifier. The dehumidifier provided does only covers 18 square metres, but it can be moved from room to room. The Landlord's position is that no more can be done if the Tenant will not follow the advice given.
- 14.** Responding to questions from the Tribunal, Mr McPhate said there is one expert report available in respect of these issues.

## **Windows**

- 15.** The Tenant said the water ingress through all the windows depends on the direction of the wind and rain. It enters and drips onto the floor and surfaces. She has to use towels to mop it up. The Tenant said that a handyman commented that the windows were not made to sustain heavy rain. There is water sitting in the space between the double glazing.
- 16.** Mr McPhate said the Tenant may be correct. There have been difficulties getting contractors to attend. A contractor was due to attend on 6<sup>th</sup> May 2021, but he was unwell. Another contractor has now been contacted and will attend when they are available.

## **Heating**

- 17.** The Tenant said the living room heater sometimes leaks water. The hallway and bedroom heaters, when set at low mode, go off soon after they are put on. The Tenant's son's bedroom heater is always piping hot. She was told by a technician not to use the thermostat valves on the radiators because they are old and not in working order. Some work has been carried out to the heaters but the situation remains the same. The loss of pressure issue has been rectified, but the living room radiator still leaks a little. The Tenant is aware of how to use the heating system and had read the instructions when the tenancy started.
- 18.** Mr McPhate said a heating engineer had attended a number of times. He fixed a leak to one valve and no other leak had been reported. The heating engineer had confirmed that some radiator pipes had been fitted the wrong way round but this did not affect their efficiency. It was the opinion of the heating engineer that the Tenant will not listen to him when he explains how the heating works.
- 19.** Responding to questions from the Tribunal, Mr McPhate said there is no report from the heating engineer. There are emails, and a report could probably be obtained.

## **Further discussion**

- 20.** Responding to questions from the Tribunal, the Tenant confirmed that there is no bathroom fan. There is an extractor fan above the cooker, but it is not vented to the outside. The Tenant said she always uses this fan when cooking.
- 21.** The Tenant had hoped to lodge photographs but had understood they would not be accepted. The Tribunal confirmed that photographs would be helpful.
- 22.** The Tribunal decided to proceed to an inspection of the Property.
- 23.** By email dated 18th June 2021 the Landlord's representative lodged the following productions:
  - (i) Report by Peter Cox Preservation dated 25 January 2021.
  - (ii) Report by The Preservation Company dated 23 April 2021.
  - (iii) Report by TL Roofing – undated.
  - (iv) Report by Heatcare dated 11 June 2021

## **The Inspection**

- 24.** An inspection took place on 13<sup>th</sup> August 2021. The Tribunal Members were in attendance. The Tenant and her son, Mr NS Schintu were in attendance. Mr Russell McPhate, Solicitor, was in attendance as the Landlord's representative.
- 25.** The property is a self-contained first floor flat in a semi-detached block containing two flats. The property was constructed around 1960 and is located

in an area of similar style properties around one mile south east of Dunfermline town centre. The walls are of cavity brick construction and there is a flat roof, apparently constructed of concrete/brick, clad with felt or similar type of waterproof membrane. Accommodation comprises entrance hall and staircase at ground level with hallway, lounge, kitchen, bathroom and two bedrooms at first floor level. There is a gas fired central heating boiler with water filled radiators throughout the flat. The windows are double glazed throughout.

**26.** The Tribunal observed the following:

**Kitchen**

The mechanical extractor fan was operational but had no anti-blow back flap. There were gaps to the plaster around the fan. The cooker hood was of the recycling filtered type, and did not extract to the outside.

Moisture readings with a damp meter showed normal levels throughout the kitchen. There was mould growth evident on the external kitchen wall.

**Lounge**

Moisture readings throughout the living room were normal with the exception of an area on the chimney breast, near the ceiling, where a patch of approximately 300mm x 300mm showed high moisture readings. There was a dark line along the top of the wallpaper above the chimney breast, and the wallpaper was peeling, with mould evident beneath the paper.

**Front bedroom**

Moisture readings were normal throughout the bedroom. There was mould present beneath peeling paper on the side wall.

**Rear bedroom**

Moisture readings were normal throughout the bedroom. There was mould growth evident in the corners, and the wallpaper was lifting slightly.

**Bathroom**

There was no mould visible in the bathroom. Moisture readings were normal. There was some peeling textured paint on the ceiling. The extractor fan was operational.

**Windows**

The window catch in the kitchen was broken on the lower right hand side and could not be used in the tilt position.

The front bedroom window handle on the side wall was loose and the window was binding on the frame when opened.

Otherwise, the windows throughout the Property appeared to be operational. The weather was dry and calm. No water ingress was noted.

### **Heating system**

The hall cupboard housed the gas boiler. The heating was turned on at the request of the Tribunal. All radiators, with the exception of the landing radiator, which was not turned on, heated up during the inspection.

There was a receptacle with collected water below the corner of the lounge radiator, and corrosion evident to the lower edge of radiator.

In the hall cupboard, there was damage to the ceiling plaster, and evidence of a loose vent. This had not been included in the application.

### **External**

The front elevation had been re-rendered in recent months. Only very limited inspection of the chimney was possible as the surface of the flat roof could not be seen.

On the back elevation, historic repairs were evident to the rendering. There was loose rendering on the left hand side of the kitchen window. The terminal was missing from the bathroom extractor vent. Historic repairs were evident to the right hand downpipe. There was staining from the bathroom overflow outlet.

27. Following the inspection, the Ordinary Member compiled a schedule of photographs which was circulated to the parties.

### **The Hearing**

28. A hearing took place by telephone conference on 20<sup>th</sup> August 2021. The Tenant was in attendance. The Landlord was not in attendance and was represented by Mr Russel McPhate, Solicitor. An interpreter was in attendance.

### **Roof**

29. The Tenant said the roof appeared to be fine at the moment, but there had been significant issues with mould around the chimney breast in the living room, which had started around January 2021. The situation had improved somewhat during the summer months. The Tenant said the chimney breast issue had been notified to the Landlord's representatives, and she had been told someone would visit to check this. No one had visited.

30. Mr McPhate said the roofer had visited on two occasions and the original problem had been dealt with. The issue with the chimney breast appeared to



be a new issue that may or may not be connected to the roof. The Landlord is now aware of the issue and will have it inspected.

### **Heating**

31. The Tenant said there is no problem with pressure in the heating system now. She continues to have problems with the radiators which turn off if the thermostat valve is set at a lower setting. Responding to questions from the Tribunal, she said the radiator in the living room leaks on occasion.
32. Mr McPhate said the heating had been addressed, however, the issue with the leaking living room heater will be investigated.

### **Windows**

33. The Tenant said all the windows with the exception of the staircase window allow water ingress during wet weather. There are problems with misting between the double glazing panes. The kitchen window allows water ingress leading to water pooling on the worktop.
34. Mr McPhate said the windows had been examined and it had been agreed that all leaking windows would be replaced. A quote has been received but no date has yet been set for the work to be carried out.

### **Damp**

35. The Tenant said the walls all appeared to be dry now, with the exception of the chimney breast in the living room. She continued to be concerned about mould beneath the wallpaper in the bedrooms and living room. There had also been mould in the kitchen and bathroom. There was no obvious mould in the staircase, but there is a damp smell. There is also a damp smell in the living room and this is not healthy. Responding to questions from the Tribunal, she said she hoped the Landlord would arrange to remove the wallpaper and clean the walls, perhaps using anti-mould paint or varnish.
36. Mr McPhate said it was the Landlord's intention to address the chimney breast issue, and thereafter to redecorate the Property. At the time at which the application was made, the problem was believed to be due to condensation. It was now clear there may be a penetrating damp issue in the living room. Responding to questions from the Tribunal, Mr McPhate said he was unaware of whether there had been any cavity wall insulation investigations. Asked whether there had been any previous problems with mould in the Property prior to this tenancy, Mr McPhate said his firm had not dealt with the Property prior to this tenancy. He was not aware of any issues with mould in the past.

### **Fans**

37. The Tribunal was aware that extractor fans had been installed in the kitchen and bathroom after the application to the Tribunal was made. The Tenant said

the bathroom fan was faulty as it should be automatic but was not. She felt it should have a humidity sensor. The kitchen fan was letting in air from outside. The kitchen fan switches itself on, even when the Tenant is not cooking. It had been running at bedtime the previous evening and again in the morning.

38. Mr McPhate said the fans would be looked at, with the kitchen fan properly fitted and finished. He pointed out that there was a difference between a fan not working and not being automatic. This was not necessarily a fault.
39. Mr McPhate made a submission regarding timescales should the Tribunal put a Repairing Standard Enforcement Order in place. There are currently issues with a) accessing contractors due to the Covid-19 pandemic restrictions; and b) supplies of materials in relation to Brexit.

### **Tribunal discussion**

40. The Tribunal determined that:

- (a) The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006)**

The Property is not wind and watertight, due to the ingress of water around the chimney breast in the living room, which is causing penetrating damp issues. The cause of the ingress requires to be investigated and repairs carried out.

Although the Tribunal noted obvious signs of mould throughout the Property, it made no findings in relation to the historical issues of dampness. There was insufficient evidence before the Tribunal to determine the cause. The Tribunal noted that two specialist reports attributed the problem to condensation, and that the problem appeared to have improved since the installation of extractor fans and works to the roof and heating system.

- (b) The structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order.**

The Tribunal found that the windows of the Property were not in a reasonable state of repair and in proper working order. The kitchen window requires repair. The front window on the front bedroom requires repair. The Tribunal did not observe any water ingress at the time of the inspection, which took place during dry weather, but it was noted that there was agreement between the parties that some of the windows are leaking, and that the Landlord intends to replace all leaking windows.

- (c) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.**

The Tribunal found that the radiator in the living room is not in a reasonable state of repair and in proper working order, due to the leak and corrosion. This requires to be attended to.

The Tribunal made no findings in relation to the other radiators in the Property. They were tested during the inspection and found to be heating appropriately. The Tribunal was not persuaded that any work was required to alter the valves or pipes.

### **Observations**

41. In relation to the heating system, the Tribunal considered it may be helpful for the Landlord to provide written instructions for the Tenant on the operation of the heating system and radiator valves. The Landlord may also wish to investigate the matter raised in the Heatcare report as to whether the bedroom and hallway require the installation of larger radiators. This may help to avoid a recurrence of issues with condensation in the winter months.
42. It may be prudent for the Landlord to instruct a cavity wall insulation specialist to examine the Property.
43. The Tribunal noted that the Landlord has undertaken to decorate the Property throughout, when all repairs have been attended to.
44. The Tribunal considered that the extractor fans did not form part of the application, as they had been installed after the application was made, and it was unclear whether issues with their operation are a result of faults or operator error due to an absence of instructions. The Tribunal noted that the Landlord has agreed to address issues with the extractor fans, including sealing the gaps around the kitchen fan, installing an anti-blow back flap on the outside of the kitchen fan, ensuring that both fans are in proper working order, and installing a terminal on the outside wall in respect of the bathroom fan. It may be helpful for the Landlord to ensure that the Tenant is provided with full details and operating instructions for the extractor fans.

### **Decision**

45. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
46. The decision of the Tribunal was unanimous.

### **Right of Appeal**

47. **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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# H Forbes

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Legal Member and Chairperson  
Date: 26<sup>th</sup> August 2021