

# **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 UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Chamber Reference number: FTS/HPC/RP/17/0225**

**Re: Property at 13F, Wallfield Crescent, Aberdeen AB25 2LJ ("the house")**

#### **The Parties:**

- **Mr Matthew Buchan, residing at the house ("Tenant")**
- **Mrs Jennifer Alice Dowds or Paterson, residing at 5 Monymusk Terrace, Aberdeen, whose agents are Homeguard Leasing, 115 Rosemount Place, Aberdeen ("Landlord")**

**Tribunal members: Mrs Aileen Devanny (legal member and chairperson); Mr Colin Hepburn (ordinary member (surveyor))**

#### **DECISION**

The First-tier Tribunal, having made such enquiries in relation to the application submitted for a determination as to whether the Landlord has complied with the duty imposed by Section 14(1) (b) in relation to the house concerned, and taking account of the application, written and oral representations, and findings at an inspection, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act").

#### **BACKGROUND**

1. By application made on 19 July 2017 the Tenant applied to the First-tier Tribunal (hereinafter referred to as "the Tribunal") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Section 13(1) (a) of the Act which states that " the house is wind and watertight and in all respects reasonably fit for human habitation". The Tenant's complaint relates to the back bedroom window frame which he states is rotten. The Tenant's application included a copy letter to the Landlord's agents intimating the complaint with a recorded delivery receipt.

3. By letter dated 25 July 2017, the Tribunal gave intimation that the President had made a decision to refer the application under Section 23(1) of the Act to a Tribunal.

The Tribunal comprised the following members:

Mrs. Aileen Devanny, Legal member and chairing member  
Mr. Colin Hepburn, Ordinary member (surveyor)

4. The Tribunal served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord, the Landlord's agents and the Tenant.

Following service of the Notice of Referral, the Tenant and the Landlord submitted written representations. The Landlord and Tenant indicated that they would either attend or be represented at the inspection and the Tenant indicated he wished to attend the hearing but the Landlord's agent indicated that there would be no attendance at the hearing. The Tenant gave no further information beyond explaining how the stress of dealing with the complaint had impacted on his health.

5. In the written representations the Landlord indicated that an inventory of the house was carried out at the start of the tenancy but no mention was made of the window disrepair at that time. The Landlord's representations outlined the events occurring since July 2016 when Homeguard Leasing took over management of the house and in particular the complaints made by the Tenant and the responses to these complaints. The representations noted that a joiner attended around September 2016 and indicated that the window was not particularly draughty and that the window was old and showing signs of wear and tear but was not in need of replacement at that time. Further visits were made by the Landlord's agents in October 2016 and March 2017. No fault was found with the window in October 2016 by the Landlord's maintenance manager. The Landlord's agents have obtained two quotes for a replacement window and the Landlord's instructions were awaited. A notice to quit had been served on the Tenant.

6 The Tribunal inspected the house on the morning of 22 August 2017. The Tenant provided access to the house and was present throughout the inspection. His supporter Rev. Nick Bowry was present. Also present throughout the inspection was Mr. Gavin Strachan from the Landlord's agents.

7. Following the inspection of the house, a hearing took place at the Credo Centre, John Street, Aberdeen. The Tenant with Rev. Bowry attended. Neither the Landlord nor the Landlord's agent attended the hearing. The Tenant submitted that the back bedroom window was defective and provided no further information.

## **SUMMARY OF THE ISSUE**

8. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

## **FINDINGS IN FACT**

9. The Tribunal made the following findings in fact:-

9.1. The Tenant has a tenancy of the house. The tenancy commenced on 5 February 2016.

9.2. The Tenant notified the Landlord's agents of the complaint relating to disrepair to the back bedroom window and the Landlord is aware of this alleged repair. This is not in dispute by the Landlord.

9.3 Inspection revealed that the house is a top floor flat in a three storey granite stone tenement in a city centre location. The Tribunal confined their inspection to the item of complaint in the application.

The weather at the time of inspection was dry.

Inspection revealed that the back bedroom window is double glazed with a timber frame and vent to the top of the window. The timber cill and frame is rotten and there is movement in the bottom timber cill at the joint. There is a gap between the window frame and the fixed window opening. The window is not wind and watertight because of the defects. This window is part of the structure of the house. The window in the back bedroom is part of a shared unit with the adjoining kitchen window.

9.4. At the hearing the chairperson explained the procedure relating to applications before the Tribunal relating to repairing standard complaints.

## **REASONS FOR THE DECISION**

10. In considering the repairing standard issue the Tribunal carried out an internal and external inspection of the house and in particular closely examined the specific defect highlighted by the Tenant in the application. In addition, the Tribunal carefully considered the written documentation and written representations submitted by the parties.

Visual inspection of the house indicates that the cill and frame of the back bedroom window is decayed. The Tribunal considers that to comply with Sections 13(1) (a) and (b) of the Act the back bedroom window will require to be replaced as the window is beyond repair. The Tribunal considered that a period of two months would be a reasonable period of time for the repair to be carried out.

## **DECISION**

11. The Tribunal, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

12. The Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2), which Order is referred to for its terms. The Landlord is reminded that it is a criminal offence to let the house whilst a repairing standard enforcement order applies to the house.

13. The decision of the Tribunal is unanimous.

## **APPEAL PROVISIONS**

**14. A landlord 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.

**A Devanny**

**Chairing Legal Member of the Tribunal  
Dated: 30 August 2017**

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



**SCHEDULE OF PHOTOGRAPHS TAKEN AT INSPECTION ON 22  
AUGUST 2017**

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A Devanny

30/8/2017





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