

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RP/21/0672

Title no: ANG18856

9A Hilltown Terrace, Dundee DD3 7BB (“the property”)

The Parties:-

Miss Elizabeth McDaid, 9A Hilltown Terrace, Dundee DD3 7BB (“the Applicant”) represented by Dundee Law Centre, 101 Whitfield Drive, Dundee DD4 0DX (“the Applicant’s representative”)

Glen Bruar Properties Limited, c/o Rent Locally Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the Respondent”) represented by Rent Locally, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the Respondent’s agents”)

Tribunal Members:

Graham Harding (Chairman) and Lori Charles (Ordinary Member)

Whereas in terms of their decision dated 5 November 2021 The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The Act”) and in particular that the Landlord has failed to ensure that the House is:-

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (b) the structure and exterior of the house (including drains, gutters and external pipes) 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 House concerned 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:-

- (i) To instruct a reputable firm of damp and timber specialists to inspect, investigate and to provide a report in relation to remedial works required to address any timber defects and damp issues affecting the bathroom, kitchen cupboard and the gable wall of the lounge and to exhibit said report to the Tribunal within a period of 30 days of the date of this order.
- (ii) To carry out such remedial works as recommended in said report within a period of three months from the date of service of this Notice.
- (iii) To paint the front bedroom cupboard with a suitable block paint to remove all traces of mould and to confirm to the Tribunal within six weeks from the date of service of this Notice that the work has been completed.
- (iv) To remove the silicone sealant in the rear facing bedroom and replace with plaster and redecorate and to confirm within a period of six weeks from the date of service of this Notice that this work has been completed.
- (v) To repair the loose and missing plaster and fill any holes in the kitchen cupboard and kitchen and redecorate and confirm to the Tribunal within six weeks from the date of service of this notice that the work has been completed.
- (vi) To replace the corroded external cast iron soil vent pipe from the bathroom to the kitchen waste with a new soil vent pipe and to confirm to the Tribunal within a period of six weeks that the work has been completed.

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.

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 house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the two preceding pages are executed by Graham Harding, legal member of the Tribunal, at Perth on 11 November 2021 in the presence of the undernoted witness:-

J Harding witness

G Harding Legal Member

JULIA HARDING name in full

46 ALMOND VIEW Address

PERTH

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: FTS/HPC/RP/21/0672

9A Hilltown Terrace, Dundee DD3 7BB (“the property”)

The Parties: -

Miss Elizabeth McDaid, 9A Hilltown Terrace, Dundee DD3 7BB (“the Applicant”) represented by Dundee Law Centre, 101 Whitfield Drive, Dundee DD4 0DX (“the Applicant’s representative”)

Glen Bruar Properties Limited, c/o Rent Locally Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the Respondent”) represented by Rent Locally, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the Respondent’s agents”)

Tribunal Members:

Graham Harding (Chairman) and 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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application dated 18 March 2021 the Tenant’s representatives Dundee Law Centre applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”).**
- 2. The application stated that the Applicant’s representative considered that the Respondent had failed to comply with their duty to ensure that the**

house meets the repairing standard and in particular that the Landlords had failed to ensure that: -

(a) The house met the repairing standard.

Specifically, the Applicant's representative complained that: -

1. The electrics were dangerous within the property and the light in the hall did not work.
 2. The bathroom was damp and mouldy following a flood. The floor bevelled.
 3. There was no door to the kitchen and the wall beside the doorframe was coming away from the frame and the skirting.
 4. The window in the small bedroom was unsafe and only secured by a single latch.
 5. The whole flat had damp and mould that was damaging furniture and personal effects.
 6. The windows were not safe and could not be opened.
 7. There was a drain at the rear of the building that was blocked and floods against the building.
 8. No gas and electric tests had been carried out for some time.
3. The Applicant's representatives submitted a copy of the tenancy agreement, correspondence and photographs in support of the application.
 4. By Notice of Acceptance dated 7 April 2021 a legal member of the Housing and Property Chamber with delegated powers accepted the application and referred the application under Section 23 (1) of the Act to a Tribunal.
 5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Respondent on 13 April 2021.
 6. Following service of the Notice of Referral. The Respondent's representatives by emails dated 4 and 21 May 2021, made written representations to the Tribunal.
 7. A Case Management Discussion ("CMD") was held on 24 May 2021. At the CMD it was agreed that the Respondent had carried out some repairs to the property but that there were still some issues remaining with regards to the bathroom as well as damp and mould throughout the property and an allegation that a drain at the rear of the building was blocked and causing flooding. At that time the Respondent's representatives reported that they had been attempting to communicate with Dundee City council as they believed some of the issues were communal and the Council owned other properties in the block.
 8. The Tribunal determined that an inspection of the property was necessary and also issued Directions to the parties.

9. By email dated 26 May 2021 the Respondent's representative submitted written representations complying with the Tribunal's direction.
10. By email dated 26 June 2021 the Applicant's representative submitted written representations complying with the Tribunal's direction.
11. The Tribunal inspected the Property on the morning of 24 August 2021. The Applicant, Mr Goodwin for the Respondent and Mr Trevor White for the Respondent's representatives were present during the inspection. The Ordinary Member of the Tribunal took photographs of the property which were issued to the parties in advance of the hearing.
12. A hearing was initially held by teleconference on 31 August 2021 but due to an administrative error the Respondent's representative had been told the incorrect time of the hearing and the hearing was adjourned to another date.

The Hearing

13. A hearing was held by teleconference on 1 November 2021. The Applicant attended in person and was represented by Ms Menzies of the Applicant's representatives. Mr Goodwin attended for the Respondent and was represented by Mr White of the Respondent's representatives.
14. The Tribunal referred the parties to the Pre-inspection summary and schedule of Photographs and to the high moisture readings in the bathroom and movement in the floor.
15. Ms McDaid explained that there had been a leak under the bath in 2016 and at that time the contractor carrying out the repair had advised her that there was dry rot under the floor and that eventually the bath would go through the floor. For his part, Mr Goodwin said that he had never been advised of any dry rot but he was happy to arrange for a timber specialist to carry out an inspection. Ms McDaid confirmed that an extractor fan had now been fitted in the bathroom.
16. The Tribunal referred the parties to the moderate damp readings obtained in the lounge and noted that the scaffolding that had previously been erected along the gable wall had been removed. The parties did not know the nature of the works that had been carried out. Mr Goodwin again confirmed he was happy for a timber specialist to carry out an inspection of the property.
17. The Tribunal referred the parties to the loose and missing plasterwork in the kitchen cupboard and also the medium to high damp readings. Mr White indicated the issue appeared minor but that the plasterwork could be repaired if necessary. Ms Menzies said that there were a number of holes in the cupboard wall and although they did not extend through to the exterior of the building she queried if they could affect the moisture readings.

18. The Tribunal noted that the area around the window in the rear facing bedroom had been filled with clear silicone sealant rather than plaster or a similar material. For the Applicant Ms Menzies submitted that the wrong material had been used and that the sealant would not hold that Polyfilla should have been used. For the Respondent Mr White submitted that they had relied on the contractor to use appropriate materials but that the sealant could be replaced with plaster and decorated if necessary. He submitted that the cracking on the wall was minor and reflected standard wear and tear. Ms Menzies suggested it needed investigation and Ms McDaid suggested that it could get worse if the building was not maintained.
19. With regards to the evidence of mould in the cupboard in the front bedroom, Ms McDaid said that despite cleaning it could not be removed. Ms McDaid explained that previously she had been unable to open the window in the room but this was no longer the case. Mr White submitted it was a standard ventilation issue. If the room was not properly ventilated it could cause mould. However, Mr White confirmed the cupboard could be painted. Mr Goodwin suggested he was happy to use a paint block to remove any trace of the mould.
20. With regards to the exterior of the property Mr White said that despite phoning Dundee City Council several times and being passed from one person to another he had been unable to make any progress with regards to the communal repairs. He said that he intended writing to the Council as he had just been going round in circles.
21. The Tribunal noted that it appeared from the inspection that some of the downpipes had been replaced but that the drain pipe from the bathroom at the property into the common downpipe was badly corroded and leaking. Mr White suggested that as this was an external pipe it would be a common repair. The Tribunal queried if in fact that would be the case given that it only served the property. Ms Menzies suggested that as it was only for the benefit of the property it would not fall to be common property.
22. The Tribunal acknowledged that the Respondent was offering to carry out further repairs at the property and indicated that it would take this into consideration when reaching a decision.

Summary of the issues

23. The issues to be determined are whether:
- (i) The property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (ii) 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;

- (iii) 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; and
- (iv) The property meets the tolerable standard.

Findings in fact

24. The Tribunal finds the following facts to be established: -

- The tenancy is a Private Residential tenancy.
- The Respondent provided a current Electrical Installation Condition report that was satisfactory.
- The Respondent provided a current Gas Safety Certificate that was satisfactory.
- The Respondent has replaced the windows at the property with new double-glazed windows.
- The light fixture in the hallway has been fixed.
- A door has been installed to the kitchen.
- There are high moisture readings in the bathroom and some movement in the bathroom floor.
- There is mould in the bathroom.
- The Respondent has installed mechanical ventilation in the bathroom.
- There is mould growth along the gable wall in the lounge and medium moisture readings.
- The plasterwork in the boiler cupboard in the kitchen is loose and missing in places.
- There are medium/high moisture readings along the external wall in the kitchen cupboard.
- There is a small hole in the rear wall in the kitchen at the side of a kitchen cupboard.
- An area of missing plaster around the window in the rear facing bedroom has been filled with clear silicone.
- There is minor surface cracking in the wall in the rear facing bedroom.
- There is evidence of mould in the cupboard in the front bedroom.
- A new rainwater pipe has been fitted at the rear of the property.
- The cast iron soil vent pipe between the bathroom and the kitchen is corroded.
- Scaffolding previously erected along the gable wall at the property has now been removed.

Reasons for the decision

25. The Tribunal was pleased to note both at the CMD and at the Inspection and hearing that the Respondent was addressing the Applicant's concerns with regards to the property. The Tribunal noted that the Respondent had gone to considerable expense to install new windows at the property and provide an extractor fan in the bathroom which should improve ventilation

and reduce condensation. The Tribunal was also satisfied that the Respondent had provided a satisfactory Gas Safety Certificate and Electrical Installation Condition Report and had addressed some of the other issues that had been the subject of the complaint such as relacing the kitchen door and fixing the light in the hallway.

26. Nevertheless, it did appear to the Tribunal that further investigation was required at the property particularly with regards to the high moisture readings in the bathroom and kitchen and given the mould growth and medium moisture readings in the lounge. It was concerning that the Applicant had apparently been told some time ago of the existence of dry rot in the property yet apparently that had not been conveyed by the contractors to the Respondent. Given the movement in the floor in the bathroom the Tribunal considered that further investigation in that area was justified. The Tribunal acknowledged that the Respondent was prepared to instruct a firm of timber specialists to remove the bath panel and investigate this issue as well as survey the rest of the property. The Tribunal noted that the Respondent had previously instructed a timber specialist firm Kwiksolve to carry out an inspection of the property and it had concluded the damp proof course was intact and any problem with mould was caused by poor ventilation. Whilst it is of course a matter for the Respondent, in light of the moisture readings obtained by the surveyor member at the inspection the Respondent may wish to consider instructing a second firm of timber specialists in order to obtain a second opinion.
27. Although the issues of loose and missing plasterwork in the kitchen cupboard and hole in the wall may be fairly minor the Tribunal was pleased to note that the Respondent was prepared to carry out repairs and also to replace the silicone sealant in the rear bedroom. The Tribunal was of the view that the cracks in the wall in the rear bedroom were minor as a result of settlement and did not require further investigation and would be resolved when the room was decorated.
28. The Tribunal also noted that there was no evidence of damp within the cupboard in the front bedroom and concluded that the mould had resulted from a lack of ventilation in an enclosed space. Given that the window in the room has been replaced it should be easier to improve ventilation. The Tribunal considered that block painting of the cupboard would improve its appearance and noted that the Respondent was prepared to undertake this work.
29. The Tribunal did not consider that the cast iron soil vent pipe running from the bathroom to the kitchen waste pipe was a common pipe the repair or replacement of which would be deemed to be a common repair. The pipe clearly only served the Respondent's property and no other. It was badly corroded and required to be replaced.
30. The Tribunal gave consideration to continuing the hearing as the Respondent had indicated that he was prepared to carry out any work that the Tribunal considered necessary. However, in terms of Section 24(2) of

the 2006 Act where the Tribunal finds that a landlord has failed to comply with the duty imposed by Section 14(1)(b) it must impose a Repairing Standard Enforcement Order and it was apparent from the Tribunal's findings that the Respondent was in breach of its duty.

Decision

31. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
32. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
33. The decision of the Tribunal was unanimous.

Right of Appeal

34. **A landlord, tenant or third party Applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

35. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G Harding

Signed Graham Harding Legal Member

Date 10 November 2021