

# Housing and Property Chamber First-tier Tribunal for Scotland



## REPAIRING STANDARD ENFORCEMENT ORDER

**Chamber Ref: FTS/HPC/RP/21/1085**

**Re: Property at Flat 15, 3, Lochinvar Drive, Edinburgh EH5 1GJ registered in the Land Register for Scotland under Title Sheet Number MID95091 (“the Property”)**

**Parties:**

**Mr Duncan McNeill-McCallum and Mrs Emma McNeill-McCallum both residing at the Property (the Applicants and Tenants)**

**Mrs Jane Miller (the Respondent and the Landlord) per her representatives Messrs. Elliot & Company, WS 8 Charlotte Street, Perth, PH1 5LL**

**Tribunal Members: Karen Moore (Legal Member) and Andrew Taylor (Ordinary Member)**

### **Notice to Landlord**

Mrs Jane Miller per her representatives Messrs. Elliot & Company, WS 8 Charlotte Street, Perth, PH1 5LL

Whereas in terms of its decision dated 15 September 2021, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the Landlord had failed to comply in respect of Sections 13 (1) (a) and 13 (1) (c) of the Act and has failed to ensure that the Property is wind and watertight and reasonably fit for human habitation and that the installations in the house 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 First-tier Tribunal now requires the Landlord to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlords must on or before 15 November 2021: -

1. Engage a suitably qualified heating engineer to carry out an inspection of and report (“the Report”) on the operation and effectiveness of the electric heating and hot water

supply installation including boiler, all radiators, valves, programmers and thermostats;

2. Follow any recommendations of the Report to ensure that the entire system is fully functioning, safe and in proper working order;
3. On completion of the works provide a copy of the Report and any receipted invoices for the work carried out to the Tribunal and the Applicants and Tenants;
4. Engage a suitably qualified joiner/window specialist to repair or replace the Juliet balcony bedroom door so that it is capable of being properly opened and closed, has intact seals and is wind and watertight and, additionally, to inspect the threshold/sill to the Juliet balcony door and to the lounge patio door unit and to carry out any works required to make these areas wind and watertight.
5. Repair the leak under the en-suite shower room wash hand basin;
6. Replace the badly fitting toilet seat in the en-suite shower room and
7. Carry out all making good and decoration associated with the completion of the foregoing works.

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 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

In Witness Whereof these presents printed on this and the preceding page are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 15 September 2021 before this witness, Norman William Moore, solicitor, Muirfield Business Centre, 1A, South Muirhead Road, Cumbernauld, G67 1 AX

**N Moore** *Witness*

**K Moore**

**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: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act**

**Chamber Ref: FTS/HPC/RP/21/1085**

**Re: Property at Flat 15, 3, Lochinvar Drive, Edinburgh EH5 1GJ registered in the Land Register for Scotland under Title Sheet Number MID95091 (“the Property”)**

**Parties:**

**Mr Duncan McNeill-McCallum and Mrs Emma McNeill-McCallum both residing at the Property (“the Applicants”)**

**Mrs Jane Miller (“the Respondent”) per her representatives Mr. Donald Elliot, Solicitor of Messrs Elliot & Company, WS 8 Charlotte Street, Perth, PH1 5LL and Ms Catherine MacColl, Advocate, Edinburgh (“the Respondent’s Representatives”)**

**Tribunal Members: Karen Moore (Legal Member) and Andrew Taylor (Ordinary Member)**

**Decision**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Respondent has 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 Respondent has not complied with that duty in respect that the Property does not meet the Repairing Standard in respect of Section 13 (1) (a) and Section 13 (1) (c) of the Act.

Further, the Tribunal determines that the Respondent has complied with the duty imposed on her by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Section 13 (1) (d) and Section 13 (1) (h) of the Act.

The reasons for the Decision are set out below.

## **Background**

1. By application received on 7 May 2021 (“the Application”), the Applicants made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination that the Respondent has failed to comply with the duty imposed on her by Section 14(1)(b) of Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (c), 13(1) (d), and 13(1) (h) of the Act.). The Application cited twenty-one items of disrepair in the Property and evidenced intimation of these items to the Respondent. The Application was referred to the Tribunal and a Case Management Discussion (“CMD”) was fixed for 6 July 2021 at 10.00 by telephone conference call.
2. The CMD was intimated to the Parties. Both Parties submitted written representations in terms of the CMD intimation, the written representations being submitted on behalf of the Respondent by her former agents, Braemore Sales and Lettings (“Braemore”). The CMD took place on 6 July 2021 at 10.00 by telephone conference call at which Mr. McNeill-McCallum of the Applicants and Ms Kennedy of the Respondent’s Representatives were present. The Tribunal explained that, in the normal course of procedure before Covid 19, the Tribunal would inspect the Property and then hold a Hearing and the purpose of the CMD was to determine if any matters could be resolved in the interim. The Tribunal advised that its view is that in the case an Inspection and Hearing would be required at a later date. The CMD proceeded and, with reference to the list of items narrated in the Application, Mr. McNeill-McCallum advised that items 5,13,14, 15, 16 and 17 on the list had been addressed. The Tribunal adjourned the CMD to later date for an Inspection and Hearing the dates of which will be notified to the Parties.

3. The Applicants submitted further written representations with copy documents on 28 July and 7 and 31 August, all 2021 and the Respondent's Representatives submitted further written representations on her behalf on 7 September 2021. The Applicant also submitted five short clips of video evidence on 11 September 2021.

### **Inspection**

4. The Inspection took place on 8 September 2021 at 11.30 a.m. at the Property. The Applicant and the Respondent were present at the Inspection. In compliance with Covid 19 procedures, the Tribunal carried out a visual inspection of the Property on its own and, immediately thereafter, the Respondent inspected the Property on her own.
5. The Tribunal inspected the parts of the Property referred to by the Applicants in the Application, namely: -
  - i) The heating system, being the situation of the boiler and radiators and the location of the thermostat, being items 1 and 4 on the list in the Application;
  - ii) The tank above the boiler, item 2 on that list;
  - iii) The heating/hot water control panel in the kitchen, item 3 on that list;
  - iv) The holes at the radiators, item 5 on that list;
  - v) The windows and the Juliet balcony door, item 6 on that list;
  - vi) The lock on the Juliet balcony door, item 7 on that list
  - vii) The leak at the basin in the en suite, item 8 on that list;
  - viii) The ill-fitting toilet seat in the en suite, item 9 on that list;
  - ix) The extractor fan in the en suite, item 10 on that list;
  - x) The draughts in the bedrooms, items 11 and 12 on that list;
  - xi) The pop-up overflow, item 13 on that list;
  - xii) The kitchen cabinet above the sink, item 15 on that list;
  - xiii) The integrated washing machine, item 17 on that list;
  - xiv) The hob cooker, item 18 on that list
  - xv) The finish on the kitchen worktops, item 19 on that list;
  - xvi) The bedroom carpets, item 20 on that list;
  - xvii) The hall flooring, item 21 on that list and
  - xviii) The general condition of the Property in respect of the Tolerable Standard.
6. Due to continuing Covid 19 restrictions the Tribunal's Inspection was limited to a visual inspection. The Tribunal did not inspect the door entry system, item 16 on the

list, nor did the Tribunal inspect the three additional items noted by the Applicants in their written submissions.

7. At the Inspection, the Tribunal took digital photographs which photographs were issued to the Parties.

## **Hearing**

8. The Hearing took place on 15 September 2021 at 10.00 by telephone conference call at which Mr. McNeill-McCallum of the Applicants, the Respondent, Mr. Elliot of the Respondent's Representatives and Ms MacColl all were present. At the outset of the Hearing, the Tribunal outlined the procedure to date, the detail of the Application, the scope of the Repairing Standard and the Tribunal's remit as set out in the Act. The Tribunal invited the Parties to address each item on the list in the Application in turn.
9. For the sake of completeness, during the Hearing, the Parties agreed that items 2, 3, 5, 7, 10, 13, 14, 15, 16, 17 and 18 on the list and narrated above, together with the three additional items noted by the Applicants in their written submissions, have all been repaired satisfactorily.

### **Items 1 and 4: The heating system and the positioning of the thermostat control in the living or sitting room.**

10. These points were addressed together as they relate to the heating system in general. In addition to the Applicants' written submissions, Mr. McNeill-McCallum advised the Tribunal that there had been issues with the heating since the tenancy commenced in 2019, with various contractors attending to attempt to improve efficiency, TB MacKay being the most recent. TB MacKay had indicated that the work they had carried out would make the radiators 60% more efficient and, although, the Applicants have no reason to doubt this, they have reservations until the weather becomes colder during winter. He advised that the Applicants had been told by the Braemore that the boiler should be serviced but this has not been done yet. With reference to the positioning of the thermostat, Mr. McNeill-McCallum advised the Tribunal that Lomond and Baxi, heating engineers instructed by Braemore, had said that this should be in a different position, explaining that, because two of the living room radiators do not have controls, the room can overheat, causing the heating system for the rest of the Property to shut off. He explained further that, if the fire door is closed, as there is only one control and the two radiators are oversized, the

room overheats and the other radiators do not perform efficiently and the heating shuts off.

11. Ms. MacColl did not have any comment to make in respect of the heating system in general but addressed the issue of the positioning of the thermostat control in the living room with the Respondent who advised the Tribunal that the position of the control is the original one from when the Property was constructed and assumed that it was in the correct position. She offered to have TB MacKay look at the positioning.
12. Mr. McNeill-McCallum confirmed to Mr Taylor of the Tribunal that, from the video evidence, the control panel in the kitchen has been remedied and that purpose of the video of the thermostat in the living room and the temperatures at different times of day was to evidence the calibration of the thermostat.

**Item 6: draughts at the door and windows.**

13. In addition to the Applicants' written submissions, Mr. McNeill-McCallum advised the Tribunal that the Respondent's contractor, Alba, had attended and carried out work to the windows and the balconies. He stated that the contractor had noted the difference in temperatures in the rooms and in the main bedroom, in particular. Mr. McNeill-McCallum advised that the Juliet balcony door had been fixed but is not sealed 100% and that there is a gap at the sill of the sitting room balcony door. He advised that Braemore's contractors, Lomond, had recommended that all windows and doors should be serviced but that Alba had only serviced some of the windows.
14. With regard to the Respondent's position and in response to Ms. MacColl 's questions, the Respondent explained that she had taken the decision based on Alba's advice to carry out work on some and not all of the windows as Alba had assured her that only one or two had faults which required work. She advised that she had nothing more to do with Braemore and did not rely on their opinions. In response to Ms. MacColl 's questions, the Respondent advised the Tribunal that Braemore had not told her about the Application until shortly before the date of the CMD and had submitted representations without her knowledge, leaving her responsible for their actions. The Respondent explained that she has since dispensed with their services and has taken steps to address the repairs herself, using different trades people not linked to Braemore. With regard to the windows and Alba's involvement, the Respondent advised that she had contacted Alba direct and

confirmed and what needed done and had instructed and paid for that work. She reaffirmed that Alba had said that not all of the windows need work done.

15. With regard to the Juliet balcony door, the Respondent advised the Tribunal that she had resided in the Property for four years and that the Juliet balcony door had been in working order. It did not need to be pushed at the top to close, unless on a particularly windy day.

16. In response, Mr. McNeill-McCallum acknowledged the Respondents' difficult position with Braemore but stated that there are still issues with the air coming in at the sitting room balcony door and at the Juliet balcony and that Braemore had advised that Alba would service all windows and doors.

**Items 8 and 9: pop-up waste and toilet seat**

17. The Parties agreed that TB MacKay had parts on order to carry out these repairs.

**Items 11 and 12: draughts in main bedroom wardrobe and en suite.**

18. In addition to the Applicants' written submissions Mr. McNeill-McCallum advised the Tribunal that the main bedroom and en suite are particularly cold. With regard to the shower cabinet, in high winds, the air can be heard coming up from shower cabinet. He advised that the estimator from Alba had noted difference in temperature in that room to the rest of the Property.

19. With regard to the Respondent's position and in response to Ms. MacColl 's questions, the Respondent explained that she had been advised by TB MacKay that they could not assist and that it was a matter for the property factor of the building of which the Property forms part. Therefore, she contacted the property factor, Lowther, who inspected the Property but could not determine any issue. She advised that she awaits a written note or report from Lowther.

20. In response to Ms. MacColl 's questions, the Respondent advised the Tribunal that, although opening the walls of the Property had been mentioned, she did not think that this would assist as, as far as she was aware, the insulation did not have anything to do with draughts. With regard to the video evidence of the shower, the Respondent advised the Tribunal that it appeared to her in line with the air pressure in a five-storey flat at a harbour where there is a lot of change in air pressure.



21. Mr. McNeill-McCallum clarified that the Applicants had not asked that the walls be opened. He stated that Lowther had advised him that they would expect to see mould if there were a breach in the outer walls or insulation but there was none.

**Item 19: the kitchen worktop**

22. The Parties agreed that works to sand and re-finish the work tops were programmed for 27 September 2021.

**Item 20: bedroom carpets**

23. Mr. McNeill-McCallum advised the Tribunal that the Applicants position in respect of the ridges in the carpets was fully explained in the written representations.

24. In response to Ms. MacColl 's questions, the Respondent advised the Tribunal that, in her opinion, it appeared that the ruffles in the carpet had been caused by moving furniture and that it appeared that tall shelving had been dragged from the spare bedroom to the main one causing the ruffles. With regard to the smaller bedroom, she advised that this was being used as an office for two, with two office chairs and desks and so it had more wear as a home office than as a spare bedroom.

25. Mr. McNeill-McCallum clarified that the shelving had been lifted and not dragged and that the Respondent's explanation did not address the ridges in other parts of the carpet, namely at the wall.

**Item 21: hall flooring**

26. Mr. McNeill-McCallum advised the Tribunal that hall floor squeaked excessively as it had not been fitted properly. In his opinion, it was too tight and lifting. He stated that the noise of someone walking on it at night if visiting the bathroom wakened others. Mr. McNeill-McCallum stressed that the Applicants had taken the advice of Shelter before raising the complaints with Braemore and submitting the Application and had not done so to raise spurious complaints.

27. In response to Ms. MacColl 's questions, the Respondent advised the Tribunal that the hall floor has always been squeaky and, from the Inspection, it appeared no more so that than when she lived in it. She explained that it is a wooden floor and had been in the same condition when Mr. McNeill-McCallum viewed the Property before taking up the tenancy.

## **Summing Up**

28. Mr. McNeill-McCallum advised the Tribunal that the Applicants had not taken the approach to the Tribunal lightly. They hoped that the heating system will perform better but that remains to be tested. They appreciated that the Respondent has carried out works and had paid in good faith for works which had not resolved matters.
  
29. Ms. MacColl submitted that it is clear that there has been an increase in activity and more focus on having repairs done since the letting agent has been removed. She submitted, however, that, with regard to the heating and draughts, there is no evidence that the heating system does not heat the Property in an adequate fashion and that has not been proved by the Applicants at the Hearing. She submitted that TB MacKay have tested the system and found it to be fine. She submitted that evidence on draughts is different to evidence on temperatures and, in any event, nothing significant had been shown by that evidence. With regard to the shower cabinet, the water under the shower cabinet is not evidence of a draught and there is no evidence that the Repairing Standard is not met.
  
30. With regard to the positioning of the thermostat and the servicing of the windows and doors, Ms. MacColl submitted that the Respondent has explained that, although she has taken responsibility for Braemore's failings, Braemore's views are not representative of her views, nor are those of Lomond, Braemore's contractors. The thermostat is in the original position and TB MacKay have not advised otherwise. She submitted that it the statements by Braemore to the Applicants in respect of servicing the windows are not relevant as the Respondent dealt with this directly.
  
31. With regard to the en suite sink, the toilet seat and the kitchen worktop, Ms. MacColl submitted that although repairs will be carried out, all of these are in a reasonable state of repair at present and not below the Repairing Standard.
  
32. With regard to the bedroom carpets, Ms. MacColl submitted that these are in a reasonable state of repair at present and not below the Repairing Standard, the Respondent having explained why the carpets have become ruffled.
  
33. With regard to the hall flooring, Ms. MacColl submitted that this is in a reasonable state of repair at present and not below the Repairing Standard, the Respondent having explained that it is no different to when she resided there.

34. Mr. McNeill-McCallum clarified that both Lomond and Baxi had recommended repositioning of the thermostat and that TB MacKay had not been instructed in that regard.

### **Summary of the Issues**

35. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1)(a), 13(1)(c), 13(1)(d) and 13(1)(h) of the Act at the dates of the Inspection and Hearing.

### **Findings of Fact**

36. From the Application, the written representations and documents lodged, the video evidence, the Inspection and the Hearing the Tribunal makes the following findings in fact.

37. The Respondent is the owner of the Property in terms of the title registered in the Land Register for Scotland under Title Sheet Number MID95091 and is the Landlord. The Applicants are the Tenants of the Property in terms of a private residential tenancy agreement between the Parties.

38. The Property is a flatted property on the fifth floor of a modern block of flats constructed circa 2004. The Property comprises a living or sitting room with balcony, a kitchen, hallway, two bedrooms, one with both a Juliet balcony and an en suite bathroom and a bathroom. The Property is accessed from street level by an internal stairway and an elevator.

39. From the Inspection, the Tribunal found the following in respect of matters specifically complained of in the Application: -

- i) The heating system appears to be the original heating system with the electric boiler in a hall cupboard, the central control in the kitchen and a thermostat on a wall in the living or sitting room which wall is adjacent to the kitchen. There are three radiators in the living or sitting room, a radiator in each bedroom and one in the kitchen. The heating system could not be tested.
- ii) The expansion tank has been secured above the boiler in the hall cupboard;
- iii) The heating/hot water control panel in the kitchen appears to have been replaced;
- iv) There are no holes or gaps at the radiator pipes throughout the Property;

- v) None of the windows nor the Juliet balcony door or lock could be tested;
- vi) The leak at the sink in the en suite could not be tested;
- vii) The toilet seat in the en suite appeared to be ill-fitting;
- viii) The extractor fan in the en suite appeared to have been replaced;
- ix) The shower cabinet in the en suite and the wardrobe in the main bedroom were sealed and appeared to be draught-free;
- x) The pop-up overflow in the en suite could not be tested;
- xi) The kitchen cabinet above the sink appears to have been secured;
- xii) There appears to be a new washing machine in the Property;
- xiii) The hob cooker appears to have been replaced;
- xiv) The surface of the kitchen worktops could not be tested;
- xv) The bedroom carpets were ridged in parts, but not significantly so and are not worn;
- xvi) There is a squeaking noise when walking on parts of the hall flooring;
- xvii) There is no evidence of rising or penetrating damp
- xviii) There is no evidence that the Property is not structurally stable;
- xix) There is sufficient ventilation, natural and artificial light and heating;
- xx) The Property appears to have an acceptable fresh water supply, or a sink with hot and cold water
- xxi) The Property has an indoor toilet, a fixed bath or shower, and a wash basin which appears to be served with hot and cold water
- xxii) The Property appears to have a good drainage and sewerage system
- xxiii) The electric supply in the Property appears to meet safety regulations
- xxiv) The Property has a proper entrance
- xxv) There are cooking facilities in the Property and
- xxvi) The Property has the requisite fire detection equipment.

40. From the Hearing, the Tribunal found both Mr. McNeill-McCallum of the Applicants and the Respondent to be truthful, fair and reasonable and had no reason to doubt the evidence of either Party.

41. The Tribunal accepted that the Applicants had reported issues with the efficiency and operation of the heating system and issues with draughts from the windows and at

the Juliet balcony to the Respondent's former agents, Braemore, and accepted that attempts had been made to address these issues. The Tribunal accepted that since dismissing Braemore, the Respondent has attended to matters herself and has instructed other contractors.

42. In respect of all of the evidence before it, on the balance of probabilities, whilst the Tribunal is satisfied that the windows have been repaired or serviced, the Tribunal cannot be satisfied that both balcony doors have been fully repaired and are free from draughts. The Tribunal did not find any evidence of faults or disrepair to show that the Property was not wind and watertight in respect of the main bedroom wardrobe, the shower cabinet or the windows in general. With regard to the shower cabinet, from the Inspection and the video evidence, the Tribunal found that the shower waste water disturbance is entirely consistent with a waste pipe connected to a soil stack which is vented at roof level and exhibits a syphoning effect due to air and waste flows.

43. In respect of the evidence led, on the balance of probabilities, the Tribunal cannot be satisfied that the heating system in the Property is in a proper working order.

44. In respect of the evidence led and from the Inspection, on the balance of probabilities, the Tribunal cannot be satisfied that there is no leak in at the sink of the en suite.

45. In respect of the written representations with documents, the evidence led at the Hearing and from the Inspection, on the balance of probabilities, the Tribunal is satisfied and found that: -

- i) The water tank is secured above the boiler in the hall cupboard
- ii) The heating/hot water control panel is in proper working order;
- iii) There are no holes or gaps at the radiator pipes throughout the Property;
- iv) The Juliet balcony door is in proper working order;
- v) The extractor fan in the en suite is in proper working order;
- vi) With regard to both the en suite and the wardrobe in the main bedroom, there are no holes in the walls or gaps between finishes nor any evidence of cold spots or mould on the walls that would evidence a failure to meet the repairing standard in terms of wind and water tightness;
- vii) The pop-up waste to the bath is in proper working order;
- viii) The kitchen cabinet is secured;

- ix) The new washing machine is in proper working order;
- x) The hob cooker is in proper working order;
- xi) The kitchen worktops are in a reasonable condition;
- xii) The bedroom carpets are in a reasonable condition;
- xiii) The hall flooring is in a reasonable condition;
- xiv) The Property is free from dampness and is structurally stable;
- xv) There is sufficient ventilation, natural and artificial light and heating;
- xvi) There is an acceptable fresh water supply, or a sink with hot and cold water
- xvii) There is an indoor toilet, a fixed bath and shower, a wash basin served with hot and cold water
- xviii) There is a good drainage and sewerage system
- xix) The electric supply meets safety regulations
- xx) The Property has a proper entrance
- xxi) There are cooking facilities in the Property and
- xxii) The Property has the requisite fire detection equipment.

### **Summary of the Issues**

46. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (a), 13(1) (c), 13(1) (d) and 13(1)(h) at the date of the Inspection and Hearing.

### **Decision of the tribunal and reasons for the decision.**

47. The Tribunal's decision is based on the Application with supporting documents, the Inspection and the Hearing.

48. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, having found that it cannot be satisfied that the Property is draught-free in respect of the Juliet balcony and the living or sitting room balcony, the Tribunal found that, at the date of the Inspection and Hearing, the Respondent had failed to comply with the duty imposed by Section 14 (1) (b) of the Act in this respect.

49. In respect of the complaint in terms of Section 13(1)(c) that the Respondent has failed to ensure that the installations in the house 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, having found that it cannot be satisfied that the heating system in the Property is in proper working order and having found that it cannot be satisfied that there is no leak in at the sink of the ensuite, the Tribunal found that, at the date of the Inspection and Hearing, the Respondent had failed to comply with the duty imposed by Section 14 (1) (b) of the Act in this respect.
50. In respect of the complaint in terms of Section 13 (1) (d) that the Respondent has failed to ensure that the fixtures, fittings and appliances provided by her under the tenancy are in a reasonable state of repair and in proper working order, having found that the fittings and fixtures and appliances are in a reasonable state of repair and in proper working order, the Tribunal found that, at the date of the Inspection and Hearing, the Respondent has complied with the duty imposed by Section 14 (1) (b) of the Act in this respect.
51. In respect of the complaint in terms of Section 13 (1) (h) that the Property fails to meet the Tolerable Standard, the Tribunal had regard to the Scottish Government guidance in this regard which states that the Tolerable Standard is a basic level of repair which a property must meet to make it fit for a person to live in. The guidance sets out the following criteria as examples of that basic level as :problems with rising or penetrating damp; structural stability; enough ventilation, natural and artificial light or heating; insulation; an acceptable fresh water supply, or a sink with hot and cold water; an indoor toilet, a fixed bath or shower, and a wash basin with hot and cold water; a good drainage and sewerage system; an electric supply which meets safety regulations; a proper entrance and cooking facilities. Having found that the Property meets all of these criteria, the Tribunal found that at the date of the Inspection and Hearing the Respondent has complied with the duty imposed by Section 14 (1) (b) of the Act in this respect.

52. The decision is unanimous.

### **Repairing Standard Enforcement Order**

53. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

### **Appeal**

54. 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.

### **Effect of Section 63**

55. 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:

**K Moore**

Karen Moore, Chairperson

15 September 2021