



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 24(1) of the Housing
(Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/23/0334

**Re: Property at 12 Baxter Park Terrace, Ground Right, Dundee, DD4 6NW (“the
Property”)**

Parties:

**Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee, DD1
3BA (“the Third Party Applicant”)**

Surinder Sidhu, 6 Muirfield Place, Dundee (“the Landlord”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mark Andrew (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) unanimously determined that the Landlord had failed to comply with
the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the
Act”). The Tribunal accordingly made a Repairing Standard Enforcement Order
(“RSEO”) as required by Section 24(2) of the Act.**

Background

- 1 By application to the Tribunal, the Third Party Applicant applied to the Tribunal for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the former Tenant considered the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard.
- 3 In summary the Third Party Applicant submitted that the Landlord had failed to comply with the Repairing Standard as he had failed to provide a Gas Safety

Certificate and Electrical Installation Condition Report, a bedroom door did not open and close properly, a window was broken and two bedroom windows had cages fixed to them with no means of escape.

- 4 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the parties under Schedule 2, Paragraph 1 of the Act.

The Inspection

- 5 The inspection took place on 21 April 2023. Mr Byron Young was present on behalf of the Third Party Applicant. The Landlord was present.
- 6 The Tribunal proceeded to inspect the property. The Landlord produced an up to date Gas Safety Certificate and Electrical Installation Condition Report. Photographs were taken of these documents by the Tribunal.
- 7 The Tribunal viewed the living room window and noted it had a large crack in the glazing. The Landlord confirmed that he was awaiting a contractor to attend and repair this later on that day.
- 8 The Tribunal viewed the bedroom door and noted it appeared to open and close without any difficulty.
- 9 The Tribunal inspected the two bedroom windows and noted that both had cages fixed to them which restricted the opening of the windows and left no means of escape.

The Hearing

- 10 The Hearing took place following the inspection on 21 April 2023. Mr Young was in attendance. The Landlord did not attend. The Tribunal noted he had been advised of the hearing during the inspection and had received intimation from the Tribunal and therefore determined to proceed in his absence.
- 11 The Tribunal noted that the Landlord had produced up to date Gas Safety and Electrical Installation Condition certificates at the Hearing and Mr Young confirmed this. The only matter outstanding on that item was the qualification of the electrician who had carried out the EICR. The Tribunal could not locate him as a member of any electrical trade body.
- 12 The Tribunal confirmed with Mr Young that the Landlord had accepted the window was cracked and required repair. The Tribunal also confirmed with Mr Young that the bedroom door appeared to opening and closing with no difficulties.

- 13 With regard to the cages on the windows, Mr Young confirmed that the reason for raising this item was due to the restriction on opening the windows fully.
- 14 The hearing concluded and the Tribunal determined to issue its decision in writing.

Reasons for decision

- 15 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, and the submissions from the parties at the Case Management Discussions. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 16 The parties were in agreement that the items relating to the production of the Gas Safety Certificate and EICR had been resolved by the production of the documents at the inspection, albeit the Landlord will require to confirm that the electrician who completed the EICR has the necessary qualification. The parties were also in agreement that the bedroom door was functioning correctly.
- 17 The Tribunal had viewed the crack in the living room window and the Landlord accepted that this required replaced, having arranged a contractor to carry out this work.
- 18 The outstanding matter for the Tribunal to determine was therefore whether the cages on the windows amounted to a breach of the Repairing Standard. The Tribunal ultimately concluded that it did. The windows could not currently function properly, as the cages prevented them doing so, and this presented a serious risk to residents by preventing a means of escape by those occupying the bedrooms. The Tribunal had noted there were locks on both bedroom doors which would further increase that risk in the event of a fire. On that basis the Tribunal considered that the cages should be removed in order to ensure that the windows were functioning correctly.
- 19 The Tribunal therefore concluded that the property does not meet the Repairing Standard for the above reasons and in terms of the following provisions of the Act:
 - (i) In respect of section 13(1)(a), fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order;
- 20 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal “must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard”. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as

required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is one month.

21 The Tribunal would request that the Landlord provides proof by way of photographs once the items on the RSEO have been addressed, together with copy invoices to confirm the works carried out to the living room window. The Tribunal will then consider whether the matter can be further determined without a reinspection.

22 The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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 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 is abandoned or determined.

9 May 2023

Legal Member/Chair

Date