

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

**Chamber Ref: FTS/HPC/RP/21/3063**

**33 India Street, Montrose, Angus DD10 8PQ  
("The Property")**

**The Parties:-**

**Mr Rodger Dolan, 33 India Street, Montrose, Angus DD10 8PQ  
("the Tenant")**

**Mrs Elizabeth Petrie Swankie, the Homestead, 10 Bents Road, Montrose,  
Angus DD10 8QA  
("the Landlord")**

**Tribunal Members**

**Graham Harding (Legal Member)**

**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) in relation to the house concerned, and taking account of the evidence led by both the Tenant and the Landlord, 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 5 December 2021 the Tenant 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 Act").
2. The application stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that: -

- (a) That the house was wind and watertight and in all other respects reasonably fit for human habitation; and
- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

Specifically the Tenant's representative complained that: -

The roof of the property suffered from slipped and dislodged slates and nail sickness and needed stripped and re-tiled.

There was water ingress in the front bedroom.

There was water entering the bathroom through the light fitting which had then been removed.

- 3. By Notice of Acceptance dated 20 December 2021 a legal member of the Tribunal with delegated powers accepted the application and a Notice of Referral was issued on 6 January 2022.
- 4. Following service of the Notice of Referral, the Landlord submitted written representations to the Tribunal dated 17 January 2022 and received on 18 January 2022. The Landlord submitted further written representations dated 20 January and 16 and 20 February 2022.
- 5. The Tenant submitted further written representations to the Tribunal dated 19, 21 and 23 January, 3, 20, 22 and 23 February 2022.
- 6. The Tribunal inspected the Property on the morning of 17 February 2022. The Tenant was present during the inspection. The Landlord did not attend. The Ordinary Member of the Tribunal took photographs of the property and prepared a Pre-hearing Summary and Schedule of Photographs that was circulated to the parties in advance of the hearing.

### **The Hearing**

- 7. A hearing was held by teleconference on 25 February 2022. Both parties were in attendance.
- 8. The Tenant submitted that the Schedule of Photographs did not reflect a true picture of the new roof and that the photographs he had submitted showed that the roof works were still not complete as there were gaps between the tiles and a hole could be seen and the lead flashing left a lot to be desired. The Landlord confirmed that there was still some work to be completed on the roof including the addition of a ridge tile and she accepted that some of the tile edges were not aligned and explained that she was waiting on the contractors returning to complete the job. She said that she had told the contractor she was not happy with the work and advised the Tribunal that it came with a 20-year guarantee.

9. In response to a query from the Tribunal as regards the problem with the lead flashing the Tenant advised that it did not appear to be properly connected at the chimney. The Landlord advised the Tribunal that as far as she was aware there had been no water ingress from the roof following it being re-tiled.
10. The Landlord advised the Tribunal that the bathroom light had been replaced and was working. She went on to say that contractors were working on re-flooring the bathroom in the property above and the issue that had caused the water ingress into the Tenant's bathroom was resolved. The Tenant confirmed the bathroom light was now working.
11. There was some discussion as to whether or not the contractors had removed the previous render at the front of the house as the Tenant doubted that this was the case. The Landlord advised the Tribunal that she had received confirmation from the contractors that the render had been removed and that three layers had then been applied to repair the crack that had been apparent above the front bedroom window and where it had been thought the water ingress had occurred. The Landlord said that the contractors had not suggested carrying out any internal repairs. She acknowledged that there were high moisture readings but did not know what would have to be done to remedy the problem.
12. The Tenant reiterated that the work done on the front wall by the contractors was completed in about 7 hours and he believed was by applying another coat on top of the existing harling and on one part there was a hollow sound as there had been a door previously located there. The Landlord indicated that she was very disappointed to hear what the Tenant was saying but had not seen the work done herself as she worked in Portlethen.
13. In response to a query from the Tribunal the Tenant confirmed that the last occasion on which there had been water ingress in the front bedroom had been on 29 December 2021 and the time before that had been on 28 August 2021. He thought the water may have come from the crack in the wall or from the roof and down the wall cavity.
14. The landlord confirmed that the bathroom and bedroom would be redecorated once the damp issues had been resolved. The Landlord also advised that she had received a message from the contractor that he had images showing the removal of the old render from the wall.
15. Following the hearing the Tribunal issued a Direction to the Landlord to provide a report from a timber specialist detailing the likely cause of any dampness and any remedial work required to the internal window area of the front bedroom at the property.
16. The Tenant submitted further written representations dated 7, 14 and 26 March 2022.

17. The landlord submitted further written representations dated 11, 18 and 25 March 2022. A report from Richardson & Starling (Northern) Limited, Dundee detailing the proposed remedial work to be carried out at the property was submitted by the Landlord.

### **Findings in fact**

18. The Landlord has instructed contractors to completely re-tile the roof of the building of which the property forms part.
19. The roofing works have largely been completed although some snagging work remains to be completed.
20. On completion the contractors will provide the Landlord with a 20-year guarantee against defects.
21. The electric light fitting in the bathroom has been replaced and is now in working order.
22. The Landlord has instructed contractors to resolve the water ingress issue from the property above the tenant to prevent any future water ingress into the Tenant's bathroom.
23. The Landlord has had contractors re-render the front of the property.
24. There are high moisture readings in the front bedroom window soffit and also mould growth resulting from previous water ingress.
25. Timber specialists Richardson & Starling identified dampness to the window area and have recommended substantial remedial works to the front wall of the front bedroom.

### **Reasons for the Decision**

26. There are ongoing issues between the parties unrelated to whether or not the property meets the repairing standard. In reaching its conclusions the Tribunal has restricted its deliberations to only those matters of fact directly related to the issues around the Tenant's application.
27. The Tribunal was satisfied that the Landlord had instructed contractors to carry out extensive repairs to the roof of the property that involved the removal of the existing slates and completely retiling the roof. Although some minor snagging works required to be completed the Tribunal was in general satisfied with the work and did not consider that the Tenant's concerns merited further investigation.

28. The Tribunal was also satisfied from the oral submissions by both parties that the issues of water ingress in the bathroom and the damage to the electric light fitting had been resolved by the time of the hearing. There was still a high moisture reading in the bathroom ceiling at the time of the inspection however the Tribunal was satisfied that this would dry out over time. The Tribunal was also satisfied that the Landlord intended to redecorate in due course.
29. The Tribunal has noted the Tenant's concerns regarding the render at the front of the property and although it is possible that there may be an ongoing issue the Tribunal does not consider at this stage that further remedial work to the render would be justified. It would of course be open to the Landlord to take up with the contractor any issues she may have with regards to the quality of the work done.
30. The Tribunal has noted the terms of the report by Richardson & Starling with regards to the proposed remedial work to be carried out around the front bedroom window. It was apparent from the inspection given the high moisture readings in that area that remedial work was required and the Tribunal was satisfied that at present in its current condition the property does not meet the repairing standard.
31. The Tribunal also noted from its inspection and from the Richardson & Starling report that there was evidence of black mould in the property. Black mould can occur in a property if there is inadequate ventilation. It is important that windows are opened regularly particularly when cooking or drying clothes as black mould once established can be difficult to eradicate.

### **Decision**

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

### **Right of Appeal**

35. **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**

36. 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.

Signed

Legal Member

Date            21 April 2022