

# 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: PRHP/RP/16/0296**

**Title number: Subjects registered in the Land Register of Scotland under title number PTH28615**

**House address: 1 South Inch Place, Perth, PH2 8AL**

### **The Parties:-**

**Mrs Maisie Brown, 1 South Inch Place, Perth, PH2 8AL, represented by Mr Martin Brown, 40 Woodhouse Road, Hove, BN3 5NE ('the Applicant')**

**WMB Properties Ltd, Chapelshade House, Dundee, Angus, DD1 1HN, represented by Alastair Baptie and Struan Baptie ('the Landlords')**

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, determined that the Landlords have not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

### **Background**

By application received 12<sup>th</sup> September 2016, the Applicant applied to the Private Rented Housing Panel for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').

1. The application by the Applicant stated that she considered that the Landlords had failed to comply with their duty to ensure that the House meets the repairing standard, in that the house was not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the house (including drains, gutters and external pipes) was not in a reasonable state of repair and in proper working order. In particular, she complained of:-

Failing to repair a broken plastic gutter on the roof of his building  
Rainwater falling four floors to the pavement and main entranceway/step  
After heavy rainfall the entrance way and walls are soaked  
The common hallway is very wet and slippery, the walls are damp  
There is evidence of damp penetrating the wall adjacent to living areas

2. The Applicant's representative, Mr Martin Brown, had notified the Landlords' representative, Mr Alastair Baptie, of the alleged defects by email dated 24<sup>th</sup> August 2016, reporting a damaged gutter on the roof directly above the main entrance to the block of flats, in which the House is situated. Mr Brown stated that the splash of water off the pavement had caused the pillars and door of the building to be soaked, and moss had grown up the wall, preventing the wall from drying out. He stated that water may have penetrated the wall into the House. He stated that he had removed the moss and applied fungicidal wash to the walls; he had covered them with plastic; and the Applicant had agreed to put a small bin out when it rained, to catch the splash and keep the entrance dry. Alastair Baptie had responded on the same date, stating that matters would be addressed 'asap'. On 7<sup>th</sup> September, the Applicant's representative again emailed Alastair Baptie asking for a date for the repairs and pointing out that the entrance and pavement were again affected following heavy rain, and they were wet and slippery underfoot. Alastair Baptie responded on the same date, stating that the works were listed and would be carried out 'in order of priority'. In further correspondence dated 9<sup>th</sup> September 2016, between the representatives of the parties, Alastair Baptie directed Martin Brown to contact A&S Properties, stating that WMB Properties were no more than a third party. On 15<sup>th</sup> September 2016, Martin Brown was informed by email by A&S Properties that 'this is an unmanaged flat where we only market for the landlord and thereafter they manage tenure for themselves.'
3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22(1) of the Act to a Committee.
4. The Committee members were Ms Helen Forbes (Legal Member) and Mr Robert Buchan (Ordinary Member).
5. The Private Rented Housing Panel served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties dated 25<sup>th</sup> October 2016.
6. By letter to the Private Rented Housing Panel dated 6<sup>th</sup> November 2016, the Landlords' representative, Mr Struan Baptie, wrote that a contractor had been instructed to fix the rhone pipe, and it had, ostensibly, been fixed on 21<sup>st</sup> September 2016; however, the repair was ineffective and another contractor had to be instructed. A cherry picker was required in order to carry out the work. On 11<sup>th</sup> October, the second contractor attempted to carry out the work, but the cherry picker was too small to reach the affected pipe. The repair was carried out on 31<sup>st</sup> October 2016. Photographs indicating the repair were provided to the Private Rented Housing Panel. The Landlords' representatives were also keen to instruct a damp specialist to examine the House as they believed any problems with damp were caused by condensation, and a failure by the Applicant to open the windows. There was further correspondence between parties, as the Applicant was unwell, and the damp specialist's inspection had to be postponed until 1<sup>st</sup> December 2016. The Landlords' representatives provided the Private Rented Housing Panel with an Electrical Installation Condition Report dated 30<sup>th</sup> May 2016.
7. Further representations were received by the Private Rented Housing Panel from the representative for the Applicant on 21<sup>st</sup> November 2016. Mr Brown enclosed a letter he had written to the Landlords dated 17<sup>th</sup> November 2016, setting out the historical communications between the parties, and answering, and in some instances, refuting, points raised by the Landlords' representatives in their representations to the Panel.
8. On 1<sup>st</sup> December 2016, the functions and members of the Private Rented Housing Panel transferred to the First Tier Tribunal for Scotland, with allocation to the First Tier Tribunal for Scotland (Housing and Property Chamber).

9. Further correspondence was received by the Tribunal from the Landlords' representatives on 2<sup>nd</sup> December 2016, enclosing a report from Hampton Preservation, indicating that black spot mould was noted to a small area of wall within the lounge of the House and on a couple of the vertical blinds. In their opinion, this was caused by a lack of ventilation. The Applicant was advised to keep all trickle vents open and open windows to alleviate the problem. The Landlords' representative also stated that there was no problem with water lying outside the front door as there is a camber on the communal path, and the entrance door and four inch step would prevent water coming in. There had been no complaints from the other tenants within the block.
10. The Tribunal attended at the House on 5<sup>th</sup> December 2016. The weather was dull, dry and frosty. The House is a ground floor apartment within a four storey brick-built tenement block, with mock stone render and slated roof. There are eight flats in the block, which was constructed circa 1907.

The Applicant was present at the inspection, although she was confined to her bed with ill-health. Her representative, Mr Martin Brown, was present. The Landlords' representative, Mr Struan Baptie, was present. Mrs Debbie Scott, Surveyor, was also present at the inspection, for the purposes of training.

The Tribunal inspected the alleged defects and found as follows:-

*10.1 Failing to repair a broken plastic gutter on the roof of his building*

The gutter had been repaired and was in proper working order. There was evidence of green staining to upper window ledges, which was indicative of water having poured down the walls.

*10.2 Rainwater falling four floors to the pavement and main entranceway/step*

The weather was dry, therefore, there was no rainfall on the pavement or main entrance.

*10.3 After heavy rainfall the entrance way and walls are soaked*

As above, there was no evidence of rainfall at the time of inspection.

*10.4 The common hallway is very wet and slippery, the walls are damp*

The hallway was dry at the time of inspection. Damp meter readings did not indicate any problem with damp. There was evidence that a damp course had been inserted, and judging from the appearance of the lower brickwork in the passage, it appears to have been effective, in that there is a clear line below which there is efflorescence and some surface degradation in the brickwork, and above this line there is not.

There was a gap underneath the main front door to the block of flats that may allow ingress of water, however, there was a slight camber in the hallway and step, which should mitigate against water gathering in the hallway.

*10.5 There is evidence of damp penetrating the wall adjacent to living areas*

The Applicant stated that there had been a strong smell of damp within the built-in cupboard in her bedroom. The walls within the cupboard were tested with the damp meter, indicating no problem with damp. There was no smell of damp. The Applicant stated that the smell had diminished since the rhone pipe was fixed and the gas-fired central heating was on all the time.

There was slight condensation present on the double-glazed lounge window. The Applicant's representative said that he had slept in the lounge the previous night, possibly exacerbating any condensation. The trickle vents were open. The damp meter readings on the inside front wall of the House, in the lounge, were green, indicating no problems with damp. The Applicant's representative said that he had re-decorated the flat at the time of moving in, and he had washed off mould and replaced the wall paper. There had been no problems with mould since that time.

The kitchen window was open.

The Applicant indicated that she would not be well enough to attend the Hearing. She indicated that she ensured that windows were opened regularly.

11. Following the inspection of the House, the Tribunal held a hearing in the MacDonald Arms Hotel, Balbeggie. The Applicant's representative was present. The Landlords' representative, Struan Baptie, was present. Mrs Debbie Scott was present for the purposes of training. She took no part in the Hearing.

## **Discussion on the application**

### **11.1 *The gutter/rhone pipe***

The Applicant's representative said that the defective rhone pipe had caused a great deal of misery over a period of six months. He was satisfied that the rhone pipe had now been fixed and the problems caused by the defect were no longer apparent; however, the front door does not close now. The bottom half of the door is swollen.

The Landlords' representative said that he had noticed the fault with the door, and he would ensure the door was repaired so that it operated correctly.

Mr Buchan mentioned the gap under the door, observing that a simple brush weather strip could be fitted to the bottom of the door to lessen the problem of rainwater penetration. The Landlords' representative said he would get a contractor to attend to this matter.

### **11.2 – 11.4 *Issues relating to water falling onto pavement, main entranceway, step and walls.***

The Applicant's representative said that the problem had been particularly bad in heavy rain, and that the bounce of water off the concrete could be substantial. Although there is a camber in the hallway, the water was not exiting quickly enough. There had been particular concerns that the problem would continue into the winter, when there would be the risk of water freezing in the hallway and outside. He felt that the Landlords had underestimated the problem. He was pleased that the problem had now been fixed and the walls seemed to be drying out. He said that the Applicant can now go out without worrying about slipping.

The Landlords' representative said that the Landlords had been notified of the rhone problem at the end of August. There had been no reports of any problems before that. The Landlords were in the block of flats once or twice a week and no other tenant had mentioned the problem. The Landlords were also worried about the risk of frost and they had been keen to have the problem rectified, however, they were let down by contractors, which caused a delay.



The Applicant's representative pointed out that some of the tenants might not have good enough English to report the problem and may not know how to go about reporting such problems.

The Landlords' representative indicated that information was given to all tenants at the start of the tenancy advising them how to go about reporting problems.

#### *11.5 There is evidence of damp penetrating the wall adjacent to living areas*

The Applicant's representative said that the problems caused by the defective rhone pipe had encouraged the growth of heavy healthy moss on the front wall of the building and he had removed it and painted with fungicidal paint. He had not had any assurances or response from the Landlords when he had pointed out the problem. He had been keen to see the problem fixed while the weather was good. There had been a smell of damp in the House. Other people, including the Applicant's GP, could smell the damp. He thought water was penetrating through the front wall due to the rhone pipe problem. The windows were opened regularly in the House. There was far less condensation now that the rhone pipe had been fixed.

The Landlords' representative said they had to evict the previous tenant due to problems caused with condensation, as the tenant would not vent the property. He accepted that the leaking gutter did not help the situation more recently. The building had been renovated in 2007/2008. A damp course had been inserted at that time. There has been flooding in the area in the past.

## **12. Summary of the issues**

The issues to be determined are:

12.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the ingress of water from the defective rhone pipe results in the House not being wind and watertight and in all other respects reasonably fit for human habitation.

12.2 The structure and exterior of the House (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006)

Whether the defective rhone pipe, the structure of the entrance and hallway, and any problems resulting from these issues have led to the structure and exterior of the House not being in a reasonable state of repair and in proper working order.

## **13. Findings of fact**

The Tribunal determined that:

13.1 The House is wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Housing (Scotland) Act 2006).

The House is wind and watertight. The repair to the rhone pipe appears to have been effective and there is no longer a problem with rainwater running down the front wall of the block of flats. There is no longer any evidence of damp within the House.

13.2 The structure and exterior of the House (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006).

The structure and exterior of the House is in a reasonable state of repair and in proper working order, given that the rhone pipe is no longer defective, and there is no longer a problem with excess water gathering at the front of the block of flats or within the front passageway.

The Tribunal members further observed that the secure front entry door did not close properly and there was a gap under the door. The Landlords' representative undertook to attend to these problems.

#### **14. Decision**

The Tribunal accordingly determined that the Landlords had not failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

15. The decision of the Tribunal was unanimous.

#### **Right of Appeal**

**16. 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**

17. 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.

H Forbes

Signed .....

Date ..... 12th December 2016 .....

Chairperson

Photographs taken during the inspection of  
1 South Inch Place, Perth, PH2 8AL



Front of the block

Photographs taken during the inspection of  
1 South Inch Place, Perth, PH2 8AL



Detail at front door



Gap below front door and door not closing



Photographs taken during the inspection of  
1 South Inch Place, Perth, PH2 8AL



Evidence of past rainwater spillage

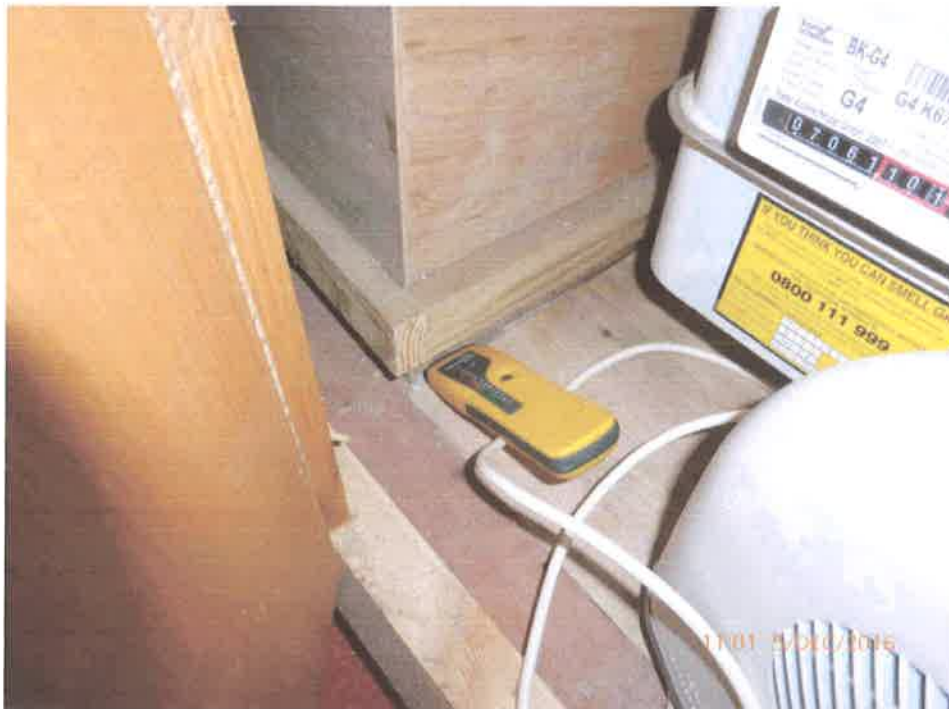


Double glazing with trickle vent in lounge

Photographs taken during the inspection of  
1 South Inch Place, Perth, PH2 8AL



Damp meter readings in lounge



Damp meter readings in bedroom