

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/23/4505

**24 Ground Left, West Street, Dundee DD3 6SB
("The Property")**

The Parties:-

**Mr Nicholas Kerry, 24 Ground Left, West Street, Dundee DD3 6SB
("the Tenant")**

**Area Estates Limited, C/O Hamways Ltd, 104 Station Road East, Oxted,
Surrey RH8 0QB
("the Landlords") represented by Pavillion Properties, 86 Bell Street,
Dundee DD1 1HN**

Tribunal Members

Graham Harding (Legal Member)

Andrew Murray (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 Landlords' 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 13 December 2023 the Tenant's representative Mrs Carol Berkeley 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's representative considered that the Landlord 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 is wind and watertight and in all other respects reasonably fit for human habitation; and
- (b) The installations in the house for the supply of water, gas and electricity and for sanitation and heating water are in a reasonable state of repair and in proper working order.

Specifically the Tenant's representative complained that:-

There was water ingress from the flat above that had spread from the bathroom to the hallway and bedroom causing a damp smell and mould and the collapse of the bathroom ceiling.

- 3. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 21 March 2023.
- 4. Following service of the Notice of Referral. The Tenant by email dated 22 March 2024, made written representations to the Tribunal.
- 5. The Tribunal inspected the Property on the morning of 24 April 2024. The Tenant and Mr Paul Letley of Pavillion Properties were present during the inspection. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
- 6. Following the inspection of the Property the Tribunal held a hearing at Endeavour House, Dundee and heard from both the Tenant and Mr Letley.

The Hearing

- 7. The Tenant advised the Tribunal that although repairs had been carried out to the property, he had still experienced leaks from the ceiling in the bathroom the latest being on 15 March 2024. The Tribunal noted that Hamptons Timber specialists had inspected the property and had looked at the pipe box.
- 8. Mrs Berkeley advised the Tribunal that the original leak had been reported to the Landlord's representatives on 24 September 2023 and that on 12 December she had spoken to their property manager, Mr Billy Baxter. She said that on 13 December the Tenant had travelled to France to stay with her and in his absence on 4 January 2024 the ceiling had been repaired but that there was still a leak.
- 9. For the Landlord Mr Letley acknowledged that his firm had been notified in September 2023 of the water ingress at the property and had instructed plumbers and a roofer and damp specialist to attend at the property to look at the property and at the flats above. He explained that there were

several possible sources and believed that some of the leaks had been fixed. Mr Letley went on to say that the Tenant had been offered alternative accommodation and that the Landlords had used their best endeavours to resolve the issues but that it had not been possible. Mr Letley said that he had instructed Steven Craig of Advanced Plumbing Solutions and Hamptons timber Specialists to attend at the property. He explained that it had been suggested that it had been advised that the walls be stripped back but that the flat would need to be vacant for this to happen.

10. The Tribunal queried if the property had a current Electrical Installation Condition Report and that the electrical installations in the property met the new standards required. Mr Letley said there was a current EICR but was uncertain of the position with regards to the new legislation but would check.
11. Following some discussion between the parties with regards to the Tenant moving into temporary accommodation it was agreed that the work could be done over a period of two or three weeks with the tenant moving out of the property between 10 and 24 May 2024.
12. Given the ongoing water ingress and the need for further repairs the Tribunal indicated that it was minded to make a Repairing Standard Enforcement Order and this was acknowledged by Mr Letley.

Findings in fact

13. The Tenant is a Tenant under a Private Residential tenancy.
14. The Tenant has experienced water ingress at the property affecting the bathroom, hallway and bedroom since September 2023.
15. The Landlords' representatives instructed contractors to carry out repairs at the property in about January 2024.
16. The Tenant has continued to experience water ingress since the repairs were carried out the last occasion being on 15 March 2024.
17. The Landlords have obtained advice from Advanced Plumbing Solutions and Hampton timber Specialists and intend to carry out further repairs at the property.
18. These repairs require to be done over a two-week period when the tenant is not in the property.

Reasons for the decision

19. The Tribunal was satisfied from its own observations at the inspection and from the oral evidence of the Tenant, the Tenant's representative and the Landlords' representative that although some repairs had been carried out at the property the issues around water ingress had not been fully resolved and further remedial work was required. Although the Landlords were willing to undertake further work the Tribunal considered it appropriate to issue a Repairing Standard Enforcement Order to ensure the work was carried out in a timely manner. The Tribunal also wished to be satisfied that the electrical installations in the property were in a satisfactory condition and met the current repairing standard.

Decision

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

Right of Appeal

23. **A landlord or tenant 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

24. 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

Housing and Property Chamber First-tier Tribunal for Scotland



Housing

(Scotland) Act 2006: Schedule of Photographs

Property: 24 West Street Dundee DD1 6SB

Chamber Reference : FTS/HPC/RP//23/4505

Inspection Date: 24 April 2024 - 10.00am

In attendance:

Mr Kerry (tenant)

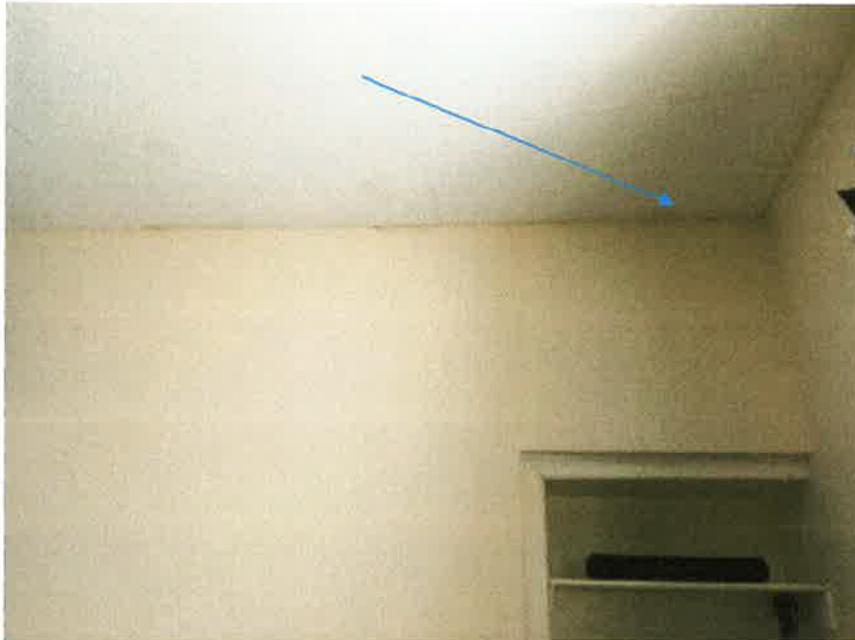
Mrs C Berkeley (tenant's mother)

Mr G Harding (tribunal legal member)

Mr A Murray (tribunal surveyor member)



1 Front elevation 24 West Street Dundee



2 Damp in rear bedroom



3 Damp in rear bedroom



4 Damp at bathroom fan



5 Damp at bathroom pipe box

Andrew Murray DipBS FRICS ; Date of report: 24/04/2024