

04 JUN 2024

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/23/3795**

**Re: Property at 75 Urquhart Road, 2<sup>nd</sup> Floor Left, Aberdeen, AB24 5ND (“the Property”)**

**Parties:**

**Sheila Simpson Tindal, c/o Aberdeen Considine, 5/9 Bon Accord Crescent,  
Aberdeen, AB11 6DN (“the Landlord”); and**

**Mrs Malgorzata Kulinska, formerly of 75 Urquhart Road, 2<sup>nd</sup> Floor Left,  
Aberdeen, AB24 5ND (“the Tenant”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Anderson (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 Tenant sought an order against the Landlord on the basis that they had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the Tenant considered the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard and in particular that the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, on the basis that there was water ingress to the property and evidence of damp.

- 3 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. An inspection was scheduled for the 6 February 2024 with a hearing set for later that day.

### **The Inspection**

- 4 The Tribunal inspected the property at 10am on 6 February 2024. The Tenant was in attendance and permitted access. The Landlord was present and accompanied by her husband and a representative from Aberdein Considine. The weather was dry and sunny.
- 5 The dwelling is the second floor flat within a flatted granite building. The accommodation comprises of a living room, kitchen, bathroom and two bedrooms. The inspection focused on the areas identified in the application which were primarily in the living room and bedroom.
- 6 In the living room damp readings were taken on sections of the wall on the right hand side of the window. High moisture readings of 99% were recorded. There was evidence of water marks to the plasterwork. Evidence of damp staining could also be seen on the wall beneath the window. Damp readings were taken of other areas of the wall which read as normal.
- 7 In the bedroom damp readings were taken on sections of the window soffit which read as normal. There was some slight water staining and some evidence of mould. Sections of the wall next to the window was tested and high moisture readings of 99% were recorded next to the windowsill. There was evidence of water staining on the wall at the chimney breast and high readings of 99% were recorded.
- 8 Photographs were taken during the inspection and are included in the attached schedule.

### **The Hearing**

- 9 The hearing took place following the inspection in Aberdeen in the Employment Tribunal centre on Huntly Street. The Landlord was present and represented by Elaine Elder from Aberdein Considine, the Landlord's agent. The Landlord's husband was also in attendance. The Tenant was present and accompanied by her partner.
- 10 The Tribunal took the parties through the findings of the inspection and asked for their submissions. For the avoidance of doubt the following is not a verbatim account of the hearing, but a summary of the submissions from the parties in terms of those matters relevant to the Tribunal's determination of the application.

- 11 The Tenant explained that the tenancy had commenced in August 2020. After a few months the Tenant noted marks on the wallpaper in the corner. There appeared to be water ingress and then damp patches began to appear. The Tenant had reported this three times to the Landlord's agent. Each time the report was closed without any comment. The damp was worsening. The Landlord's agent would attend to carry out inspections and photos were taken but nothing was done. The Tenant received no information. At the end of December 2023 there were additional issues with the window in the bedroom with water draining down into the wall. This was reported to the Landlord's agent who advised the Tenant to keep the room as dry as possible and collect as much water as possible. The Tenant had sent another photo showing the damp and mould appearing to the Landlord's agent and was informed that the Landlord was looking to carry out repairs in due course. The Tenant understood that some works had been carried out, however no contractors had been inside the property with the exception of a painter decorator.
- 12 In response to questions from the Tribunal the Tenant advised that the Landlord's agent would carry out regular inspections. On each occasion she had pointed out the problems with the wall. The Landlord's agent would take photos and notes. The Tenant was unaware of any roofing contractors or surveyors having come out to inspect the problem. When the issues started it was limited to the lounge area but had since moved through to the bedroom, particularly on the wall next to the chimney. There had been a small damp patch that had grown bigger over time.
- 13 Ms Elder addressed the Tribunal on behalf of the Landlord. She confirmed that the Landlord had taken action upon being made aware of the damp issues by arranging for the gutters to be cleared and the room painted. The Landlord had heard nothing else thereafter and presumed that the matter had been addressed. Towards the end of 2022 further issues were raised by the Tenant. The Landlord had obtained a quote from JOR Property who indicated that it was the roof causing the issues. The roof had been replaced in the summer of 2018 by a company called AFB with a ten year guarantee. The Landlord had faced difficulties in getting work done to the roof as she had been told that only AFB could carry out the work. If anyone else went on to the roof it would invalidate the guarantee. The Landlord confirmed that her upstairs neighbour had organised the contract and the other owners had signed up to it. The Landlord had since spoken to her upstairs neighbour to try and sort the matter out. However AFB had been dragging their heels. They had promised to go out and look at the roof. The Landlord had been chasing them ever since. AFB had eventually attended to look at the roof but couldn't see the problem with the skews that JOR Property had identified. AFB then decided to get an independent report from an insurance company. Another roofing contractor, D&D Slating, had then come out to look at the problem. D&D Slating had found other problems but they did not believe the skews were the primary issue. The Landlord understood that the works outlined in the D&D Slating report were now going to be carried out on instruction from AFB.

- 14 Ms Elder explained that the Landlord would have to obtain the consent of all of the other owners in order to instruct JOR Property to carry out the work. None of the other properties had raised any issues with the roof. One owner had said he would be prepared to pay his share of the bill if it could be proved that the skews were the issue. He wanted proof that AFB were wrong in their assessment. The Landlord explained that she didn't think JOR Property had gone into the property, they had just looked at the roof. She also didn't think D&D Slating had been into the property, despite AFB being told that they needed to look at the damp issues internally in the property as well as the roof.
- 15 The Landlord stated that she had contacted the local Council for help at the beginning of October. AFB had told the Council that they had found issues with broken slates and believed there to be a problem with the chimney can. They told the Council they would rectify this but the Landlord didn't think they had done anything. Ms Elder explained that the Landlord's agent would generally deal with all management issues arising from the tenancy if straightforward. However this matter was complicated by the guarantee in place. The AFB contract was with the Landlord therefore it was unlikely that they would speak with the Landlord's agent. The Landlord's agent did not deal with communal repairs on behalf of Landlords however could offer advice on how to approach the issue. Ms Elder confirmed that the Landlord did not intend on putting any other tenants into the property until the issues with the water ingress were resolved.
- 16 The hearing concluded and the Tribunal determined to issue its decision in writing.
- 17 Following the hearing the Tribunal issued a Direction requiring the Landlord to provide "*All copy documentation held in relation to the guarantee issued by AFB Contracts Ltd in relation to the roofing works carried out in 2018, including details as to the terms of the said guarantee and any related contractual documentation.*" The Landlord provided a response by email dated 11 March 2024 which included copy correspondence between the Landlord and AFB Contracts Ltd dated 6 and 27 January 2017, copy invoice from AFB Contracts dated 6 July 2018, copy Construction Contractor Agreement between the owners of 75 Urquhart Road and AFB Contracts and copy email from AFB Contracts to the Landlord dated 18 January 2024 with D&D Slating report and quote attached.
- 18 The Tribunal received an email from the Tenant on 29 February 2024 confirming that the tenancy had ended as at 28 February 2024 and she had moved out of the property. In light of the issues complained of and potential risk to future occupants the Tribunal determined to continue with the application.
- 19 **Findings in Fact**

The Tribunal found the following facts to be established:-

- 20 The Landlord and Tenant entered into a tenancy agreement dated 11 August 2020. The tenancy between the parties terminated on 28 February 2024.
- 21 There is water ingress to the lounge and the bedroom in the property.
- 22 The property is not wind and watertight.

### Reasons for decision

- 23 The Tribunal determined the application having regard to the terms of the application, the written representations and the findings of the Tribunal's inspection. 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.
- 24 The Landlord did not dispute the fact that the property does not presently meet the Repairing Standard. She had confirmed this in her written representations and in her verbal submissions at the hearing. The Tribunal had some sympathy with her efforts to enforce the warranty in place for the roof by having AFB carry out the remedial works required to address the water ingress to the property. It was clear that she had not ignored the issue and had been actively corresponding with them to try and find a solution.
- 25 The Tribunal carefully considered the provisions of section 16(4) of the Housing (Scotland) Act 2006 which states that "*a landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.*"
- 26 The Landlord had stated that the guarantee in place following the roof repairs by AFB in 2018 prevented any contractors from accessing the roof other than AFB. The contractual documentation produced by the Landlord between the owners of 72 Urquhart Road and AFB was not however explicit in terms of the consequences of proceeding with another contractor in the event that further roof works were required. The Landlord stated that were she to instruct another contractor to carry out the works she would require the consent of all other owners in the tenement block. Whilst the Tribunal accepted that this presented some difficulties for the Landlord, the Tribunal was not satisfied that this meant she lacked the necessary rights to instruct the repairs. The Tribunal did not therefore consider that the provisions of section 16(4) had been met in this case.
- 27 It may be that AFB will ultimately progress the works following the report from D&D Slating. However the Tribunal would have some concerns if such works were to proceed without an internal inspection of the property by the contractor to ensure that the planned works will in fact address the ongoing water ingress to the lounge and bedroom. The Tribunal would therefore

expect there to be further investigation prior to the commencement of any works to ensure that any repairs will rectify the issue.

- 28 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), the house is wind and watertight and in all other respects reasonably fit for human habitation.
- 29 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 six months taking into account the fact that the property is no longer occupied and the challenges the Landlord may face in arranging for the works to be completed.
- 30 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 appeal is abandoned or determined.

R O'Hare

**Legal Member/Chair**

**Date 27 May 2024**