

# 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/17/0083**

**Second Floor Flat, 30 Albyn Grove, Aberdeen, AB10 6SQ  
("the Property")**

**The Parties:-**

**Miss Katie Benson, Second Floor Flat, 30 Albyn Grove, Aberdeen, AB10 6SQ  
(represented by her agent, Mr Scott Benson, 8 Devenick Place, Aberdeen, AB10  
7AH)  
("the Tenant")**

**Mr Cameron McCormack, 5 Quartalehouse, Stuartfield, Peterhead, AB42 5DE  
(represented by his agent, Ms Marlene Leiper, Geraghty Gibb Property  
Managers Limited, 43 Union Terrace, Aberdeen, AB10 1NP)  
("the Landlord")**

**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 Landlord has complied with the duty imposed by Section 14(1)(b) in relation to the Property, and taking account of the evidence led on behalf of both the Landlord and the Tenant at the hearing, determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. By application, which application comprises documents received on 6<sup>th</sup> March 2017, ("the application") 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 by the Tenant stated that the Tenant considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord has failed to ensure that:-
  - (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation.

- (b) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
3. By letter dated 8<sup>th</sup> March 2017 the Convener of the Housing and Property Chamber intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
  4. The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
  5. Following service of the Notice of Referral the Tenant made written representations to the tribunal by letter dated 2<sup>nd</sup> April 2017 with chronology and copy e-mails dated 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> March 2017 attached. The Landlord also made representations to the tribunal by correspondence dated 30<sup>th</sup> March 2017 (indicating that the Landlord's representative would make oral representations at the hearing) and by e-mail dated 3<sup>rd</sup> April 2017.
  6. The tribunal, comprising Miss Gillian C Buchanan, Legal Member and Chairperson, and Mr David Lawrie, Ordinary Member, inspected the Property on the morning of 27<sup>th</sup> April 2017. The Tenant, the Tenant's representative, Mr Scott Benson, and the Landlord's representative, Ms Marlene Leiper, were present during the inspection. Photographs taken during the inspection are attached.
  7. Following the inspection of the Property the tribunal held a hearing at Credo Centre, 14 – 20 John Street, Aberdeen, AB25 1BT and heard from the Tenant's representative, Mr Scott Benson, and the Landlord's representative, Ms Marlene Leiper.
  8. The Tenant submitted as follows:-
    - (a) That on 31<sup>st</sup> January 2017 water began to pour into the Property from above the window in the double bedroom occupied by the Tenant.
    - (b) That the ingress of water had been caused by a failure of the gutters of the Property situated immediately above the affected window.
    - (c) That there had been no such ingress of water during the period of the tenancy prior to 31<sup>st</sup> January 2017.
    - (d) That the ingress of water that affected the bedroom of the Property did not affect the third floor flat situated immediately above the Property which meant that the leak was not caused by the roof of the tenement being defective.
    - (e) That despite repairs having been effected by contractors on behalf of the Landlord over a period of 3 days from around 13<sup>th</sup> April 2017 the repairs undertaken did not prove that the cause of the leak had been remedied.

- (f) That since the repairs were effected, no further ingress of water has taken place.
- (g) That the Tenant moved back into the bedroom during the week commencing 17<sup>th</sup> April 2017.

9. The Landlord's representative submitted as follows:-

- (a) That prior to 31<sup>st</sup> January 2017 there had been no previous incidence of water ingress into the Property.
- (b) That following notification of the ingress of water on 31<sup>st</sup> January 2017 the Landlord's representative obtained two quotations from contractors to identify and undertake necessary repairs and sought to engage with the owners of other properties within the tenement block to share in the cost of the required repairs.
- (c) That Bon-Accord Roofing was appointed to undertake required repairs which were carried out over a period of 3 days from 13<sup>th</sup> April 2017 and comprised replacing both zinc valleys behind the chimney, renewing cement skews and tabling behind the chimney and down both sides thereof, making multiple repairs to the pointing on the chimney, renewing the chimney haunch, checking slates in accessible areas and replacing approximately 12 such slates and clearing out accessible guttering all at a cost of £2,340 inclusive of VAT and to include provision of scaffolding. The Landlord's representative produced to the tribunal at the hearing a copy of an invoice from Bon-Accord Roofing dated 20<sup>th</sup> April 2017 together with photographs taken by Mr Michael Clark of Bon-Accord Roofing on completion of the remedial works.
- (d) That Michael Clark of Bon-Accord Roofing is an experienced contractor who was aware of the nature of the water ingress and the need to repair the source of that leak.
- (e) That once the internal plaster around the affected window has dried out, a contractor will be appointed to undertake and make good the decoration to the bedroom for which a price quotation has been obtained from Mr Norman Byers in the sum of £290. The Landlord's representative produced to the tribunal at the hearing an e-mail from Mr Norman Byers dated 21<sup>st</sup> April 2017 detailing the internal decoration to be undertaken.

### **Summary of the Issues**

10. The issues to be determined are:-

- (a) Whether the Property is wind and water tight and in all other respects reasonably fit for human habitation having particular regard to the prior ingress of water above the window in the bedroom of the Property occupied by the Tenant; and

- (b) Whether the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

### **Findings of Fact**

11. The tribunal finds the following facts to be established:-

- (a) That the Landlord is the heritable proprietor of the Property;
- (b) That the Landlord leased the Property to the Tenant and another for the period from 3<sup>rd</sup> May 2016 to 2<sup>nd</sup> May 2017.
- (c) That the lease between the Landlord and the Tenant is a Short Assured Tenancy.
- (d) That on 31<sup>st</sup> January 2017 a substantial leak occurred in the bedroom of the Property occupied by the Tenant which resulted in water pouring into the Property from above the window.
- (e) That, on the balance of probabilities, as a consequence of repairs effected by the Landlord's contractor, Bon-Accord Roofing, over a period of 3 days commencing on or around 13<sup>th</sup> April 2017 the cause of the leak giving rise to the ingress of water on 31<sup>st</sup> January 2017 has been identified and repaired.
- (f) The Property is wind and water tight and in all other respects reasonably fit for human habitation.
- (g) That the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

### **Reasons for the Decision**

12. The Property is a second floor flat forming part of a four storey tenement comprising shops at ground level and flats over three storeys above. The Property is accessed from a common entrance door leading from Albyn Grove along a common corridor and up a common stairwell.

On the date of the inspection by the tribunal, it was raining fairly heavily.

The tribunal proceeded to examine the window in the bedroom of the Property occupied by the Tenant which had suffered from a substantial leak above the window on 31<sup>st</sup> January 2017. On examination the tribunal found that the window and the frame around the window were properly sealed. The tribunal identified that the internal plaster to the left of the window was dry but that the internal plaster to the right of and beneath the window was damp but appeared to be in the course of drying out.

Repairs to the Property had been carried out by Bon-Accord Roofing over a period of 3 days from 13<sup>th</sup> April 2017 on the instruction of the Landlord. The Tribunal had sight of an invoice from Bon-Accord Roofing dated 20<sup>th</sup> April 2017 narrating the repairs effected and photographs taken by Mr Michael Clark of Bon-Accord Roofing showing the areas of the property where repairs had been carried out.

The tribunal noted that subsequent to the repairs by Bon-Accord Roofing there had been no further incidence of water leaking into the bedroom. There was no evidence of water ingress into the bedroom despite heavy rain at the time of the tribunal's inspection of the property.

The Tenant had moved back into the bedroom subsequent to the repairs having been carried out.

On the balance of probabilities the tribunal was satisfied that the cause of the ingress of water on 31<sup>st</sup> January 2017 had been identified and repaired and that the Property therefore meets the repairing standard.

### **Decision**

13. The tribunal accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14(1)(b) of the Act.
14. The decision of the tribunal was unanimous.

### **Right of Appeal**

15. In terms of section 46 of the Tribunals (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.

### **Effect of section 63**

16. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally 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 so determined.

# **G Buchanan**

Signed...

Date

27/4/17

Chairperson

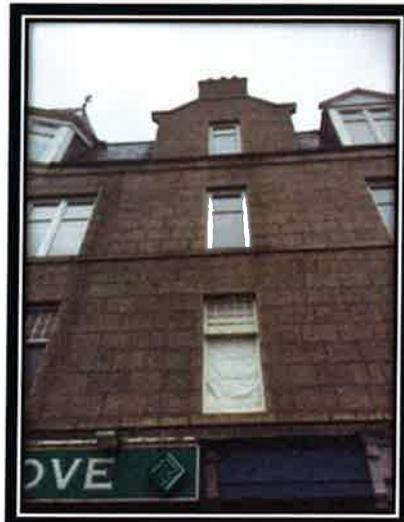


PHOTOGRAPHIC SCHEDULE

30 ALBYN GROVE ABERDEEN AB10 6SQ  
RP/17/0083



Second from top window previously affected by water ingress



Damp staining above and around bedroom window



**DAVID LAWRIE**  
Surveyor  
First-Tier Tribunal  
Housing and Property Chamber

01 May 2017