

# Housing and Property Chamber First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**STATEMENT OF DECISION OF THE TRIBUNAL  
UNDER SECTION 24(1)  
OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Property at 29H Union Place, Dundee DD2 1AB ("the House")**

**The Parties:**

**Phillip Edge and John Edge 29H Union Place, Dundee DD2 1AB ("the Tenant")**

**Sean Gordon Lewis trading as Sean Lewis Properties, 171 Perth Road, Dundee DD2 1AS ("the Landlord")**

**Chamber Ref: FTS/HPC/RP/22/0694**

## **DECISION**

The Tribunal having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the inspection and hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

## **Background**

By application dated 8 March 2022 (hereinafter referred to as "the Application") the Applicant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in

particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...*

*...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.*

*(e) any furnishings provided by the landlord are capable of being used safely for the purpose for which they are designed.”*

The Applicant complained that: the windows throughout the House are draughty, the ceilings in the kitchen, bathroom and bedroom are water damaged and mould is present.

By letter of 22 April 2022, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

John McHugh, Chairperson  
David Godfrey, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

An inspection was fixed for 31 May 2022 and a hearing for 7 June 2022.

The Tribunal inspected the House on 31 May 2022. Phillip Edge was present. The Landlord was neither present nor represented.

On 7 June 2022, the Tribunal held a hearing by telephone conference. Mr Edge participated. The Landlord was not represented. The Tribunal considered the written evidence submitted by the parties and the Tenant’s oral submissions.

### **Submissions at the Hearing**

The Tenant advised that the windows were draughty and the flat was cold. Mould had built up in the bathroom. Damp staining had been evident at the viewing of the flat and had returned shortly after the lease commenced. He had repeatedly reported the problems at the property to the landlord’s agent. He had received many promises of attendance by workmen most recently as the Friday prior to the hearing. Despite these promises, typically no one would attend and the issues reported were not addressed.

## **Summary of the Issues**

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

## **Findings in Fact**

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a third floor flat in a traditional tenement block.
- 2 The Tenant holds a private residential tenancy of the House dated 6 September 2021.
- 3 Sean Gordon Lewis is the registered owner of the House.
- 4 Sean Lewis Properties is noted as the Landlord in the tenancy agreement.
- 5 The Tenant took possession of the House from 7 September 2021.
- 6 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 7 The Tenant notified the Landlord of the defects in the House which are now the subject of the Application by email to the Landlord's agent dated 27 January 2022.
- 8 The inspection on 31 May 2022 revealed:
  - a. The rhones on the front and rear exterior elevations are choked and leaking.
  - b. The downpipe on the front elevation is detached from the wall.
  - c. Windows throughout the property are loose and poorly fitting and admit draughts.
  - d. Mould is present on the ceiling and walls of the bathroom.
  - e. Damp staining is evident in the kitchen and the rear bedroom ceilings and walls.
  - f. The bathroom extractor fan is not fitted tightly to the wall.

- g. High dampness levels are present in the wall which divides the kitchen from the rear bedroom close to the rear wall corner.

A schedule of photographs taken at the inspection is attached to this Decision.

## **Reasons for the Decision**

### Rainwater Goods

The exterior rain water goods are in poor condition. They are choked and leaking and this may be contributing to the ingress of water to the House.

### Windows

The windows are poorly fitting and admit draughts.

### Dampness and Mould

Mould is present in the bathroom. The extractor fan there may not be operating effectively as it is not fitted flush to the wall.

There is evidence of water ingress in the kitchen and rear bedroom. Damp staining is evident in both rooms and high damp meter readings were obtained in the wall separating the two rooms close to the rear facing kitchen window.

### The Repairing Standard

The Tribunal considers the condition of the rainwater goods; the windows; the bathroom extractor fan and the presence of dampness and mould to constitute a breach of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made in respect of them.

## **Decision**

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act and resolved to make a Repairing Standard Enforcement Order.

The decision of the Tribunal was unanimous.

## **Right of Appeal**

**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 of the 2006 Act**

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.

John M McHugh  
Chairperson

Date: 16 June 2022