



**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/2472**

**Re: Property at 31 Craigiebuckler Terrace, Aberdeen, AB15 8SX (“the  
Property”)**

**Parties:**

**Mr Frank Ibazebo, 31 Craigiebuckler Terrace, Aberdeen, AB15 8SX (“the  
Tenant”)**

**Mr Daniel Shepherd and Ms Lindsay Mathers, c/o Barbara Ellis Leasing, 13  
Deeside Park, Aberdeen, AB15 7PQ (“the Landlord”)**

**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 The Tenant applied to the Tribunal for a determination as to whether the  
Landlord 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:-**
  - (i) The house was wind, watertight and in all other respects reasonably fit  
for human habitation; and**

(ii) The house met the tolerable standard.

- 3 In summary the Tenant submitted in the application that the vestibule, gable and roof were not wind and watertight, there was mould in the attic and two bedrooms, the hallway ceiling caved and the toilet required to be fixed to prevent it from emanating a foul smell.
- 4 By Notice of Acceptance of Application dated 12 November 2021 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 and hearing were thereafter scheduled for 13<sup>th</sup> January 2022.
- 5 Following service of the Notice of Referral the Tenant submitted additional written representations which included photographs of the alleged disrepair and email correspondence between the Tenant and Barbara Ellis Leasing. The Landlord also submitted written representations which included a report from Wise Property Care, email correspondence with the Tenant and photographs.

### **The Inspection**

- 6 The inspection took place on 13<sup>th</sup> January 2022. The weather was dry following a period of heavy rain. The Property was a three bedroom semi detached house with lounge, bathroom and kitchen downstairs, with access to the garage through the kitchen, and three bedrooms, one ensuite, upstairs. The attic could be accessed via a Ramsay ladder and had been floored and carpeted. The property had a pitched and tiled roof, with flat roofed areas over the dormers. The garage and a section of the kitchen had a flat roofs.
- 7 The Tenant was in attendance at the property along with his son. Mr Shepherd was present and accompanied by his agent Barbara Ellis of Barbara Ellis Leasing. The Tribunal proceeded to inspect the issues highlighted in the application.
- 8 The Tribunal examined the lounge ceiling and walls. Damp reading taken in the areas were shown to be normal albeit there was staining which indicated historic issues.
- 9 The Tribunal examined the downstairs hall. The ceiling showed evidence of water staining. The Tenant ran the shower in the master bedroom ensuite, directly above, which resulted in water coming through the ceiling and down the wall. It was noted that recent works had been undertaken to the ceiling by the Landlord to stabilise it.
- 10 The Tribunal proceeded upstairs and inspected the ensuite bathroom in the master bedroom. Despite the leakage to the ground floor hall, the shower

appeared in good repair and Ms Ellis indicated that it had recently be resealed and regrouted. The Tribunal inspected the toilet and noted that some of the bolts appeared to be corroded.

- 11 The Tribunal inspected the master bedroom. Evidence of mould and damp was noted on the walls and window blind and damp readings taken indicated the presence of water ingress. The Tribunal went on to inspect the front bedroom to the left of the staircase. Damp staining was found on the wall pertaining to the gable however damp meter readings taken in the room were normal. The room appeared to have been recently replastered and the Landlord indicated that work had been carried out. The Tenant confirmed that there were no issues to be inspected in the third bedroom.
- 12 The Tribunal proceeded to inspect the attic where evidence of condensation and damp could be seen in the eaves. Finally the Tribunal inspected the garage. Damp readings taken were normal and the Tribunal found no evidence of water ingress.
- 13 A photo schedule was subsequently prepared and issued to the parties. The Tribunal also issued a Direction in advance of the Hearing requesting parties submit any additional written representations they wished the Tribunal to consider.
- 14 The Landlord submitted copy invoices as evidence of work carried out to the property, in particular the roof, gable wall and ensuite bathroom shower. The Landlord further submitted email correspondence from the Tenant and stated that the Tenant was refusing access for repairs. The Tenant subsequently responded to the Tribunal to advise that the Landlord had been given ample opportunity and it was now in the hands of the Tribunal.

### **The Hearing**

- 15 The hearing took place on 14<sup>th</sup> March 2022 by conference call. The Tenant was in attendance. Mr Shepherd was present and accompanied by his agent Ms Ellis. For the avoidance of doubt, this statement of decision is not a verbatim account of what was said at the hearing but a summary of the evidence relevant to the Tribunal's determination of the application.
- 16 The Tribunal took the parties through the areas inspected and a summary of their evidence is as follows:

#### *The living room*

- 17 The Tribunal noted that it had found no recent evidence of water ingress in the living room to the front of the property, albeit there was evidence of historic staining. Mr Ibazebo stated that there had been recent issues and he had taken photographs. The Tribunal noted that nothing had been received from him in that regard since the inspection. Upon further questioning it was noted that the Tenant was in fact referring to photographs taken prior to the

inspection which had been previously submitted to the Tribunal. Those photographs showed evidence of water ingress, one in particular showed water pooling in a container on the couch.

- 18 Ms Ellis confirmed that the Tenant had notified her of water ingress during a period of bad weather. A contractor had been sent out to inspect and repair the issue and as far as the Landlord was aware the problem had been fixed. The Tenant had not made her aware that it was ongoing, other than mentioning it at the inspection. Ms Ellis advised that since the inspection the Tenant had refused access and it had been impossible for the Landlord to do anything. She referred to the invoice from AJ Donald which had been submitted to the Tribunal as evidence of the work undertaken. At the same time repairs had been done to the garage and the dining room. She confirmed that these repairs had been undertaken in November 2021.

*The downstairs hall and ensuite shower room*

- 19 The Tribunal noted that during the inspection it was evident that water was leaking from the upstairs ensuite bedroom in the master bedroom. The Tenant confirmed that the issue was still ongoing. The ceiling was spoiled, there were cracks and water staining. The Landlord had attempted to repair the problem but putting a board over the area on the ceiling but that had not stopped the problem. The Tenant advised that he and his family were no longer using the ensuite shower as a result. They only used the downstairs bathroom.
- 20 Ms Ellis confirmed that leaks from the ensuite shower had previously been reported and a contractor had been sent to try and fix the problem but it had been unsuccessful. A second contractor had then been sent and he had regouted the shower cubicle from top to bottom and resealed the shower tray at the end of 2020. It had looked brand new. She referred to a photograph taken at the time which had been submitted to the Tribunal. The contractors had reported to her that there were buckets which appeared to be used for washing in the ensuite and it seemed as if the ensuite was being used as a wetroom. The Tenant had told her that the whole room should have been sealed, however she advised that it was not a wet room, it was a shower room. If water was spilled on the floor it would come down the ceiling. The Tenant had also said that he was not using the downstairs bathroom, only the ensuite. Ms Ellis advised that during the inspection the sealant in the shower cubicle appeared to be full of holes. The Landlord's intention was to undertake the necessary repairs once the tenancy had ended. She noted that a Notice to Leave had been served.
- 21 Mr Shepherd confirmed that a board had been fixed to the ceiling as a temporary measure. He had also noted that the sealant in the shower was full of holes, and this appeared to be the obvious cause of the water running down the walls. He had instructed Ms Ellis to reseal the shower, however attempts at access since the inspection had been unsuccessful. The shower would have to be resealed before the ceiling could be fully repaired.

- 22 In response, the Tenant stated that the allegations that the ensuite was being used as a wet room were untrue. He did not know what a wet room was. It was obvious that the shower was still leaking. There was a bucket in the shower room, but this was used for cleaning. With regard to the holes, they had always been there. The sealant had simply worn out.

*The toilet in the ensuite shower room*

- 23 The Tenant advised that the bolt holding the toilet bowl is rusted and a foul smell emanates every time the toilet is flushed. The contractor had viewed this when he came to repair the shower. The toilet bowl was not secure and shook when it was used. There was leakage from the toilet due to problems with the sealant. This was still ongoing.
- 24 Ms Ellis confirmed that there had been issues reported and a plumber had been sent to carry out a repair. He had confirmed that he had fixed it and resealed it. She referred to the invoice from WC Robertson. He had fitted a new seal to the toilet and new bolts to hold the toilet in place. The Tenant advised that the repair had not fixed the problem, there was a missing bolt which had rusted. The plumber had told him that this could not be fixed because there was no alignment between the bolt and the hole in the floor. Ms Ellis stated that she was not aware of a missing bolt. She would take this up with the plumber.

*The master bedroom, front bedroom and loft*

- 25 The Tribunal confirmed that high damp readings had been found in the master bedroom on the gable wall, along with damp staining and mould. Damp staining had also been noted in the front bedroom to the left of the staircase and evidence of condensation in the loft. The Tenant confirmed that the stain was in the property before he moved in. His wife had noted it and they had taken photographs. The property suffered from ongoing issues with damp and mould due to poor insulation. It was an old property with no loft insulation. The roof was also exposed and there was an ingress of cold air and rain. This had caused his family health problems, his son had a chest infection and allergies. Nothing had been done by the Landlord. The Tenant confirmed that he was spending around £35 every month buying mould treatment remover and associated materials to treat the issues. They were renting a three bedroom property but not getting full use of it.
- 26 Ms Ellis confirmed that the inventory of the property had been carried out immediately prior to the tenancy by an independent valuer and did not support the Tenant's statement as to the condition of the property at that time. The property was in good order. A painter had treated the stains in the attic and had repainted the affected areas. There was no evidence of mould in the property. The issues had started after the Tenant moved in. She explained that the master bedroom has an ensuite shower which would produce steam and this would go to the coldest area in the room in the absence of proper ventilation. The mould and corrosion of the window blind was evidence of excessive moisture in the room. Ms Ellis confirmed that there had been a

problem in the front bedroom and the Landlord had arranged numerous repairs. Wise Property Care had undertaken a survey, and she referenced the report submitted to the Tribunal as evidence of this. The Landlord had taken the advice of the surveyor and had undertaken the recommended repairs. She advised that the front bedroom was a single bedroom but had a double bed which had added to the problem.

- 27 Ms Ellis confirmed that following the report from Wise Property Care some areas in the front bedroom on the gable wall were framed and a membrane put in. The report had only recommended repairs in the front bedroom, not the master bedroom. Roof repairs had also been carried out. The works had reduced the size of the room slightly and the Landlord had therefore offered to pay for a new double bed to replace the king size bed following concerns expressed by the Tenant. However the bed still fitted in the room.
- 28 Mr Shepherd confirmed that the gable wall in the front bedroom had been cleaned and a membrane and false wall installed. The original wall was plaster board on to a brick wall outside. The moist air hitting the cold wall was a cause of the condensation and exacerbating mould problem. In response to questions from the Tribunal he advised that no insulation had been put in as far as he was aware. Numerous repairs had been done to the roof and chimney stack, and he referenced invoices from AJ Donald and John G Baird. The work in the front bedroom appeared to have fixed the problem however he conceded that there now appeared to be a further leak. Major repairs were required and he would need to instruct another assessment by a roofing company. However he had been unable to do this as a result of the Tenant refusing access.
- 29 The Tenant advised that the front bedroom had a lot of water ingress. No maintenance work had been done because the Landlord wanted to push the problem on to the Tenant. The mould was extensive. He conceded that the Landlord had attempted repairs in the front bedroom however no repairs had been done to the master bedroom to address the issues, and no work in the loft. He again referenced photos that had been taken after his family had moved into the property as evidence of the issues that had been there from the start.
- 30 Ms Ellis confirmed that the Tenant had submitted photographs at the start of the tenancy however it had been difficult to identify what they were purporting to show. The Tenant had reported some mould in the loft and a decorator had been sent to attend to this. No other issues had been reported. Ms Ellis pointed out that the loft did not form part of the inventory. Whilst it was lined, it was not advertised as a useable room. Ms Ellis confirmed that the Landlord had instructed her to undertake an assessment of the roof, but they required access to the property for this.
- 31 Mr Shepherd confirmed that during the inspection he had looked through small hatches in the loft wall and there did appear to be a problem with the roof that required further assessment. There looked to be areas that were wet

on the underside of the roof, about half a metre from the gable wall on the front pitch near the chimney. As soon as access was allowed, he would arrange for a contractor to investigate and carry out any necessary repairs. The roof had been an ongoing issue throughout the tenancy and numerous repairs had been attempted. It had seemed that these had fixed the problem but that no longer appeared to be the case. In response to questions from the Tribunal, he confirmed that there was no cavity wall insulation. There was some roof insulation in the form of fibre glass wool at ceiling level between the first floor accommodation and the loft but that was the extent of it.

#### The garage

- 32 The Tribunal noted that during the inspection no evidence of water ingress had been found in the garage. The Tenant confirmed that there had been no recent leakages from the ceiling. However there were still some leakages from the wall between the garage and the lounge. He had sent photos to Ms Ellis, although he confirmed that these had preceded the Tribunal's inspection. He understood the Landlord had instructed repairs to the garage which appeared to have addressed some of the leaks.
- 33 Ms Ellis advised that she had not been notified of an ongoing problem. The garage roof had been repaired. The Tenant had not contacted her since the inspection regarding this issue.

#### Other issues

- 34 The Tenant advised that he'd understood the ongoing Tribunal proceedings prevented him from allowing access, as the matter was now in the hands of the Tribunal. The Tribunal clarified that the ongoing proceedings did not negate his obligation to allow the Landlord access and he should continue to do so, if requested. It was in the interest of both parties to work together in order to address any issues of disrepair at the property. The Tenant confirmed his understanding and that he would arrange access in future.
- 35 Both parties made reference to ongoing repossession proceedings, with Mr Shepherd indicating that his family wished to move back into the property after a period of living abroad. The Tribunal clarified that its sole remit in terms of the application before it was the consideration of the Repairing Standard and any proceedings out with that were not relevant to the determination of the application.

#### **Findings in Fact**

Having considered all of the evidence, in terms of the written representations from the parties, the findings of the inspection and the verbal submissions at the hearing, the Tribunal found the following facts to be established:-

- 36 The tenancy between the Landlord and Tenant is a Short Assured tenancy which commenced on or around 15<sup>th</sup> November 2017.

- 37 There is no evidence of ongoing water ingress in the lounge or the garage.
- 38 There is water ingress from the ensuite shower room into the downstairs hall below. The ceiling in the downstairs hall has been damaged as a result.
- 39 There is evidence of water ingress in the master bedroom and in the roof. The roof is not presently wind and watertight.
- 40 The toilet in the ensuite bedroom is not in a reasonable state of repair.

### **Reasons for decision**

- 41 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties and their verbal submissions at the hearing, 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.
- 42 It has been established based on the Tribunal's findings in fact that there are areas in which the property does not meet the Repairing Standard. Mr Shepherd confirmed this himself in his evidence during the hearing. There continues to be issues with water ingress, and it is clear that further assessment of the roof will be required in order to identify the cause and repairs required.
- 43 The Tribunal further concluded based on its findings from the inspection that the toilet in the ensuite bedroom requires repair in order to secure it to the floor and ensure it is in proper working order. With regard to the shower in the ensuite, this is clearly the cause of the water ingress to the downstairs hall, as witnessed by the Tribunal during the inspection. Whilst there appeared to be an insinuation by the Landlord that the Tenant had caused the damage to the shower sealant, the Tribunal did not find any evidence of this and it is therefore the Landlord's responsibility to ensure that repairs are effected to prevent further leaks.
- 44 The Tenant stated on a number of occasions during the hearing that the Landlord has done nothing to address the issues of disrepair. The Tribunal does not accept this and has some sympathy with the position the Landlords have found themselves in. It is clear from the evidence that the Landlords have in fact made numerous attempts to carry out repairs and fix the problems highlighted by the Tenant. They have followed recommendations made by professional contractors and have carried out extensive works. Mr Shepherd expressed his intent at the hearing to instruct further reports and his actions to date do not in the view of the Tribunal indicate any unwillingness to do what is required in order to bring the property up to a reasonable standard.

45 Notwithstanding, the Tribunal ultimately 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 not wind and watertight and in all respects reasonably fit for human habitation; and
- (ii) In respect of section 13(1)(d), any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.

46 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 twelve weeks.

47 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

Date 28 April 2022

