

Housing and Property Chamber
First-tier Tribunal for Scotland



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

REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Tribunal

RE: All and Whole the dwelling house known as 53D Sandeman Street, Dundee, DD3 7LD registered in the Land Register and having Title No ANG24306 (hereinafter referred to as "the House")

The Parties:

Miss Karen Downton ("the Tenant")

Miss Yvette Norrie and Mr Christopher Airlie, Balfield House, 8/9 Osprey View, Piperdam, Dundee, DD2 5LZ; 7 Hoylake Crescent, Dundee, DD2 3NG ("the Landlord")

Dundee City Council-Private Sector Services Unit, 5 City Square, Dundee, DD1 3BA ("the Third Party Applicant")

Chamber Ref: FTS/HPC/RT/20/0174

NOTICE TO YVETTE NORRIE AND CHRISTOPHER AIRLIE

WHEREAS in terms of their decision dated 10 March 2022 the Tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that:

"(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"

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord to:

- 1 Replace or repair all windows in the House such that they are capable of being open and closed as intended; have working, unbroken handles; and are draught proof.
- 2 Repair or replace the front door so that when closed it is draught proof.
- 3 Repair or replace the bathroom ceiling light so that it can be switched on and off as intended.

The Tribunal orders that the works specified in this Order must be carried out and completed within 31 days from the date of service of this Notice.

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.

Where such an appeal is made, the effect of the decision and 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.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by John Miller McHugh, Chairperson of the Tribunal at Edinburgh on the Seventeenth day of March Two Thousand and Twenty Two in the presence of the undernoted witness:

J McHugh

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 53D Sandeman Street, Dundee, DD3 7LD (hereinafter referred to as "the House")

The Parties:

Miss Karen Downton ("the Tenant")

Miss Yvette Norrie and Mr Christopher Airlie, Balfield House, 8/9 Osprey View, Piperdam, Dundee, DD2 5LZ; 7 Hoylake Crescent, Dundee, DD2 3NG ("the Landlord")

Dundee City Council-Private Sector Services Unit, 5 City Square, Dundee, DD1 3BA ("the Third Party Applicant")

Chamber Ref: FTS/HPC/RT/20/0174

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 20 January 2020 (hereinafter referred to as "the Application") the Third Party 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 Third Party Applicant 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,
(b) 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,
(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
(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 under the tenancy are capable of being used safely for the purpose for which they are designed, [and]
(h) the house meets the tolerable standard.”*

The Third Party Applicant complained that: the living room windows were draughty, not able to be opened and closed and secured open and that handles were broken; the window handle was broken in the front right bedroom; the kitchen window pane was broken; windows throughout could not be secured in the open position; the front door was draughty; the front door lock was broken; the bathroom light was not working; there was damage to the hall wall; there were inadequate fire and carbon monoxide detection facilities; there was no Electrical Installation Condition Report (EICR); and there was no Landlord's Gas Safety Certificate.

By letter of 6 February 2020, 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
Robert Buchan, 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 and hearing were originally fixed to take place on 30 March 2020 but the COVID-19 pandemic delayed the Tribunal's ability to deal with the case.

An inspection was ultimately fixed for 28 February 2022 and a hearing for 7 March 2022.

The Tribunal inspected the House on 28 February 2022. Present were: the Tenant; Mr Airlie for the Landlord and Stuart Cuthill from the Third Party Applicant.

The Tribunal held a hearing by telephone conference on 7 March 2022. Only Mr Cuthill attended.

Submissions at the Hearing

Mr Cuthill agreed with the Tribunal's observations as to the condition of the House.

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 first floor flat.
- 2 The Tenant has a short assured tenancy of the House dated 15 January 2017.
- 3 The Landlord is the registered owner of the House.
- 4 The Tenant took possession of the House from 16 January 2017.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Third Party Applicant notified the Landlord of the defects in the House which are now the subject of the Application by letter dated 18 December 2019.
- 7 The inspection on 28 February 2022 revealed:

- a. The front door is ill fitting and admits draughts.
- b. The kitchen window pane has been repaired.
- c. New smoke and heat detectors complying with current standards have been installed.
- d. A new carbon monoxide detector has been installed.
- e. A new lock has been fitted to the front door.
- f. The bathroom light is not working properly.
- g. The hall wall has been repaired.
- h. Some of the windows are not draught proof when closed. Some do not open as designed. There are broken handles.
- i. A satisfactory Gas Safety Certificate and EICR have been provided.

Reasons for the Decision

Door

The lock has been replaced but the door remains ill-fitting and has no draught proofing. It requires to be made draught proof by repair or replacement.

Windows

The kitchen window pane had been replaced. The windows generally are in need of replacement. The tenant mentioned at the inspection that one of the double glazing units was admitting condensation although this was not observed at the inspection. The windows do not all open and close as intended; they are draughty; and have broken handles.

Bathroom Light

The light cannot be switched on and off.

Electrical and Gas Safety

Satisfactory certificates have been provided.

Hall wall

The hole has been the subject of a basic repair.

Fire and Carbon Monoxide detectors

New heat, smoke and CO detectors have been installed.

The Repairing Standard

The Tribunal considers that the condition of the windows, the bathroom light and the front door constitute a breach of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made in respect of them. The other items within the application were consistent with the repairing standard.

Observations

The Tribunal noted that the bath panel was extensively cracked and in need of replacement. This is an issue which was not part of the application so no formal decision can be made. A second application could be made regarding this issue and the landlord is therefore encouraged to deal with the issue now.

Decision

The Tribunal, considering the terms of section 13 of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

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.

J McHugh

John M McHugh
Chairperson

Date: 17 March 2022