

# 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/22/4179**

**Sasine Register: ANGUS 34755**

**Flat 9, 67 Seagate, Dundee DD1 2EH (“The Property”)**

**The Parties:-**

**Mr Gavin Ross and Mr Jussi Aalto-Gallacher, Flat 9, 67 Seagate, Dundee DD1 2EH (“the Tenants”)**

**Sale Developments Limited, having its registered office at Westburn House, near Dunning, Perth, Perthshire PH2 0QY c/o Rockford Properties, 50 Castle Street, Dundee DD1 3AQ (“the Landlord”)**

**Tribunal Members: Richard Mill (Legal Member) and David Godfrey (Ordinary Member)**

## **Decision**

The property does not meet the repairing standard. The landlord has not complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

## **Background**

1. The tenants applied to the Tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the written application the tenants stated that the landlord had failed to comply with their duty to ensure that the property meets the repairing standard according to section 13(1)(a), (f), (g) and (h), which set out the following obligations:-

- The house is wind and watertight and in all other respects reasonably fit for human habitation.
- The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- The house does not meet the tolerable standard.

### **Inspection**

3. The tribunal inspected the property on 11 April 2023 at 10.00 am. The second tenant permitted entry to the both the tribunal and the representatives in attendance on behalf of the landlord, who were Ms Hazel Young and Mr Calum Jenkins of Rockford Properties. Partway through the inspection the first named tenant also attended at the property.

### **Hearing**

4. Following the inspection of the property, the Tribunal convened a hearing on 11 April 2023 at 2.00 pm by teleconference. Both tenants joined the hearing. The landlord's interests were represented by Ms Hazel Young of Rockford Properties.

### **Summary of Issues**

5. The issues to be determined by the tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
6. The tenants stated in their application that the roof had not been watertight for some 12 weeks which had caused severe leaks resulting in plaster falling from the internal ceiling with black mould and damp in five rooms. They considered the circumstances to be an electrical fire risk. They raised concerns that there were no smoke and carbon monoxide alarms.

### **Relevant Factual Chronology**

7. The tenants' private residential tenancy in respect of the property commenced on 21 September 2022. At the time that the tenants viewed the property an explanation had been provided that a roof repair was ongoing at the block. Scaffolding was present at that time. The property is a top floor flat. The tenants had been given an assurance that the property was wind and waterproof other than one

bedroom which was acknowledged to be letting in water from the roof and in respect of which no rent was to be charged on the basis that the room was not reasonably capable of being occupied.

8. Regrettably after taking up occupation it was quickly identified by the tenants that the roof was not watertight. The tenants reported water ingress to the landlord's agents on 30 September 2022. The affected rooms were at the front of the property.
9. On the night of 2-3 November 2022 the tenants emailed Rockford Properties out of hours on an emergency basis to advise that the kitchen and bathroom ceiling had come down due to substantial water ingress at the time of heavy rain. These rooms are at the rear of the property. As a consequence of this and the condition of the property the tenants were accommodated in a hotel the following night (3-4 November) which was funded by the landlord. On 4 November 2022 the landlord's agents advised that necessary works were complete and the tenants could safely return.
10. Water ingress however continued at the property and it was agreed that it was no longer acceptable for the tenants to reside there and they were moved to alternative accommodation on 18 November 2022. The tenants were accommodated there until 14 December 2022. The tenants could not live there on a longer term basis as other tenants had been identified to move into the property in mid-December 2022.
11. From 14 December 2022 the tenants were then housed at a further alternate property in the same block as their own let property; at flat 3 on the first floor.
12. The landlord agreed to a rental reduction with the tenants as follows: 50% was deducted for their first month's rent and 60% for the second and third months.
13. On 31 March 2023 the tenants were advised that the works to the property had been fully completed and they could now return to the property. No other accommodation is being made available now. However, due to their ongoing concerns and the existence of ongoing roof works, they have not yet returned to live in the property. They have access to the property.

### **Findings in Fact**

14. The tribunal makes the following findings in fact (as at 11 April 2023):
  - a. The title to the subjects known as flat 9, 67 Seagate, Dundee DD1 2EH is held by the landlord in the Sasine Register of Scotland on the search sheet – Angus 34755.

- b. The property is a top (third) floor flat in a stone built tenement entered by a common passageway and stair. The property is directly accessed along an open platform on the rear elevation of the property. The flat is over two levels. The lower level comprises of a hallway, kitchen, bathroom, living room and bedroom. The upper floor is accessed via an internal staircase which leads to two further bedrooms and a storage room. There is no gas in the property. The heating system is electrical.
  - c. The entire block within which the property is situated is currently undergoing substantial roof works which include the removal of the chimney heads. These works have been ongoing for many months and there is scaffolding around the entire block.
  - d. There is evidence of water ingress into all rooms in the property. The damp meter readings evidence that there is active water ingress in some areas. A number of internal works have recently been undertaken, including the repainting of walls and ceilings. Such works have been undertaken prior to the roof works being completed.
  - e. Some parts of the roof do not have roof slates nor any adequate cover to prevent ongoing water ingress. Further water ingress is reasonably likely to continue to occur.
  - f. There is mould in the property and there is a smell of damp upon entry.
  - g. The substantial water penetration into the property includes the site of the electrical consumer unit in the lower hallway, evidenced by clear water staining. All of the electrical supply and services is likely to have been directly impacted by the extent of recent water ingress.
  - h. The property has linked smoke and heat detectors. There is adequate provision for the detection of fire.
15. Reference is made to the schedule of photographs comprised within the inspection report prepared by the tribunal and attached to this decision.

### **Reasons for Decision**

16. The tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection and the representations made to the tribunal at the hearing.

17. The tribunal is only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the hearing on 11 April 2023.
18. The tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
19. There was no dispute between the parties regarding the condition of the property as at the date of the tribunal's inspection and hearing. It was accepted on behalf of the landlord that whilst assurances have been given to the tenants that the roof is watertight that this is clearly not the case, standing that evidence of ongoing water ingress was noted at the time of the tribunal's inspection of the property. The landlord's representative was unable to provide any specification as to when the outstanding roof works would be complete and accordingly when the property would be watertight.
20. It was further acknowledged and accepted on behalf of the landlord that the internal redecoration works which had been completed to date have been ineffective. Those have been carried out when there continues to be water ingress to the property. The redecoration already carried out will therefore require to be undertaken again and more extensively.
21. The landlord's representative therefore accepted that the repairing standard is not currently met given the ongoing water ingress and the internal condition of the property.
22. Earlier in the process the tribunal had issued a Direction requiring the landlord to produce an Electrical Installation Condition Report (EICR) given the accepted water ingress into the property. That Direction was not complied with on the basis that an EICR did exist, based upon an inspection some time ago (though adhering to the statutory requirements for private let properties). The landlord's representative persisted at the hearing in submitting that there was no need for a further EICR. The tribunal rejected that submission which had no merit. There is clear evidence that substantial levels of water have entered the property and this has come into contact with the electrical supply. There are clear signs of water damage around the electrical consumer unit and within most of the ceiling and walls, which carry electrical circuits. The tribunal noted and accepted the submissions by the tenants regarding the electricity supply failing in late 2022. They had required to call SSE who had isolated some of the electrical supply in the property due to water damage. The submission that the electrical condition of the property does not require to be checked by a qualified electrician is unacceptable. The tribunal has serious concerns regarding the current safety of the electrical supply. The landlord and its representatives will wish to carefully consider permitting or directing

the tenants to continue with their occupation until appropriate electrical testing has been carried out.

23. The tribunal was satisfied that there is adequate provision for the detection of smoke and heat in the property in accordance with the Scottish Government statutory guidelines. Due to the set up and occupation of the rooms being reorganised as a direct consequence of the water ingress, the living room is currently being used as a bedroom. This however does not impact upon the compliance of the property in respect of the detection for fire.
24. Given the high levels of moisture and damp in the property, active steps require to be undertaken to seek to remove this. This is in the interests of the landlord as well as the tenants as this will impact upon the timescales and success of necessary redecoration works. The tribunal accordingly requires the landlord to install a dehumidifier at its expense as well as undertaking the necessary other works to ensure that the property complies with the repairing standard. There remains mould in a number of areas of the property. The internal condition of the property does not meet the tolerable standard.
25. The tribunal acknowledges that the landlord has, long before the tribunal's involvement, accepted the need for roof repairs to be undertaken and instructed those at, no doubt, some substantial cost. The tribunal also acknowledges that the tenants were decanted and that a rent rebate was applied to the rent for the first 3 months of their occupation of the property. The tribunal did note however that despite the property having three bedrooms it was let as a two bedroom property only with the large upper bedroom having effectively been closed off with the landlord's agents openly acknowledging that there was water ingress into that room. It would have been very obvious that the high levels of water ingress to that room would very likely have a direct impact upon the whole of the property and that the source of the water was ultimately going to lead to other areas of the property, including the rooms below, which is exactly what happened.
26. The tribunal determined to make a Repairing Standard Enforcement Order (RSEO) in terms of the work which is necessary. The scope of the works are set out in that RSEO. The tribunal determined that the landlord be provided with a period of 10 weeks to carry out these works which is reasonable given the nature and extent of the works.

### **Right of Appeal**

27. 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.

28. 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.

In witness whereof these presents type-written on this and the preceding pages are executed by Richard George Mill, solicitor,  
legal member of the tribunal at Edinburgh on 12 April  
2023 before this witness:-

R G Mill

\_\_\_\_\_ Legal Member

C McNaught

\_\_\_\_\_ Witness

CATHY MCNAUGHT Name

Address



## Pre-hearing inspection summary and schedule of photographs



**Property:** FLAT 9, 67 SEAGATE, DUNDEE DD1 2EH

**Ref No:** FTS/HPC/RP/22/4179

**Tribunal members:** Mr R Mill & Mr D Godfrey

### **Purpose of inspection**

The purpose of the inspection is to prepare a photographic record of the condition of the property, specifically as it relates to the items raised in the application and any issues arising there from.

### **Access**

The above Tribunal Members attended the property at 10:00 on 11<sup>th</sup> April 2023.

The Landlord, Sale Developments Ltd, was represented by Hazel Young and Calum Jenkins of Rockford Properties Limited.

Access to the property was provided by the Tenant, Mr Jussi Aalto-Gallacher.

David Godfrey MRICS  
Ordinary (Surveyor) Member  
First-tier Tribunal for Scotland

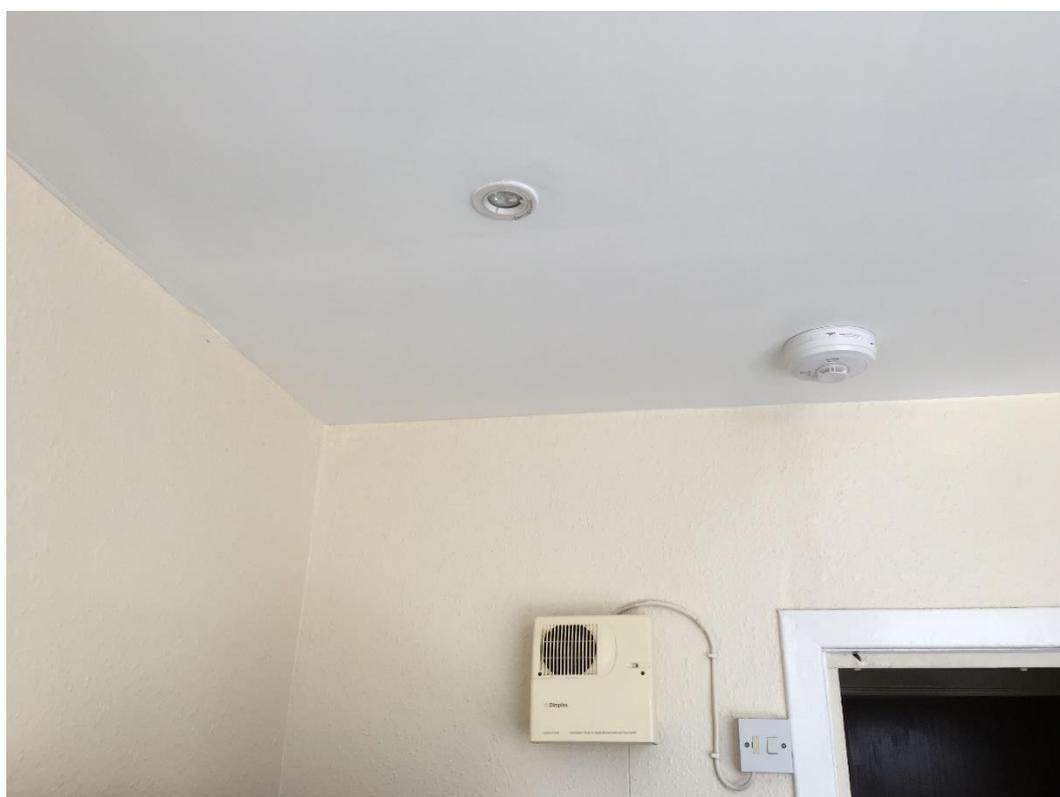
11/04/2023

Appendix 1

Schedule of photographs taken during the inspection on 11/04/2023.



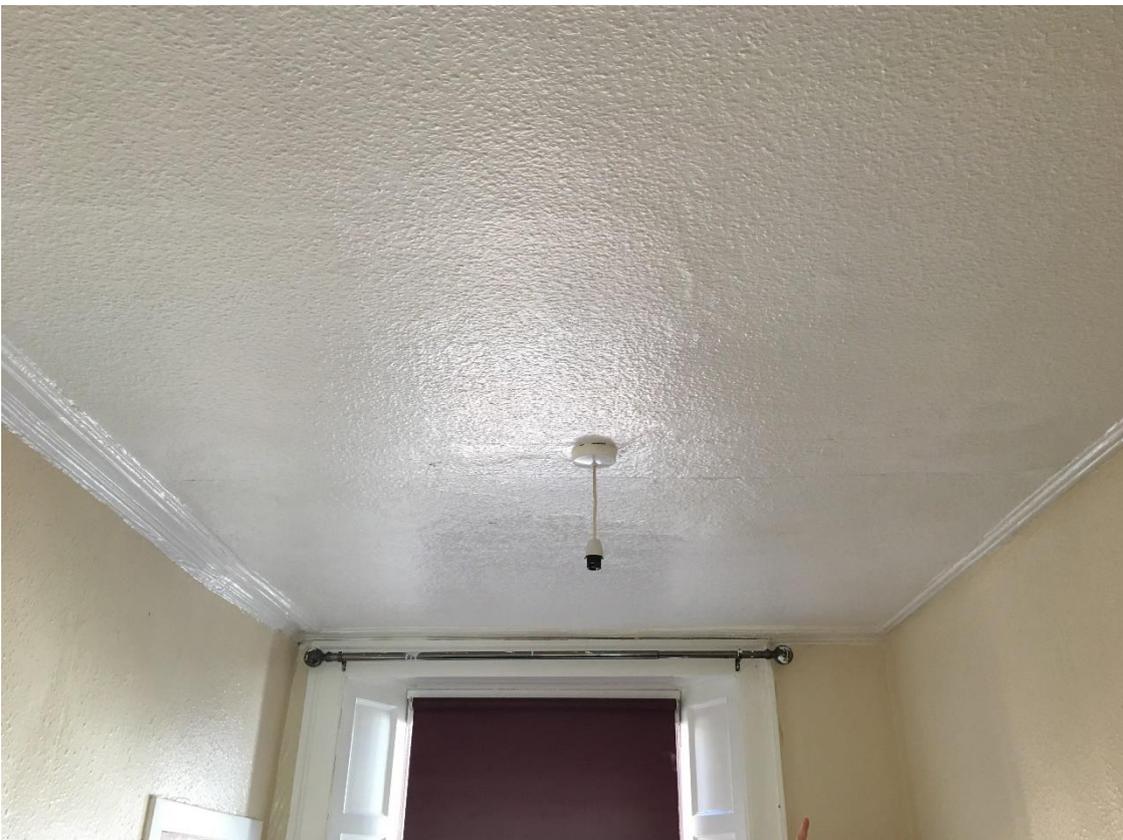
Renewed plasterwork in Kitchen.



Renewed plasterwork in Kitchen (also showing Heat Detector).



Damage to Kitchen floor covering.



Renewed plasterwork in Lounge/NE Bedroom. High damp meter readings obtained at recess cupboard on East wall.



Repaired ceiling in Lounge/NW Bedroom.



Damp staining evident at repaired ceiling in Lounge/NW Bedroom.



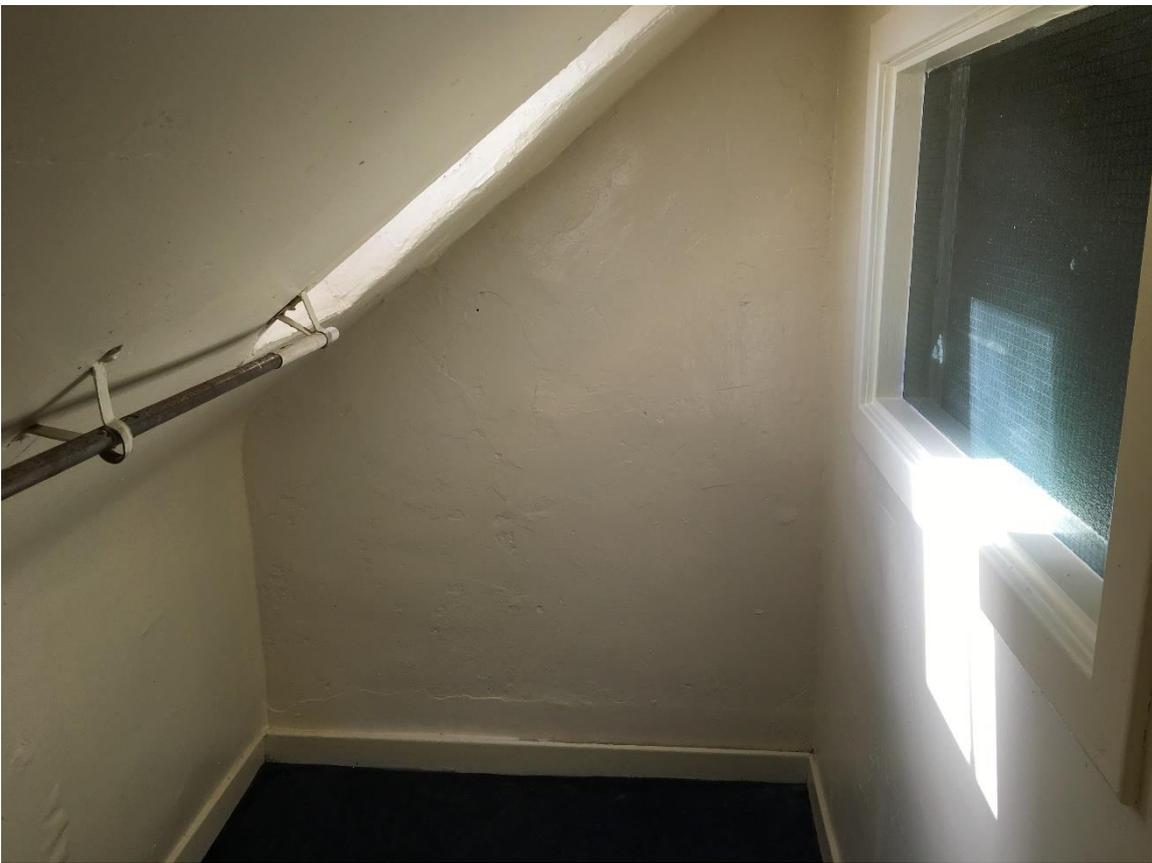
Drop/cracking to Hall ceiling.



Recently re-clad Bathroom ceiling. Moderate damp meter readings obtained on west wall.



Horizontal cracking to plasterwork in stairwell.



Attic store.



Gap in plasterwork at Attic Store skylight.



Renewed plasterwork in Attic Floor E Bedroom. Signs of recent water penetration evident.



Renewed plasterwork in Attic Floor E Bedroom. Signs of recent water penetration evident.



Renewed plasterwork in Attic Floor E Bedroom. Signs of recent water penetration evident.



Rear elevation of roof under repair.



Rear elevation of roof under repair.



Front elevation of roof under repair.