

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/21/1973**

**Re: Property at Flat 7, 18 Hall Street, Campbeltown, Argyll, PA28 6BU (“the Property”)**

**Parties:**

**Mr Bryan Bysouth-Mackie, Flat 7, 18 Hall Street, Campbeltown, Argyll, PA28 6BU (“the former Tenant”)**

**Mr Mota Singh, 54 Miller Drive, Bishopbriggs, Glasgow, G64 1FB (the Landlord)**

**Tribunal Members:**

**R [redacted] O'Hare (Legal Member) and M [redacted] Links (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 By application to the Tribunal, the former 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 former 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;

(ii) The house met the tolerable standard.

- 3 In summary the former Tenant submitted that the Landlord had failed to comply with the Repairing Standard as he had failed to carry out appropriate repairs to the roof to prevent the ingress of water to the kitchen, living room and bedroom and had failed to redecorate affected rooms to a reasonable standard with mitigation for mould.
- 4 By Notice of Acceptance of Application dated 27 August 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. Under normal circumstances the Tribunal would have carried out an inspection following the Notice of Referral to assist in the determination of the application. Due to the restrictions imposed by the Covid-19 pandemic at the time this was not possible. A Case Management Discussion was therefore arranged for 26 October 2021 to enable the Tribunal to discuss further procedures and ascertain if an inspection was required.

#### **The Case Management Discussions**

- 5 The first Case Management Discussion took place on 26 October 2021. The former Tenant was present and represented himself. The Landlord was represented by Miss Emelia McMillan, Kintyre Property Company. Miss McMillan confirmed that the Landlord was aware of the situation with the roof and had been trying to arrange for work to be carried out but had been unable to make progress. There were issues with another owner who was claiming to be property factor and the Landlord was trying to resolve this. Miss McMillan's firm had been trying to assist the Landlord by sourcing local contractors but had been unable to take matters further. The former Tenant advised that estimates had been obtained for the roof repairs some years ago but the owner purporting to be the property factor had prevented the work from progressing. Following the discussion the Tribunal concluded that it would require further information regarding ownership of the properties within the block to which the property formed part. The Landlord was asked to provide this information. In addition the Tenant was asked to provide photographs of the internal damage to enable the Tribunal to determine the extent of the damage. A Direction was issued to parties to that effect. The Tribunal therefore adjourned the Case Management Discussion and the Landlord was asked to attend the next scheduled date to report on the efforts which had been made to ensure that the necessary repairs were attended to.
- 6 The second Case Management Discussion took place on 30 November 2021. The former Tenant was present and represented himself. The Landlord was again represented by Miss Emelia McMillan. Miss McMillan advised that she had spoken with the Landlord's daughter following the previous Case Management Discussion and had told her what they required to do but she had received no response. She had advised that the Landlord had to

participate in the Case Management Discussion but he had failed to appear. The Tribunal noted that the former Tenant had submitted photographs of the damaged areas in the property together with a layout plan. The Tribunal further noted that the tenement at 18 Hall Street contained nine flats. Miss McMillan confirmed that the Landlord had been trusting the owner who was purporting to be the factor to address the roof repairs and had paid over money which had not been accounted for. Some work had been carried out to the roof but it had been ineffective. The former Tenant confirmed the property was still suffering from water ingress and the residents had now formed an association which enabled them to obtain grant funding from the local authority. Following the discussion the Tribunal determined that it still required further information as to the ownership of the properties in the tenement and directed the Landlord to obtain such information from Registers Scotland as would enable the ownership to be identified.

- 7 On 29 December 2021 the Tribunal received an email from Miss McMillan with details of the ownership of the flats within the tenement at 18 Hall Street. The Tribunal subsequently scheduled a further Case Management Discussion for 1 February 2022.
- 8 The third Case Management Discussion took place on 1 February 2022. The former Tenant was present and represented himself. The Landlord was represented again by Miss McMillan who advised that the Landlord did not wish to attend due to his lack of understanding of English. The Tribunal reminded Miss McMillan that an interpreter could be arranged. Miss McMillan stated that the Landlord was also unwell. She advised that letters had been sent to all owners in the building and responses received from most of them. She had also received an email from the owner purporting to act as property factor indicating that he would be in favour of carrying out investigations to locate the problem with the roof. He also stated that he had operated the informal Owners Association for a number of years and had been in the habit of arranging and paying for works before recovering costs from the other owners. He would not be prepared to fund work required to the roof in advance in view of outstanding monies that he claimed were due to him on behalf of the Association. The response from said owner raised issues pertaining to the factoring of the property which were not relevant to the application before the Tribunal but did provide some background as to why progress had not been made on the roof repairs. The former Tenant confirmed his view that the owner purporting to act as property factor was blocking the roof repairs and would continue to do so.
- 9 Following the discussion the Tribunal determined that it still required further information regarding the arrangements for carrying out common repairs in the tenement and the reason why the roof repairs had not been progressed. It was a matter of agreement between the parties that the condition of the property was a result of the necessary roof repairs and the Landlord was failing to comply with the Repairing Standard as a result. In order to progress the application the Tribunal considered it important that the Landlord himself or someone properly instructed by him provided sufficient information to answer the Tribunal's questions. Until such information was provided the

Tribunal would be unable to determine whether the Landlord had taken reasonable steps for the purpose of acquiring the necessary rights to carry out the works to the roof. The Tribunal also expressed concerns about the Landlord's lack of engagement with the Tribunal process, noting that Miss McMillan had not been in a position to provide the Tribunal with adequate information. The Tribunal therefore issued a further Direction requiring the Landlord to produce a report outlining the steps taken to progress the roof repairs and to attend the next Case Management Discussion, either on his own behalf or with a fully instructed representative.

- 10 The fourth Case Management Discussion took place on 30 March 2022. The former Tenant was present and represented himself. The Landlord was represented by his daughter Ms Harvinder Kaur. The Tribunal noted that the Landlord had failed to comply with the Direction in that his daughter was not fully instructed. She was unable to confirm whether the Landlord had paid any outstanding common repair charges to the owner purporting to be the factor. It was the Landlord's position that it was the tenant's responsibility to meet the costs of repairs. The Tribunal reminded Ms Kaur of the Landlord's responsibilities in respect of repairs. It appeared to the Tribunal that the Landlord was preventing the progress of the necessary roof repair by his failure to pay the outstanding sum and that he could resolve this to enable the work to progress. The Tribunal considered whether to impose an RSEO against the property but determined to give the Landlord one final chance by issuing a further Direction requiring the Landlord to ensure any outstanding sums of common repairs for which he has responsibility as the owner of another property in the building were paid within one month from the date of issue of the Direction.
- 11 The fifth Case Management Discussion took place on 25 May 2022. The former Tenant was present and represented himself. The Landlord was in attendance and supported by an interpreter. The Landlord confirmed that he had been in touch with the owner purporting to be the factor who had presented him with a bill for £1200 and said that he was looking for a further £2000. The Landlord had however been unable to confirm what these sums represented. He objected to having been asked for these sums without the detail as to how they were calculated. The Tribunal reminded the Landlord that it was his obligation to ensure the property he let met the Repairing Standard and it appeared from the information provided to the Tribunal that the property failed to do so. The Landlord advised that he had issued the former Tenant with a Notice to Leave, which was confirmed by the former Tenant, on the basis that the Landlord wished to sell the property. In order to progress the application the Tribunal determined to carry out an inspection which was scheduled for 20 July 2022.
- 12 The Tribunal was subsequently advised that the former Tenant was to vacate the property on 11<sup>th</sup> June 2022. On that basis the inspection was cancelled. The Tribunal issued a Direction to parties requiring both to confirm whether the former Tenant had vacated the property, and requiring the Landlord to confirm his intentions regarding the proposed sale of the property. The Tribunal also issued a Minute of Continuation confirming its intent to proceed

with the application in the absence of the former Tenant. No response was received from the Landlord in respect of the Direction.

### **Findings in Fact**

- 13 The Landlord is the registered owner of the property.
- 14 The communal roof is not wind and watertight and in a reasonable state of repair.
- 15 There is water ingress to the property as a result of the condition of the roof.
- 16 The property does not meet the Repairing Standard.

### **Reasons for decision**

- 17 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, and the submissions from the parties at the Case Management Discussions. 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 without the requirement for an inspection. The Landlord did not appear to dispute the fact that the communal roof required repair. It was therefore apparent to the Tribunal that the property did not meet the Repairing Standard due to the condition of the roof.
- 18 The Tribunal had given the Landlord ample opportunity to engage with the Tribunal process and ensure that the outstanding sums that were owed for other common repairs were settled to ensure the roof could be repaired. At the fifth Case Management Discussion the Landlord appeared to take objection to this course of action. The Tribunal therefore had some doubt as to whether the Landlord fully understood his obligations under the Repairing Standard and his responsibility to comply with his duties under the Act. His previous statement that the tenant was responsible for repairs supported this view. The Tribunal had sought clarification from the Landlord as to his intentions regarding the property, having heard that he intended to sell, through the issuing of a Direction, however he had failed to respond. On the basis that he was no longer engaging with the process ultimately the Tribunal considered it had no other option but to make a Repairing Standard Enforcement Order.
- 19 The Tribunal therefore 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;

- 20 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 three months.
- 21 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 is abandoned or determined.



29 October 2022

**Legal Member/Chair**

**Date**