

# Housing and Property Chamber First-tier Tribunal for Scotland



## **Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

**Case Reference Number: FTS/HPC/RP/17/0247**

**Re: 4 Dalandhui Mews, Dalandhui Lane, Garelochhead, Helensburgh G84 0BE (“the house”)**

**Land Register Title No: DMB7858**

**The Parties:-**

**Mr Stephen Butler, formerly residing at the house (“the former tenant”)**

**DCW Limited (in administration), 14 East King Street, Helensburgh G84 7QL**

**c/o Brian William Milne and Eileen Blackburn, French Duncan LLP Chartered Accountants (Joint Administrators), 133 Finnieston Street, Glasgow G3 8HB**

**(“the landlord”)**

**Tribunal Members – Sarah O’Neill (Chairperson); Lorraine Charles (Ordinary (Surveyor) Member)**

### **Decision**

The tribunal, having made such enquiries as it saw 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 (“the Act”) in relation to the property, and taking account of all the available evidence, determines that the landlord has not failed to comply with the duty imposed on it by Section 14 (1) (b) of the Act. The tribunal’s decision is unanimous.

## Background

1. By application received on 30 June 2017, the former tenant applied to the tribunal for a determination that the landlord had failed to comply with its duties under Section 14(1) of the Act.
2. In his application, the former tenant stated that he believed the landlord had failed to comply with its duty to ensure that the property met the repairing standard as set out in section 13(1) (a) (b) and (d) of the Act. His application stated that the landlord had failed to ensure that:
  - the house is wind and watertight and in all other respects reasonable fit for human habitation
  - 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
  - any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.
3. The former tenant included the following complaints in his application paperwork:
  1. Roof leaking into upstairs bedroom and downstairs lounge.
  2. Window unit in master bedroom has moved away from the wall leaving a 5mm gap to outside.
  3. Hole in hall wall needs fixed after repair on 15 May 2016.
  4. Hall socket is cracked.
  5. Windows to front of house and patio door needing resealed due to movement.
  6. Dead tree overhanging house needs taken down as dead and dangerous.
4. In his covering email submitted with his application form, the former tenant stated that he was about to leave the house due to the ongoing repairs issues, and that his last day in the house would be 1 July 2017.
5. On 18 July 2017, a Convener of the panel, with delegated powers under Section 96 of the Housing (Scotland) Act 2014, issued a minute of continuation to a determination under Schedule 2 Paragraph 7(2) of the Act. This stated that, having received confirmation from the former tenant that the tenancy had been lawfully terminated, the tenant was to be treated as having withdrawn his application in terms of Schedule 2 paragraph 7 (1) of the Act. It then stated that the Convener considered that the application should be determined as the defects listed, if confirmed after inspection, would demonstrate a property which

falls below the repairing standard such that it would not be in the public interest to permit any further tenancies until such time as the necessary repairs have been completed.

6. On the same date, the Convener, with delegated powers under Section 96 of the Housing (Scotland) Act 2014, issued a decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received on 30 June 2017; and intimating her decision to refer the application to a tribunal for determination.
7. The President of the panel wrote to the parties on 1 August 2017, notifying them under and in terms of the Act of her decision to refer the application under Section 22(1) of the Act to a tribunal, and that an inspection and a hearing would take place on 12 September 2017. Written representations were requested by 22 August 2017.
8. On 16 August 2017, the tribunal issued a direction to the landlord, requiring it to provide to the tribunal by 6 September 2017 an up to date Electrical Installation Condition Report (EICR) in respect of the house by a suitably qualified and registered SELECT or NICEIC electrical contractor, or a member of NAPIT, showing that all electrical installations, fixtures and fittings, including in particular the electrical sockets, and all appliances had been checked and were working safely.
9. On 22 August 2017, written representations were received from Mr Colin MacIver, of Addleshaw Goddard LLP, the solicitor acting for French Duncan Business Recovery, the landlord's administrators. On 28 August 2017, an email was received from Mr MacIver, enclosing copy EICR in respect of the property dated 3 August 2016, carried out by Gasman Energy, Glasgow, an NICEIC approved contractor.
10. Further written representations were received from Mr MacIver by email on 7 September 2017, but due to an administrative oversight, these were not sent to the tribunal in advance of the inspection and hearing. These were received by the tribunal on 13 September, the day following the inspection and hearing. The tribunal considered whether to take these representations into account in reaching its decision, in light of rule 39(2) of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016. This states that the tribunal must not consider written evidence which is lodged or served outwith a time limit it has set unless it is satisfied that there is good reason to do so. The tribunal had set a deadline for written representations of 22 August 2017, but considers that the information in the written

representations, while essentially superseded by the inspection and hearing, should be taken into account in reaching its decision.

### **The inspection**

11. The tribunal inspected the house on the morning of 12 September 2017. The weather conditions at the time of the tribunal's inspection were dry and bright. Ms Laura McCabe, Associate Solicitor with Addleshaw Goddard LLP, and Ms Sarah Carrell, Senior Asset Manager, of Cairn Letting represented the landlord at the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

### **The house**

12. The house is a semi-detached mews cottage within a small modern development in an exposed and open location close to the seafront.
13. The property is in the region of 9-10 years old, and comprises: (downstairs) a hallway, lounge, dining room/bedroom, dining kitchen and bathroom and (upstairs) three bedrooms (one with ensuite bathroom,) and a bathroom. The house was unoccupied at the time of the inspection; it was unfurnished and there were no floor coverings throughout most of the property. Ms Carrell confirmed that the furnishings and floor coverings had belonged to the former tenant, who had removed these on vacating the house.

### **The hearing**

14. Following the inspection, the tribunal held a hearing at Victoria Halls, Sinclair Street, Helensburgh G84 8TU. Ms McCabe and Ms Carrell represented the landlord and the landlord's administrators at the hearing.

### **The evidence**

15. The evidence before the tribunal consisted of:
  - The application form completed by the former tenant, together with covering email dated 30 June 2017.
  - Registers Direct copy of Land Register title DMB7858, which confirmed that the house is owned by DCW Limited. The title deed relates to the entire development which was built by DCW Limited, the developer, under exception of the properties which have been sold, which are listed in the schedule of removals within the land certificate.
  - Short assured tenancy agreement between DCW Limited and the former tenant in respect of the house dated 23 April 2015, together with accompanying notices.

- Copy emails between the former tenant and Cairn Letting dated 16 and 20 May, 15 July, 4 October and 10 November, all 2016, and copy emails between the former tenant and David McGinness of French Duncan LLP dated 25 May and September 2016 and 15 May 2017, in respect of the required repairs.
- Copy Notice of Appointment of an Administrator endorsed by the Court of Session and dated 23 February 2016, appointing Eileen Blackburn and Brian William Milne of French Duncan LLP as joint administrators of DCW Limited, provided by Ms McCabe following the hearing, as requested by the tribunal.
- Email from Argyll and Bute Council dated 31 July 2017 regarding the landlord registration details for the house.
- The written representations submitted by the solicitor for the landlord's administrators on 22 August 2017.
- The further written representations received from the solicitor for the landlord's administrators on 7 September 2017.
- The Electrical Installation Report in respect of the property dated 3 August 2016, carried out by Gasman Energy, Glasgow.
- The tribunal's inspection of the property.
- The oral representations of the representatives of the landlord and its administrators at the hearing.

### **Summary of the issues**

16. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed on it by section 14 (1) (b).

### **Findings of fact**

17. The tribunal made the following findings in fact:
  - The house is owned by DCW Limited, which was the developer for the development within which the house is situated.
  - DCW Limited is currently in administration. Brian William Milne and Eileen Blackburn of French Duncan LLP were appointed as its joint administrators on 23 February 2016.
  - The tenant entered into a tenancy agreement with DCW Limited on 23 April 2015 to rent the house for a period of twelve months from that date. The tenant was resident at the house until 1 July 2017.
  - The tenancy of the house was managed on behalf of the landlord by Cairn Letting, 34 Gibson Street, Glasgow G12 8NX.

- The tribunal in its inspection carefully checked the items which were the subject of the complaint. The tribunal observed the following:
  - i. While there were signs of historic water damage around the spotlight in the lounge, there was no evidence of a leak in the living room or the two upstairs bedrooms to the front of the house.
  - ii. An inspection of the loft space identified no signs of water ingress- the area appeared to be dry.
  - iii. There was some evidence of cracking and settlement around the windows in the lounge, the two front upstairs bedrooms and the downstairs dining/bed room to the front. There were, however, no signs of significant movement, draughts, water ingress or any noticeable gaps to the outside.
  - iv. High dampness readings were taken on an area of wall just above the bottom left hand corner of the lounge window. When inspected from the outside, there was found to be a length of UPVC beading which was not attached and sealed between the window frame and the window sill, which was leading to water ingress.
  - v. The hole in the hall wall had been repaired, and an access hatch had been fitted.
  - vi. There was a cracked double electrical socket in the hallway.
  - vii. The patio doors appeared to be sealed tight, and there was no sign of movement. No draught was observed coming through the closed doors; yet when the doors were opened, a strong breeze was felt.
  - viii. A large tree which appeared to be of considerable age stood to the right of the property and its branches were situated above the three common parking spaces in front of the house and the adjacent property, number 5 Dalandhui Mews. A number of broken branches which appeared to have come from the tree were observed on the ground around the base of the tree. The tree appeared to have several dead branches, but was alive and in foliage, and no obviously dangerous branches were observed.

### **Reasons for decision**

18. The complaints before the tribunal as set out in the former tenant's application, and the tribunal's determinations in relation to each of these, are set out below.

#### ***1. Roof leaking into upstairs bedroom and downstairs lounge***

19. It was not clear from the former tenant's application which upstairs bedroom he had been referring to, but the tribunal observed no evidence of a leak in either bedroom during its inspection. Neither was there any evidence of a leak in the lounge, aside from signs of historic water damage. The ordinary

(surveyor) member of the tribunal inspected the loft space, and found that the area appeared to be dry, with no signs of water ingress.

20. Ms Carrell told the tribunal that contractors had been called out on 3 occasions to attend to the leak, and that this had always been repaired. Among the written representations submitted by the solicitors for the landlord's administrators were invoices dated 30 June and 31 August 2016 and 31 May 2017 relating to repairs in respect of a roof leak.

21. The tribunal therefore determines, at the time of its inspection, the roof of the property was wind and watertight and in all other respects fit for human habitation.

**2. *Window unit in master bedroom has moved away from the wall leaving a 5mm gap to outside***

22. Again it was unclear as which bedroom the former tenant had been referring to as the 'master bedroom', although the tribunal made the assumption that this was the slightly larger of the two front bedrooms situated above the lounge, which had an ensuite bathroom. While during its inspection, the tribunal observed some evidence of cracking and settlement around the windows in both bedrooms, there were no signs of either significant movement or any noticeable gaps to the outside.

23. The tribunal therefore determines, at the time of its inspection, the windows in the two upstairs front bedrooms were wind and watertight and in all other respects fit for human habitation.

**3. *Hole in hall wall needs fixed after repair on 15 May 2016***

24. The former tenant's email to Cairn Letting dated 16 May 2016 explained that a gas engineer had to cut a hole in the hallway wall in order to gain access to a burst pipe. The tribunal observed during its inspection that the hole in the hall wall had been repaired, and an access hatch had been fitted. The tribunal therefore determines, at the time of its inspection, the wall in the hallway was in a reasonable state of repair and in proper working order.

**4. *Hall socket is cracked***

25. The tribunal observed at its inspection that there was a cracked double electrical socket in the hallway, which it assumed to be the socket complained about by the former tenant in his application. It noted that the Electrical Installation Condition Report by Gasman Energy in respect of the house dated 3 August 2016 found the overall condition of the electrical installation to be

satisfactory. The report also contained an observation that there was a cracked socket in the hallway. This was classified as a category C3 observation - improvement recommended.

26. Section 13 (4A) of the 2006 Act provides that in determining whether a house meets the standard of repair set out in sections 13 (1) (c) and (d) of the 2006 Act in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances regard is to be had to guidance issued by Scottish Ministers on electrical safety standards. The current guidance<sup>1</sup> states (at paragraph 15) that any element of the electrical installation that is classified as a C1 or C2 must be rectified in order to comply with the repairing standard.
27. While the tribunal observes that the landlord may wish to take action to repair or replace the cracked socket, it determines that, at the time of its inspection, the socket was in a reasonable state of repair and in proper working order.

***5. Windows to front of house and patio door needing resealed due to movement***

*a. Windows*

28. At its inspection, the tribunal observed that there was some evidence of cracking and settlement around the windows in the two front upstairs bedrooms, and the lounge and downstairs dining/bed room to the front. It did not, however, observe, any sign of significant movement in any of these windows.
29. The tribunal did, however, take high dampness readings on an area of wall just above the bottom left hand corner of the lounge window. When inspected from the outside, there was found to be a length of UPVC beading which was not attached and sealed between the window frame and the window sill, which was leading to water ingress.
30. While the landlord's representatives acknowledged that it was clear from the inspection that this seal needed to be replaced, Ms McCabe argued that the landlord had not been clearly notified of this issue, as required by section 22(3) of the Act. She pointed out that the only evidence provided by the former tenant that he had notified the landlord of any issue relating to resealing the windows was his email to David McGinness of French Duncan dated 28 September 2016. This referred only to 'windows needing resealed - master

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<http://www.landlords.org.uk/sites/default/files/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%2019%20Feb%2015%20-%20Copy.pdf>



bedroom urgent from June'. She said that this complaint was not sufficiently specific, unlike the other complaints made by the former tenant, and it was therefore not clear what he was referring to. While the complaint was that the windows should be resealed, it was clear from the former tenant's application that his complaint was that they should be resealed due to movement. She pointed out that he had made no reference to water ingress through the window, or dampness around it.

31. Ms McCabe told the tribunal that the matter would be attended to, which was confirmed by Ms Carrell, but argued that, given the lack of adequate notification, that it should not be the subject of a Repairing Standard Enforcement Order.
32. The tribunal agrees with Ms McCabe that there was no evidence before it that the former tenant had notified the landlord that there was a specific problem with the seal on the living room window. His complaint was very general, referring to all windows at the front of the house, and made clear reference to a need for resealing due to movement, rather than any other issues such as water ingress. The only evidence of notification which the former tenant had provided in relation to the windows was his email of 28 September 2016, referred to above.
33. Taken together with the specific complaint in his application, this appears to refer to both a need for resealing due to movement, and to his other complaint, discussed above, that the window in the master bedroom had moved away from the wall, leaving a gap.
34. While the tribunal notes that the lounge window is not currently wind and watertight, it is therefore unable to make a finding that it fails the repairing standard, as it considers that this issue was not adequately notified to the landlord. The tribunal hopes, however, that the landlord's agents will take prompt action to remedy the problem.

*b. Patio doors*

35. The tribunal observed at its inspection that the patio doors appeared to be sealed tight, and there was no sign of movement. No draught was observed coming through the closed doors; yet when the doors were opened, a strong breeze was felt, as might be expected given the location of the property.
36. The tribunal therefore determines that, at the time of its inspection, the patio doors were wind and watertight and otherwise reasonably fit for human habitation.

**6. Dead tree overhanging house needs taken down as dead and dangerous**

37. The former tenant's complaint was that there was a dead tree overhanging the common parking spaces in front of the house and the adjacent property, 5 Dalandhui Mews. He had stated in a second email dated 28 September 2016 to David McGinness of French Duncan that these parking spaces could not be used, as branches regularly fell from the tree. He went on to say that the previous year, a branch had destroyed the rear windscreen of a neighbour's car and caused damage to its roof.
38. At its inspection, the tribunal observed that a large tree which appeared to be of considerable age stood to the right of the property and its branches were situated above the three common parking spaces in front of the house and the adjacent property, number 5 Dalandhui Mews. A number of broken branches which appeared to have come from the tree were observed on the ground around the base of the tree. The tree appeared to have several dead branches, but was alive and in foliage, and no obviously dangerous branches were observed.
39. The tribunal took the view that this was a repairing standard issue which should be considered. In terms of section 194 of the Act, a 'house' includes *'any yard, garden, garage, out-house or other area or structure which is capable of being occupied or enjoyed together with the living accommodation (solely or in common with others)'*. It was clear from the title deed that the parking spaces were common, and appeared to be for the use of all properties within the development. The tribunal considered that this matter fell within section 13 (1) (b) of the Act, and that the parking spaces were part of the 'structure and exterior' of the house.
40. Ms McCabe told the tribunal that she agreed that this was a repairing standard issue, and accepted that it was the landlord's responsibility to ensure that the common areas were in a reasonable state of repair and in proper working order. She argued, however, that the tree and the parking areas were in a reasonable state of repair and in proper working order. She said that cars had been parked in the spaces immediately prior to the inspection, and pointed out that no expert evidence was available on the matter. She also pointed out that, given the location of the house and the tree, it might be expected that branches would fall from it from time to time.
41. The tribunal agreed that there was no expert evidence available to it regarding the tree, but from its own observations at the inspection did not consider that there was any immediate cause for concern regarding the safety of the tree/ the parking spaces. While there were some branches on the ground, the

tribunal noted that in terms of section 13 (2) (b), that in determining whether a house meets the standard of repair mentioned in section 13(1) (b), regard is to be had to the locality in which the house is situated. Given the exposed location of the house and of the development, it might be expected that some branches would fall from the tree from time to time in windy conditions.

42. The tribunal therefore determines that, on the balance of probabilities, the tree and the parking spaces are in a reasonable state of repair and in proper working order.

### **Summary of decision**

43. On the basis of all the evidence before it, the tribunal found that at the time of its inspection, the house was in a state of repair which met the repairing standard as regards the issues complained about by the former tenant. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the former tenant's application.

### **Rights of Appeal**

44. 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.
45. 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.

Signed..... **S O'Neill** ..... Date 20/9/17  
Sarah O'Neill, Chairperson

Schedule of Photographs

4 Dalandhui Mews

Garelochhead, G84 0BE

FTS/HPC/RP/17/0247



12<sup>th</sup> September 2017 at 10:00am

Weather dry and bright

Surveyor - Lori Charles Ordinary Member

This is the schedule of photographs referred to in  
the foregoing decision dated 20th September 2017  
S O'Neill

Schedule of Photographs

4 Dalandhui Mews

Garelochhead, G84 0BE

FTS/HPC/RP/17/0247

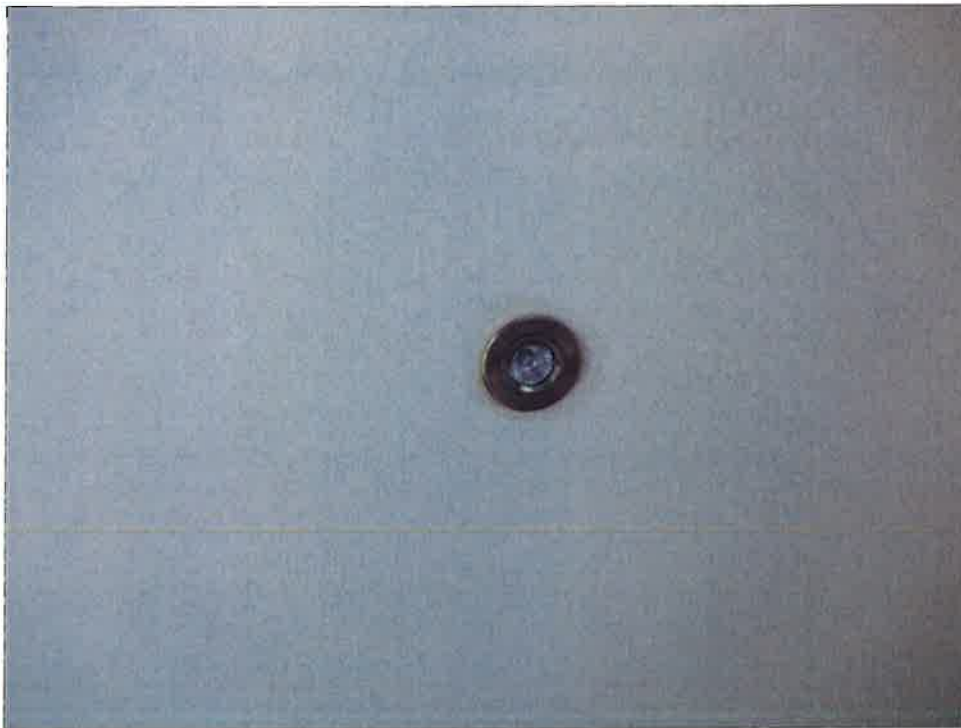


12<sup>th</sup> September 2017 at 10:00am

Weather dry and bright

Surveyor - Lori Charles Ordinary Member

Lounge – leak from master bedroom historic water damage at spotlight



Hall cracked power socket – C3 on electrical certificate recommendation to repair



Hallway – hole in wall now repaired and access hatch fitted



Lounge windows – settlement cracks visible no draughts noted at time of inspection



Lounge window – water ingress noted left hand corner only



Patio doors kitchen - settlement cracking noted no evidence of water ingress or draughts.





Master bedroom window – Settlement cracking visible no evidence of water ingress or draughts



Loft space - dry no evidence of water ingress



External photograph at lounge window – Upvc beading not attached and sealed between window-frame and window-sill allowing water ingress



Tree situated within common parking area – tree has several dead branches however the tree was alive and in foliage at time of inspection



Broken branches around base of tree



Signed *Lori Charles* 12th September 2017