



**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/23/1995**

**Re: Property at 139b Union Street, Aberdeen, AB11 6BH , being subjects  
registered in the Land Register of Scotland under Title Number ABN148907  
("the Property")**

**Parties:**

**Claymore Homes Ltd, Neo House, Riverside Drive, Aberdeen, AB11 7DG ("the  
Landlord"); and**

**Mrs Linda Leung, 139b Union Street, Aberdeen, AB11 6BH ("the Tenant")**

**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 By application to the Tribunal, the Tenant sought an order against the  
Landlord on the basis that they 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 Landlords had failed to ensure that the house met  
the tolerable standard on the basis that the windows in the property were not  
capable of being opened.**

- 3 By Notice of Acceptance of Application 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 was scheduled for the 10 October 2023 with a hearing set for later that day.
- 4 On 8 September 2023 the Tenant emailed the Tribunal to advise that the landlord had carried out some repairs but not all. Only one window in the living room could be opened and it was heavy to lift. The bedroom windows were still incapable of being opened. On 14<sup>th</sup> September 2023 the Tenant emailed again to advise that there was a potential issue with an external gas pipe and the contractor was unable to inspect the pipe due to the issue with the bedroom window.

### **The Inspection**

- 5 The Tribunal inspected the property at 10am on 10<sup>th</sup> October 2023. The Tenant was in attendance and permitted access. There was no representation on behalf of the Landlord. The Tenant's husband and a third occupant were present in the property. The weather was dry and sunny.
- 6 The dwelling is the first floor flat within a flatted granite building with commercial property on the ground floor. The property is located in Aberdeen city centre within a mixed residential and commercial area
- 7 The accommodation comprises of a living/kitchen area to the front, master bedroom with ensuite, second bedroom and a bathroom. The inspection focused on the windows within the property as per the terms of the application.
- 8 The living/kitchen area had two windows each consisting of the old external sash and case window with an inner PVC double glazed window. The left inner window was restricted from opening due to a radiator positioned in front of it. The right hand inner PVC window could be fully opened, and the external sash and case window lifted, albeit with an element of force.
- 9 In the master bedroom the inner PVC window could be fully opened. However the external sash and case window was incapable of opening due to being stuck fast with paint or caulk. The external window block had been removed, the sash cord was broken and screws were obstructing the channel. In the ensuite bathroom a sash and case window could be opened however there was no restraint or stay to secure it.
- 10 The Tribunal was unable to inspect the window in the second bedroom due to the presence of items obstructing access. There was no window in the bathroom.

- 11 Photographs were taken during the inspection and are included in the attached schedule.

### **The Hearing**

- 12 The hearing took place following the inspection in Aberdeen in the Employment Tribunal centre on Huntly Street. The Landlord was represented by Ms Paige Wilson from Stonehouse Lettings. The Tenant was present and accompanied by her husband Mr Kenny Leung.
- 13 It should be noted that Ms Wilson had sent an email shortly prior to the hearing with submissions on behalf of the Landlord and requesting an adjournment on the basis that the Landlord's submissions had yet to be considered by the Tribunal due to a delay in the provision of a mandate from the Landlord. The Tribunal did not however have sight of this in advance of the hearing. Ms Wilson did not make the request verbally to the Tribunal at the hearing and the hearing therefore proceeded on that basis.
- 14 The Tribunal then took the parties through the findings of the inspection and asked for their submissions. For the avoidance of doubt the following is not a verbatim account of the hearing, but a summary of the submissions from the parties in terms of those matters relevant to the Tribunal's determination of the application.
- 15 Mrs Leung confirmed that the issues she had raised in her application had been covered by the Tribunal during the inspection. The property had been like a furnace due to the problems with the windows. She and the other occupants had to move out due to the heat. It had affected their health and they had suffered from headaches and migraines due to the heat. They were unable to sleep. One of her fellow occupants was disabled and this had exacerbated his health issues. The windows also posed a fire hazard as they could not be opened. Mrs Leung noted that the Tribunal had been unable to inspect the window in the second bedroom but confirmed that it was the same as the master bedroom in that the external sash and case window was stuck solid.
- 16 Ms Wilson confirmed that the Landlord was aware of the issues and was in the process of arranging contractors to inspect the windows. It was not an easy repair to carry out therefore it had taken some time to find the right contractor. The Landlord was happy to have the repairs done. With regard to the living room window a radiator had been removed which enabled the window to fully open. Mrs Leung highlighted the length of time it took the radiator to be removed however Ms Wilson advised she was unable to comment on that. Ms Wilson did confirm that her company provided a full management service to the Landlord. They would arrange the contractor on the Landlord's behalf. They had engaged a contractor already but he said he was unable to carry out the work as he was not qualified to do so. The job would require scaffolding as the window had been painted from the outside.

- 17 Mrs Leung again made mention of the length of time it had taken the Landlord to address the issues. It had been escalated when there was the problem with the gas pipe and the gas engineer could not gain access from inside to inspect the pipe. The gas engineer was shocked that the window could not be opened. Mrs Leung explained that the window in the ensuite was not as much of a problem but she was concerned that the window could slam shut without any support to keep it open.
- 18 Ms Wilson reiterated that the Landlord was content to carry out the repairs but would require access externally. This would be hampered by planned works by the Council between 25<sup>th</sup> September 2023 and 30<sup>th</sup> December 2023 to the steps at Back Wynd which would prevent scaffolding from being erected whilst those works were ongoing.
- 19 The hearing concluded and the Tribunal determined to issue its decision in writing. Following the hearing the Tribunal noted the written submissions from the Landlord which outlined a chronology of events in relation to the windows and details of contact between the Landlord's agent Stonehouse Lettings and the Tenant.

20 **Findings in Fact**

The Tribunal found the following facts to be established:-

- 21 The Landlord and Tenant entered into a tenancy agreement dated 9<sup>th</sup> and 10<sup>th</sup> February and 3<sup>rd</sup> March 2023.
- 22 The left window in the living/kitchen area cannot be fully opened.
- 23 The windows in both bedrooms cannot be fully opened.
- 24 The window in the ensuite bathroom can be opened but there is no support to secure it open.

**Reasons for decision**

- 25 The Tribunal determined the application having regard to the terms of the application, the written representations 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.
- 26 Based on its findings in fact the Tribunal was satisfied that the majority of the windows in the property, with the exception of the right hand window in the living/kitchen area, were not in a reasonable state of repair and in proper working order. Although the Tribunal had been unable to inspect the window in the second bedroom, based on its observation of the state of the window in the master bedroom the Tribunal considered it could reasonably conclude that

the window in the second bedroom was in a similar or identical state. The left hand window in the living/kitchen area could not be opened fully due to the radiator causing an obstruction and whilst the window in the ensuite could open there was no mechanism to ensure it stayed open, thereby causing a potential hazard to the safety of occupants. The Tribunal considered that the inability to open the windows, either safely or at all, did not meet the Repairing Standard in that the property was not reasonably fit for human habitation. It was reasonable to expect that tenants should be able to open windows in order to access fresh air and ventilation when required. There may be a potential risk to the health of the occupants from high levels of carbon dioxide and in the short term, the levels should be monitored so that the occupants are able to act accordingly.

27 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 wind and watertight but not in all other respects reasonably fit for human habitation.
- (ii) In respect of section 13(1)(b), the structure and exterior of the house is not in a reasonable state of repair and in proper working order.

28 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, taking into account the planned works by the local authority that will impede access until 30<sup>th</sup> December 2023. However the Tribunal would urge the Landlord to carry out any repairs required by the Repairing Standard Enforcement Order that are capable of being completed whilst those works are ongoing.

29 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.

**Date 2 November 2023**