

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

8 Sandhaven Gardens, Dundee DD5 1RJ ("the House")

The Parties:

Rachel Jones, 8 Sandhaven Gardens, Dundee DD5 1RJ ("the Tenant")

Zafar Saleem and Mussarat Saleem, 211A Albert Street, Dundee DD4 6QA ("the Landlord")

Reference number: FTS/HPC/RP/23/3390

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 at the inspection and hearing and of the written documentation attached to the application, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 28 September 2023 (hereinafter referred to as "the Application"), the Tenant 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 Tenant 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"

The Tenant complained about the ingress of water from the roof.

By letter of 15 November 2023, 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
David Godfrey, 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 Third Party.

A hearing and inspection were fixed for 12 January 2024. At the Tenant's request, the inspection and hearing were discharged and new dates fixed for the inspection and hearing to take place on 20 March 2024.

The Tribunal inspected the House on 20 March 2024. The Tenant was present. The Landlord was neither present nor represented.

Following the inspection, the Tribunal held a hearing on the same day at Endeavour House, Dundee. The Tenant was represented by Rebecca Falconer of Dundee Law Centre. The Landlord was neither present nor represented. The Tribunal considered the written evidence submitted by the Tenant and the Tenant's representative's submissions.

Submissions at the Hearing

The Tribunal advised the Tenant's representative that it appeared obvious from the inspection that the condition of the roof of the House was such as to breach the repairing standard. The Tenant's representative requested that the Tribunal make a finding to that effect and a Repairing Standard Enforcement Order ("RSEO").

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 semi-detached house.
- 2 The tenant occupies the House under a tenancy agreement and has done so for approximately nine years.
- 3 Zafar Saleem is the registered owner of the House.
- 4 Zafar Saleem and Mussarat Saleem are registered as Landlords of the House.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Third Party notified the Landlord's representative of the defects in the House which are now the subject of the Application by text messages including one on 16 March 2023. The local authority also notified the Landlord of the defects by email on 16 August 2023
- 7 The inspection on 20 March 2024 revealed:
 - a. There is evidence of water ingress from the roof into the upstairs rear right bedroom.
 - b. The bedroom wall and ceiling have been repaired previously. High damp readings were found. The walls are stained. Mould is present.
 - c. The bedroom is not able to be used as intended.

A schedule of photographs taken at the inspection has been provided to the parties.

Reasons for the Decision

There is evidence of significant water ingress into the bedroom. The exact cause of the ingress cannot be determined but may relate to blocked gutters or missing tiles.

The Repairing Standard

The Tribunal considers that the condition of the roof represents a breach of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made. Having regard to the nature of the works required at the House, the Landlord's failure to engage in the present process and the fact that the defects have been the subject of reports to the Landlord for a considerable time, the Tribunal have allowed 35 days for the repairs to be carried out.

Decision

The Tribunal, considering the terms of section 13(3) 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.

John M McHugh
Chairperson

Date: 25 March 2024

Housing and Property Chamber

First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Property: 8 SANDHAVEN GARDENS, DUNDEE DD5 1RJ

Ref No: FTS/HPC/RP/23/3390

Tribunal members: Mr J McHugh & 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 subsequent correspondence and any issues arising there from.

Access

The above Tribunal Members attended the property at 10:00 on 20th March 2024.

Access to the property was provided by the Tenant, Miss Rachel Jones.

The Landlord, Mr Zafar Saleem was neither present nor represented.

David Godfrey MRICS
Ordinary (Surveyor) Member
First-tier Tribunal for Scotland
20/03/2024

Appendix 1

Schedule of photographs taken during the inspection on 20/03/2024.



Damp staining to ceiling and north wall of NW Bedroom



Rear elevation showing location of valley gutter