

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Repairing Standard Enforcement Order under Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/23/3749

Re: Property at 2B Menzies Road, Aberdeen, AB11 9BA (“the Property”)
under Title Number KNC2336

Parties:

Arran Davidson, c/o DJ Alexander, Neo House, Riverside Drive, Aberdeen, AB11 7DG (“the Landlord”); and

Mr John Harrington, 2B Menzies Road, Aberdeen, AB11 9BA (“the Tenant”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Angus Anderson (Ordinary Member)

Whereas in terms of their decision dated 31 March 2024, the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) and in particular that the landlord has failed to ensure that:-

- (i) the house meets the tolerable standard, and
- (ii) the structure and exterior of the house is in a reasonable state of repair and in proper working order.

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the Repairing Standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the landlord to:-

- (i) Carry out such works as are necessary to the exterior of the property to render the property wind and watertight; and

- (ii) Repair any water damage in the front bedroom and carry out internal redecoration following the completion of the works at (i).

The Tribunal orders that the works specified in this Order must be carried out and completed within a period of **six weeks** from the date of service of this Notice.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ruth O'Hare, Chairperson, c/o Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT at Aberdeen on 31 March 2024 before this witness:-

P Robb

R O'Hare

witness

Chairperson

PATRICK ROBB, c/o
GLASGOW TRIBUNALS
CENTRE, 20 YORK ST,
GLASGOW, G2 8GT



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/23/3749

Re: Property at 2B Menzies Road, Aberdeen, AB11 9BA (“the Property”)

Parties:

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Mr John Harrington, 2B Menzies Road, Aberdeen, AB11 9BA (“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 the Landlord 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 Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation. In particular the Tenant stated that there had been water leaks which had caused internal damage and that a hole in the exterior wall, and the internal damage from the leak, both required to be fixed.

- 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, an inspection and hearing were fixed and Notice of Referral was served on the parties under Schedule 2, Paragraph 1 of the Act.
- 4 The Tenant emailed the Tribunal on 9 February 2024 advising that he had been notified by the Landlord's agent that external repairs had been carried out on 23 January 2024, however he had seen no evidence of this and in the absence of recent adverse weather he was unable to confirm if the leak had been fixed. He further advised that internally the repairs were still outstanding. The Tenant subsequently followed up with a further email later that same day confirming that the leak had returned during a period of bad weather and provided a photograph to evidence same.

The Inspection

- 5 The Tribunal inspected the property at 10.00am on 5th March, 2024. The tenant was in attendance and permitted access. The representative for the landlord was present.
- 6 The property is situated in a mixed residential and commercial area around half a mile south of Aberdeen City centre. It was dry but overcast during the inspection with mainly dry weather over the preceding few days.
- 7 The property is a first floor flat within a four storey tenement. There is a barber's shop and a flat at ground level and flats on the upper levels. The building was constructed around 1900. The walls are solid granite and the roof is pitched and slated. The windows are PVC framed and are double glazed.
- 8 The accommodation comprises: entrance hallway, Lounge, kitchen, bathroom and two bedrooms.
- 9 The inspection concerned water ingress and damp within the front bedroom and was confined to this issue. There was evidence of previous penetrating damp to the area above the window. The wallpaper had peeled off and there was staining to the lintol. Moisture levels were tested using a Protimeter Surveymaster moisture meter. High readings (c 60%) were observed to a small area of plasterboard to the window soffit (underside of lintol). Elsewhere, readings to the sides and below the window and to the adjacent flooring were normal (below 20%). The dampness is consistent with residual moisture from previous water ingress. The right hand pane was found to be stuck fast and could not be opened. The left hand pane was opened to inspect the exterior around the window. The window was difficult to open, the mechanism was very stiff. The mastic around the window frame and adjacent mortar and stonework appeared intact.

- 10 Upon leaving the flat, it was apparent that there is significant, longstanding and ongoing water ingress to the communal staircase, originating at the upper part of the stairs.
- 11 Externally, the rear elevation was inspected. The rainwater goods were seen to be choked with vegetation. Green staining to the outer walls indicates previous and likely ongoing leakage from the rainwater goods. The inspection was restricted due to the height of the building and the restricted access within the rear garden.
- 12 The front elevation was inspected. The rain water goods to the Victoria Road frontage were choked with vegetation. There is a projecting string course of masonry above the bedroom window. However, no obvious significant defects were visible from ground level.
- 13 Photographs were taken during the inspection and are included in the attached schedule.

The Hearing

- 14 The hearing took place following the inspection in Aberdeen in the Employment Tribunal centre on Huntly Street. The Landlord was represented by Samantha Bell from DJ Alexander. The Tenant was in attendance and accompanied by his mother Doreen Bain as a supporter.
- 15 The Tribunal explained the purpose of the hearing and summarised the findings from the inspection. The Tribunal then asked parties to address it on their respective positions regarding the application and took the opportunity to ask questions of them both.
- 16 The Tenant advised that the leak in the bedroom had first appeared in October 2022. He had entered this into the repairs log held by the Landlord's agent DJ Alexander (formerly Stonehouse Lettings). He was then in regular contact with the Landlord's agent in an attempt to get the matter addressed. He made reference to the correspondence he had submitted in support of the application. The Tenant advised that he regretted that matters had reached the Tribunal however as the problem had persisted for a year and a half it was starting to affect his mental health.
- 17 The Tenant explained that during periods of high winds and heavy rain water would pour into the bedroom through the top of the window in several different areas. On 9th February 2024 the Landlord's agent had advised that a contractor had been out to fix the problem and asked the Tenant to let them know if the issue had been resolved. When the Tenant returned home from work that evening he found water was again pouring in. The Tenant advised that he believed the contractor had cleared the gutters, however he had been advised by a contractor, who had attended the property to inspect the matter, that the external wall required repointing. The Tenant confirmed that he had advised the Landlord's agent that the leak was still ongoing. In response to questions from the Tribunal the Tenant confirmed that the contractor he had

spoken with was called Inside Oot. He had subsequently been sent a copy of their quotation from the Landlord's agent which confirmed the recommendation for replacement pointing.

- 18 The Tenant advised that it was difficult to heat the property as a result of the ongoing water leak. During the recent winter he had spent in the region of £150 to £200 per month on his gas bills. He could often see the wind coming into the property although he didn't believe this was the main reason for the heating problems.
- 19 The Tribunal then heard from Ms Bell on the Landlord's behalf. She advised that the Landlord had previously instructed contractors to attend the property and provide a quotation for works required. D&D Slating had been instructed on 24th January 2024 and had cleared the gutters, having believed that was the source of the problem. In addition, a contractor had previously attended the property in September 2022 to clear a downpipe and gutters. It was noted however by the Tribunal that the downpipe in question not in the vicinity of the water leak.
- 20 Ms Bell further confirmed that the Landlord had obtained a quote from AG Slating in November 2023, who had recommended repointing as well as gutter clearance. The Landlord had not however authorised this work. The Landlord had also obtained a quote in April 2023 for the internal remedial works but had not given consent to proceed. Following the most recent leak on 9 February 2024 the Landlord had instructed Inside Oot to provide a quote. Ms Bell did not have the details of that to hand but understood it included works to the roof as opposed to the masonry. The Tenant however advised that he had received the list of works proposed by Inside Oot from the Landlord's agent and it included an element of repointing. Ms Bell confirmed that the Landlord had not yet authorised the work to go ahead. The quote was currently sitting with him for approval. Ms Bell advised that the property manager would be in touch with the Landlord regarding any outstanding quotes.
- 21 The Tenant advised that he had spoken with an employee of the Landlord's agent about four months ago and was advised that the property manager with responsibility for his tenancy was on sick leave and that no one had been in touch with the landlord during that time. The Tenant had kept in contact with the Landlord's agent regarding the leak however nothing had moved forward.
- 22 The hearing concluded and the Tribunal determined to issue its decision in writing.

Findings in Fact

The Tribunal found the following facts to be established:-

- 23 The Landlord and Tenant entered into a tenancy agreement dated 9th and 10th July 2021.

- 24 On or around November 2022 the Tenant reported a water leak in the front bedroom of the property.
- 25 In September 2022 and January 2024 the Landlord instructed contractors to carry out works to address the water leak. Said works included clearing of gutters and a downpipe.
- 26 In April 2023 the Landlord obtained a quote from his letting agent's handyman for internal remedial works. In November 2023, and following a recent leak on 9 February 2024, the Landlord obtained further quotes from contractors for works to address the leak. The Landlord has yet to instruct any of these works to go ahead.
- 27 The leak has not been addressed. There continues to be water ingress to the front bedroom during periods of high wind and heavy rain, the most recent occurrence being on 9 February 2024.
- 28 The property is not presently wind and watertight.

Reasons for decision

- 29 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.
- 30 Based on its findings in fact the Tribunal could not satisfy itself that the property is currently wind and watertight. There is evidence of water ingress in the front bedroom of the property and the Tribunal accepted the Tenant's evidence that this has occurred as recently as 9th February 2024, based on the photograph produced, damp readings from the inspection and the Tenant's submissions at the hearing. The Landlord appears to accept that there is an issue, having obtained quotes for remedial works, and it is crucial that he ensures that these are completed as soon as possible. The Tribunal struggles to understand why there has been such significant delay in addressing the source of the leak, when quotes have been obtained and not progress. There was nothing before the Tribunal to justify why it has been over a year since the problem was first reported by the Tenant and matters have not moved forward.
- 31 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.

- 32 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 6 weeks, on the basis that the Landlord has obtained a recent quote from a contractor which could presumably be progressed without further delay, and having regard to the impact of the leak on the Tenant’s enjoyment of the property and his mental health.
- 33 As an observation, the Tribunal would also urge the Landlord to address other items of disrepair which were sighted during the Tribunal’s inspection. As these do not form part of the Tenant’s application the Tribunal cannot make a determination on them as part of the RSEO however the Tribunal would expect the Landlord to take action to ensure the property is fully compliant with the Repairing Standard. In particular the windows in the front bedroom do not appear to be in proper working order. The Tribunal found it difficult to operate the opening mechanism which was stiff and it was also extremely difficult to close one of the windows without significant strength. The Tribunal also observed signs of excessive dampness in the communal stair pertaining to the property and the Landlord should look to liaise with other owners in the block to address this.
- 34 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.

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R O'Hare

Date 31 March 2024