

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24(1)**

**Chamber Ref: FTS/HPC/RP/18/0551**

**Title no: GLA 7182**

**Garden Flat, 4 Kensington Road, Glasgow, G129LF (“The Property”)**

**The Parties: -**

**Mr Alexander Thom, formerly Garden Flat, 4 Kensington Road, Glasgow, G12  
9LF (“The former Tenant”)**

**Stephanie Ryles, c/o FineHolm Letting Services Ltd, 114 Union Street,  
Glasgow, G1 3QQ; 6 Sisters Crescent, Drummoyne, NSW 2047; 26 Knockmyle  
Road, Antrim, Northern Ireland, BT41 1HE (“The Landlord”)**

Whereas in terms of their decision dated 5 July 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) and that the Landlord had failed to ensure that the property meets the repairing standard with reference to the following provision of Section 13 of the Act, as amended: -

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation.

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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: -

- (1) To instruct a suitably qualified damp specialist and building contractor to prepare a detailed survey of the property to identify the cause and full extent of the dampness, damp staining and any remedial action. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant decoration made good.
- (2) To instruct suitably qualified contractors to carry out the repairs identified in the report on the property by Advanced Preservation Specialists Ltd dated 20

June 2018, to include a repair to stop water ingress from the property above, and any resultant decoration made good.

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

**A landlord, tenant or third-party applicant 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.**

In terms of Section 63 of the Act, 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.

**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 typewritten on this and the preceding page are executed by Josephine Bonnar, Solicitor, Legal Member and Chair of the Tribunal at Motherwell on 5 July 2018 before this witness: -

  G Bonnar                        Witness

Gerard Bonnar \_\_\_\_\_ Name in full

1 Carlton Place

Glasgow

**J Bonnar**

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Ref: FTS/HPC/RP/18/0551**

**Title no: GLA 7182**

**Garden Flat, 4 Kensington Road, Glasgow, G12 9LF ("The Property")**

**The Parties: -**

**Mr Alexander Thom, formerly Garden Flat, 4 Kensington Road, Glasgow, G12 9LF ("The former Tenant")**

**Stephanie Ryles, c/o FineHolm Letting Services Ltd, 114 Union Street, Glasgow, G1 3QQ; 6 Sisters Crescent, Drummoyne, NSW 2047; 26 Knockmyle Road, Antrim, Northern Ireland, BT41 1HE ("The Landlord")**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("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, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

**The Tribunal comprised: -**

**Mrs Josephine Bonnar, Legal Member**

**Mr Nick Allan, Ordinary Member**

## Background

1. By application received on 8 March 2018 the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The Application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, and (ii) The installations in the house for the supply of water, gas, and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order. Specifically, the Tenant stated that since December 2017 there has been damp and mould in the property from a leak in the plumbing and that the property was flooded on 6 March 2018 leading to a sunken ceiling and the property uninhabitable.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 8 May 2018. The parties were notified that an inspection and hearing would take place on 15 June 2018.
4. Following service of the Notice of Referral the Tribunal were notified that the Tenant had vacated the property on 31 May 2018. By Minute of Continuation dated 5 June 2018 the Tribunal determined that it would proceed to continue to determine the application in terms of Schedule 2 Paragraph 7(3) of the Act.
5. The Tribunal inspected the property on the morning of 15 June 2018. The letting agent, Leanne Drummond of Fineholm Letting Services attended on behalf of the Landlord.
6. Following the inspection of the property the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow. The letting agent, Leanne Drummond attended and gave evidence on behalf of the Landlord.

## **The Inspection**

7. At the time of the inspection it was overcast and dry. The Tribunal inspected the property which is a two-bedroom basement garden flat conversion in the west end of Glasgow.
  
8. During the inspection the Tribunal noted water damage and fungal growth on the living room wall next to the stairwell to the kitchen, a saturated wall within the living room cupboard, a saturated wall within the boiler cupboard, significant dampness around the kitchen window, a saturated wall in the kitchen next to the door, a saturated wall in the bathroom, a basin of water in the lower bedroom indicative of recent water ingress, fungal growth on the damaged and exposed ceiling in the lower bedroom, dampness and mould on the wall and ceiling in the communal hallway and further noted high damp meter readings throughout the property including the living room, bathroom, kitchen, and both bedrooms. Externally the Tribunal noted rotten/missing fascia boards on the flat-roofed kitchen extension to the rear of the property, and a vegetation/soil/debris build up at the front bedroom window. The Tribunal further noted recently replaced pipework on the rear elevation at first floor level. Access to the back garden was provided by a resident of the flat above the property. He advised the Tribunal that the problems started with a leak from the property's water tank which is located within his property. An attempt by the Tenant to address the problem caused further damage and water ingress. He also advised that there was a further leak when he had a new kitchen installed but that any problem with that had now been fixed. He mentioned that old copper piping was an ongoing problem in relation to leaks, and that there had been a flood as a result of damage occurring to a cold water feed pipe to a shower unit that he had installed. Finally, he mentioned the new downpipe which he confirmed had been recently fitted. Previously there was a tree growing out of the pipe causing a blockage which led to water penetration into the property. A schedule of photographs taken at the inspection is attached to this decision.

## **The Hearing**

9. At the hearing the Tribunal only heard evidence from the letting agent, Leanne Drummond. She advised the Tribunal that her involvement with the property is of fairly recent date and that previously it was dealt with by a colleague. She confirmed to the Tribunal that it is accepted that the property is in very poor condition.

She advised that the problems first came to light in January 2018, during an inspection, and that the Tenant had not previously reported any issues. It was noted that water ingress had affected the hall cupboard, lounge and bathroom. Also, a damp patch was noted on the right side of the lower bedroom. A contractor was instructed but said he would need access to the flat above, occupied by the resident who had provided access to the garden during the inspection. He had been difficult about access and was not happy that the property's water tank was in his property. She sought assistance from the Council's Environmental Services. Access was obtained and the leak from the tank repaired in February 2018. The water damage from the leak was noted and domestic sized dehumidifiers had been provided to the Tenants in January 2018, however it appeared from visits to the property that they were not used. Ms Drummond advised that sometime later the Tenant reported further water ingress at the property. On this being investigated, it was established that the leak was not from the upper property's new kitchen, but from the shower. This had caused substantial water ingress and led to significant damage to the bedroom ceiling and walls. Following this incident, the Tenant asked to be decanted to another property. Ms Drummond advised that she contacted the Landlord, who is in Australia, but as the insurance did not cover this action the request was refused. Ms Drummond also took legal advice and offered the Tenant an early release from the lease. The Tenant, a university student, refused this offer due to forthcoming exams. A new bed was provided so that the Tenant could sleep in the living room, as the bedroom was uninhabitable. Ms Drummond advised the Tribunal that the owner of the upper flat has indicated that he has stopped using the faulty shower and blocked it off. She understands also that someone from Environmental Services spoke to the owner at one point. She doesn't know if the problem is fully rectified. Ms Drummond advised the Tribunal that she had been unaware of the repair to the external downpipe. There is no factor for the property and she believes that the Landlord arranged this repair direct with the other proprietors. She indicated that the hole in the damaged pipe caused a huge amount of water to leak into the property. Ms Drummond advised that the letting agents had instructed contractors to attend to the internal remedial works and reinstatement of the property at the beginning of May. Initially the Tenant was difficult about access, but this only caused delay of a few weeks. However, once the contractor got access, he said that there is continuing water ingress from above and therefore he could not start the work. She confirmed that the Tenant vacated the property at the end of May 2018, by mutual agreement.

10. Ms Drummond concluded her evidence by confirming that she accepted that there are major issues at the property in relation to dampness and water ingress. She advised that she has arranged for damp specialists to attend and inspect with a view to carrying out work thereafter. The work should be covered by insurance. She confirmed that the property cannot be re-let in the meantime. She also confirmed that although there have sometimes been issues with access to the upper property, she does not think that access will present any difficulty for getting any necessary work carried out.
11. Following the hearing the letting agent submitted to the Tribunal a copy of a report from Advanced Preservation Specialists Ltd dated 20 June 2018. The report relates to the rear dining and lower bedroom area. It confirms that “due to an ongoing leak in the flat above significant damp staining has occurred to the rear bedroom, rear dining area, stairway accessing down into the lower kitchen and also the adjacent common passageway.” Also “water damage to the exposed ceiling deafening boards” and “elf cup fungus” were noted. The report recommends that “the deafening boards be removed where the water escape is an ongoing problem prior to the treatment of the exposed ceiling joists and that the wall plaster be stripped to full height with the exposed masonry being wire brushed and sterilised prior to reforming”. The report indicates that the source of the leak has to be identified and repaired first. A sketch and quote for the work are attached to same.

### **Findings in Fact**

12. The property is a two bedroom split-level basement garden flat conversion in the west end area of Glasgow.
13. The Tenancy ended on 31 May 2018 when the Tenant vacated the property.
14. The property has been subjected to water ingress from the property above and from a damaged external downpipe, causing substantial damage to walls and ceilings. The property is also affected by dampness.
15. Water ingress from a leak from the property above is ongoing.

## Reason for decision

16. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection.
17. The Tribunal noted that the Landlord does not dispute that the condition of the property is in breach of the repairing standard. It is accepted that there is extensive damage to the property as a result of water ingress from at least three different sources. A damaged external downpipe led to water penetration from outside the property. The pipe has been repaired, but the damage caused to the property (particularly the living room) has not. Separately there has been water ingress from the property above. From the evidence, it appears that there have been two separate flood incidents. The first related to the property's water tank, which is located within the upper property. It led to water damage to the living room cupboard and bathroom. A repair was carried out. It is not clear whether this repair was successful, as the damaged walls remain saturated. Secondly, there appears to have been a significant leak from the flat upstairs, possibly the property's shower. This has caused major damage to the bedroom ceiling. The ceiling roof joists have been exposed and are extensively affected by mould and fungi. This suggests that water ingress has been a problem for some considerable time. The owner of the flat above has advised the letting agent that by blocking off the shower, he has stopped the leak. However, although no evidence was noted during the inspection of ongoing water ingress, the Landlord's contractor indicated in May 2018 that it is ongoing. There is also a basin of water in the property indicative of recent water ingress. Lastly, the Landlord's appointed damp specialist stated in the report of 20 June 2018, that there is a leak which must be attended to before any remedial work is carried out by them. A fourth possible cause of water ingress, damaged copper pipes, was mentioned by the proprietor of the upper flat but no additional evidence of same was provided to the Tribunal. This will require to be investigated.
18. The Tribunal notes that the Landlord first became aware of problems at the property in January 2018 and arranged for a plumber to repair the water tank in February 2018. The only steps taken at that point to address the damage was the provision of dehumidifiers. From the application the Tribunal notes that the second leak leading to the extensive damage to the bedroom ceiling, occurred in early March 2018. The Tenant thereafter had to sleep in the living room. Contractors were instructed by the Landlord and there was some initial difficulty with access by the Tenant, However, this led to a delay of only two or three weeks. The Tribunal also notes



that there has been some difficulty with access to the upper flat, being the source of the water ingress. The letting agent advised the Tribunal during her evidence that the proprietor of the flat above the property had complained about the location of and repairs to the property's water tank and had to be reminded of the terms of the title deeds. The Tribunal considered the terms of the deeds and notes that (on page 16) clause Fourth states "The proprietor of any one of the said four houses shall have a right of access to the other houses for the purpose of carrying out repairs to his house and the common parts of the said building and also for all other necessary and reasonable purposes and shall be bound to allow proprietors of the other houses access to his house for the same purposes" The letting agent also advised the Tribunal that access has been provided previously for the water tank repair and she did not envisage the issue of access being insurmountable, if it was needed. The Tribunal therefore concludes that there is no applicable exception to the repairing standard in terms of Section 16(4) of the Act.

19. The Tribunal considered the terms of the specialist report which has been produced. It is noted that the report recommends the instruction of a plumber to repair the leak before starting the recommended remedial work. The Tribunal also notes that the report appears to be restricted to certain identified areas of damage to the property. During the inspection, the Tribunal noted high damp meter readings throughout the property, including areas not identified as being affected by the water ingress. The Tribunal therefore concludes that the property appears to be affected by dampness over and above the water ingress which led to some walls being saturated, the sunken ceiling, mould and fungi.
20. The Tribunal is satisfied that the property fails to meet the repairing standard in relation to subsection 13(1)(a). As it was not established during the inspection and hearing that the installations in the property are defective, the Tribunal does not find the Landlord to be in breach of the repairing standard in relation to subsection 13(1) (c). The Tribunal accordingly concludes that the cause of the water ingress requires to be identified and repaired and that remedial work is required to eradicate dampness and repair the damage caused by the water ingress which has occurred. The Tribunal is therefore required to make a repairing standard enforcement order in relation to these matters.

## Decision

21. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
22. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)
23. The decision of the Tribunal is unanimous

## Right of Appeal.

**A Landlord, Tenant or Third-party applicant 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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Signed **J Bonnar** ..... 5 July 2018

Josephine Bonnar, Legal Member

Motherswell 5 July 2018

This is the schedule of photographs  
referred to in the attached decision

# J Bonnar

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



**Photograph Schedule**  
**Garden Flat, 4 Kensington Road, Glasgow, G12 9LF**

**Case Reference:** FTS/HPC/RP/18/0551

**Date of inspection:** 15/06/2018

**Time of inspection:** 10.00 am

**Weather conditions:** Dull and overcast

**Present:** Mrs Josephine Bonnar – Chairperson  
Mr Nick Allan – Ordinary Member  
Ms Leanne Drumond – Landlords Letting Agent



**Photo 1** Front elevation



**Photo 2** Water damage in Living room (L/R)



**Photo 3** Fungal growth in Living room



**Photo 4** Saturated wall – L/R cupboard



**Photo 5** Damp wall – boiler cupboard



**Photo 6** Excessive damp around window



**Photo 7** Saturated wall in kitchen



**Photo 8** Fungal growth in lower bedroom



**Photo 9** Water ingress in lower bedroom



**Photo 10** Water ingress in lower bedroom



**Photo 11** Exposed ceiling in lower bed.



**Photo 12** Flat roof above kitchen extension



**Photo 13** Rotten/missing fascia board



**Photo 14** Severe damp at front bed. window



**Photo 15** Ground build-up at front bed.



**Photo 16** Rainwater run-off front elevation



**Photo 17** Recently replaced pipework at rear

Nick Allan FRICS  
Surveyor – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber - 25<sup>th</sup> June 2018