

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**REPAIRING STANDARD ENFORCEMENT ORDER: Housing (Scotland) Act 2006  
section 24(2)**

**Chamber Reference FTS/HPC/RT/19/3633**

**Title number: Subjects registered in the Land Register of Scotland under title  
number MID101053**

**Property address: 3F1, 13 Gillespie Crescent, Edinburgh, EH10 4HT ("the  
Property")**

### **The Parties**

**City of Edinburgh Council, East Neighbourhood Office, 101 Niddrie Mains  
Road, Edinburgh, EH16 4DS ("The Third Party Applicant")**

**Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, Mail Box 46,  
2 Corstorphine High Street, Edinburgh, EH12 7ST, sometimes trading as EHPL  
Ltd. whose sole director is Mr Mark Edward Fortune ("The Landlord")**

### **NOTICE TO**

**Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, Mail Box 46,  
2 Corstorphine High Street, Edinburgh, EH12 7ST, sometimes trading as EHPL  
Ltd. whose sole director is Mr Mark Edward Fortune**

Whereas in terms of their decision dated 8<sup>th</sup> November 2022, the First-tier Tribunal for Scotland (Housing and Property Chamber) has determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that:

1. The Property is wind and watertight and in all other respects reasonably fit for human habitation
2. 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,

3. The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
4. The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health;
5. The Property meets the tolerable standard.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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) Ensure the roof above the living room is repaired to prevent water ingress.
- (ii) Repair the damage to the living room ceiling caused by the ingress of water and, in particular, re-plaster and redecorate all affected areas.
- (iii) Repair or replace the living room windows to ensure that they are wind and watertight, in proper working order, and in a reasonable state of repair.
- (iv) Repair or replace the kitchen window to ensure that it is wind and watertight, in proper working order, and in a reasonable state of repair.
- (v) Ensure that the downstairs bedroom window is wind and watertight, in proper working order, and in a reasonable state of repair.
- (vi) Engage a suitably qualified SELECT, NICEIC or NAPIT registered electrical contractor or suitably qualified fire engineer to test and repair or replace the system for detecting fires and for giving warning in the event of fire or suspected fire to ensure that the system meets the requirements of the Act and all current statutory guidance. Thereafter to provide the Tribunal with a report on the working order of the system and written evidence of compliance with all fire safety requirements of a House in Multiple Occupation.
- (vii) Install a carbon monoxide detector in the kitchen in compliance with the relevant legislation and all current statutory guidance.
- (viii) Engage a suitably qualified SELECT, NICEIC or NAPIT registered electrical contractor to carry out a certificated inspection and testing of the entire electrical installation in the property and any electrical appliances and equipment provided by the landlord. Thereafter to provide a copy of an unqualified Electrical Installation Condition Report (EICR) and Portable Appliance Test (if applicable) to the Tribunal.
- (ix) Engage a suitably qualified and Gas Safe registered engineer to carry out a certificated gas safety check on the gas heating system and any other gas appliances in the property and provide a copy of the Landlord Gas Safety Record to the Tribunal.

The Tribunal orders that the works specified in this Order must be carried out and completed within a period of **8 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.**

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 Property at any time during which a RSEO has effect in relation to the Property. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents typewritten on this and the preceding pages are executed by Helen Forbes, chairperson of the Tribunal at Glasgow on 8<sup>th</sup> November 2022 before this witness

H Forbes



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

**STATEMENT OF DECISION: Section 24(1) Housing (Scotland) Act 2006**

**Chamber Reference FTS/HPC/RT/19/3633**

**Title number: Subjects registered in the Land Register of Scotland under title number MID101053**

**Property address: 3F1, 13 Gillespie Crescent, Edinburgh, EH10 4HT ("the Property")**

**The Parties**

**City of Edinburgh Council, East Neighbourhood Office, 101 Niddrie Mains Road, Edinburgh, EH16 4DS ("The Third Party Applicant")**

**Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, Mail Box 46, 2 Corstorphine High Street, Edinburgh, EH12 7ST, sometimes trading as EHPL Ltd. whose sole director is Mr Mark Edward Fortune ("The Landlord")**

**Tribunal Members:**

**H Forbes (Legal Member)**

**C Jones (Ordinary Member)**

**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 has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

**Background**

1. By application dated 5<sup>th</sup> November 2019, the Third Party Applicant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.

2. The Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard, in that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order; any furnishings provided by the Landlord under the tenancy are not capable of being used safely for the purposes for which they are designed; the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and the Property does not meet the tolerable standard. In particular, it was stated that the following work was required: -
1. *Damaged window in living room, in dangerous condition requires urgent attention;*
  2. *Broken window in front bedroom currently boarded up;*
  3. *Repair leak from upper bathroom into lower bathroom;*
  4. *Investigate and repair water leaks into living room ceiling;*
  5. *To repair hard wired panel smoke detection system;*
  6. *To repair kitchen window;*
  7. *To ensure CO detector is fitted;*
  8. *To ensure gas safety certificate is carried out;*
  9. *To ensure appropriate electrical safety certificates are obtained;*
  10. *To repair kitchen flooring (not initially reported to owner)*
  11. *To repair cooker hob as not all the rings working (not initially reported to owner)*
3. The Third Party Applicant notified the Landlord of the defects (with the exclusion of 10 and 11 above) by letter dated 8<sup>th</sup> October 2019 which was posted and hand-delivered on 11<sup>th</sup> October 2019. The letter was addressed to Mr Mark Fortune, 2 Corstorphine High Street, Edinburgh, EH12 0AW and included the phrase '*I am writing to you, as you are listed as the registered owner for [the Property]*'.

4. As part of the Application, the Third Party Applicant enclosed a list of 5 known occupants of the Property, together with tenancy agreements issued by EHPL Limited (Edinburgh Holiday & Party Lets) to two occupants. The agreements purported to be issued under Schedule 4, paragraph 8 of the Housing (Scotland) Act 1988 ("the 1988 Act"), which deals with 'a tenancy the purpose of which is to confer on the tenant the right to occupy the Property for a holiday.' The Third Party Applicant also included payment details and receipts issued to the tenants. The account name on the payment details was '*mefortune*'.
5. The Third Party Applicant stated that they considered the Property to be used for residential letting rather than holiday lets, as the tenants were either working or studying and some had lived in the Property for several months. It was stated that the tenants did not consider themselves to be on holiday and considered the Property to be their main or only home. Furthermore, it was stated that one of the tenants had claimed benefits and been provided with a lease with the landlord stated as 4M Ltd. The benefits claim was said to have started in July 2019. The registered address for 4M Ltd was 2 Corstorphine High Street, Edinburgh.
6. On 27<sup>th</sup> November 2019, a legal member of the First-tier Tribunal for Scotland (Housing and Property Chamber), with delegated powers and having considered the application, referred the application under Section 23(1) of the Act to a Tribunal. The legal member did not consider there were grounds for rejection of the application in terms of Rule 8 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Rules"); however, the referral was subject to a preliminary hearing on the jurisdiction of the application, given that the tenancy agreements stated they were for holiday lets.
7. Notice of Referral to a Tribunal under section 23(1) of the Act was sent to parties on 18<sup>th</sup> December 2019, notifying parties of a preliminary hearing set down for 27<sup>th</sup> January 2020. The Landlord's notice was addressed to Mr Mark Fortune, EHPL Ltd., 2 Corstorphine High Street, Edinburgh, EH12 7ST.
8. Mr Fortune emailed the Housing and Property Chamber on 13<sup>th</sup> January 2020, in response to the letter of 9<sup>th</sup> January 2020; however, he ended his email with the words '*Without prejudice*'. The Tribunal could not, therefore, consider the terms of his correspondence.
9. No written representations were made by either party in the time allowed. By letter dated 9<sup>th</sup> January 2020, the Housing and Property Chamber ("the HPC") wrote to both parties informing them that no written representations had been received.

10. On 16<sup>th</sup> January 2020, the papers that had been sent by recorded delivery to the Landlord were returned to the HPC by Royal Mail marked '*not called for*'.
11. On 21<sup>st</sup> January 2020, parties were notified that the hearing had been rescheduled to 17<sup>th</sup> February 2020.
12. On 22<sup>nd</sup> January 2020, the HPC emailed notification of the forthcoming hearing, together with the application and associated documents to the Landlord using the email address provided by him.
13. On 23<sup>rd</sup> January 2020, the application and associated documents, together with intimation of the forthcoming hearing, were served upon Mr Fortune and EHPL Ltd. by Sheriff Officers by depositing in the letter box at the address in the lease documentation, which was 2 Corstorphine High Street, Edinburgh.
14. By email dated 27<sup>th</sup> January 2020, Mr Fortune stated that he did not reside at either of the addresses used by Sheriff Officers, and that he currently resided in France. No address in France was provided. The Landlord stated that he would not accept any papers by email, and that they must be served upon him at his 'domicile address'. The Landlord stated that the company EHPL Ltd. was no longer in existence.
15. By email dated 28<sup>th</sup> January 2020, Mr Fortune said he was the owner of the Property although that may be challenged, but in law the landlord was Edinburgh Holiday and Party Lets Ltd.
16. By email dated 29<sup>th</sup> January 2020, Sheriff Officers informed the HPC that they were notified on 24<sup>th</sup> January 2020 by tenants at 2 Corstorphine High Street, Edinburgh, that they do not accept mail or service on behalf of their landlord, stating that Edinburgh Holiday Party Lets was based at 2D Corstorphine High Street, Edinburgh.
17. By email dated 29<sup>th</sup> January 2020, the HPC informed Mr Fortune that, given the doubt surrounding his current address, additional steps had been taken in terms of Rule 6A of the Rules and the formal communications had been served on him by advertisement on the HPC website. The advertisement was displayed from 22<sup>nd</sup> January to 17<sup>th</sup> February 2020.
18. By email dated 29<sup>th</sup> January 2020, Mr Fortune informed the HPC that he did not accept email as a valid form of service. Furthermore, he disputed that the notification letter of 8<sup>th</sup> October 2019 had been served upon him, as the post code was incorrect and CCTV images did not show the Third Party Applicant's representative hand-delivering the letter. Mr Fortune alleged that the Third Party Applicant's representative had been seen delivering the said letter at a different address. Consequently, it was Mr Fortune's position that any hearings called by the Tribunal were unlawful. He stated that the persons that had been

residing in the Property, in terms of the tenancy agreements provided with the application, were no longer resident, stating that they '*had lodged for 1 to 2 month*'. Mr Fortune stated that he would not attend any hearings until the rules had been followed correctly.

19. By email dated 11<sup>th</sup> February, the Third Party Applicant's representative informed the HPC that he was unable to attend the forthcoming hearing.
20. A preliminary hearing on the jurisdiction of the application took place on 17<sup>th</sup> February 2020 at Riverside House, 502 Gorgie Road, Edinburgh. Neither party was in attendance.
21. The Tribunal considered Rule 24, which provides that the Tribunal must give each party reasonable notice of the date, time and place of a hearing, with a notice period of no less than 14 days from the date of receipt of the notice. The Tribunal considered that this Rule had been complied with in respect of both parties. In the case of Mr Fortune, service had been carried out on 22<sup>nd</sup> January 2020 using an email address provided by the party on 13<sup>th</sup> January 2020. This method of service was in compliance with Rule 6(1)(b) of the Rules. While the Tribunal considered this a competent method of service, they also noted that Mr Fortune had stated thereafter that he would not accept service by email. Given that service was then carried out by advertisement in compliance with Rule 6A of the Rules, the Tribunal was satisfied that service had been effected and Rule 24(1) had been complied with. Consequently, the Tribunal decided to proceed with the hearing in the absence of parties, in terms of Rule 29 of the Rules.
22. The Tribunal then considered whether the tenancies of the Property were tenancies to which the repairing standard duty applied. Section 12 of the Act provides that the repairing standard duty applies to any tenancy of a Property let for human habitation unless it falls within a list of excluded tenancies. Section 12(f) excludes 'a tenancy of a Property which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the Property for a holiday'.
23. The Tribunal considered the allegations made by the Third Party Applicant in the application that the tenants did not consider themselves to be on holiday, and that they had resided in the Property for longer periods than provided for in the tenancy documents provided to the Tribunal. The Tribunal noted that the Third Party Applicant had indicated a further lease would be made available, and this had not happened. The Tribunal also considered the Landlord's assertion that the Property is used only for holiday lets. In all the circumstances, the Tribunal did not have enough evidence before it to make a finding in this regard.
24. The Tribunal considered the assertion made by Mr Fortune that he had not been notified of the work that required to be carried out for the purpose of complying with the repairing standard duty. The Tribunal noted that the

Third Party Applicant had not provided any further written representations in this regard.

25. The Tribunal decided to issue a Direction to the Third Party Applicant, seeking further information in this regard. A Direction was issued on 25<sup>th</sup> February 2020 in the following terms:

“The Third Party Applicant is required to lodge the following information with the First-tier Tribunal for Scotland (Housing and Property Chamber), Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT by 20<sup>th</sup> March 2020:

1. Additional evidence that the tenants referred to in the Application have resided in the Property for longer than the period of 31 days referred to in section 12(1) of the Act. This evidence may, but does not have to, take the form of sworn affidavits from the tenants, and bank statements that show regular rental payments being made. If no such evidence is available, the Third Party Applicant should indicate to the Tribunal how he intends to evidence this at any future hearing, including whether or not he intends to call the tenants as witnesses;
2. A copy of the lease between Mr Clegg and 4M Ltd., which is referred to in the application as ‘to follow’, or an explanation as to why the lease is unavailable;
3. A copy of any Universal Credit documentation that indicates that Mr Clegg was in receipt of Universal Credit in or around July 2019 and while residing at the Property, or an explanation as to why this documentation is unavailable;
4. A detailed response to the matter raised by the Landlord in his email of 29<sup>th</sup> January 2020 regarding the incorrect post code on the notification to the Landlord of works required to be carried out, and whether or not hand-delivery of said notification was made to 2 Corstorphine High Street, Edinburgh, EH12 7ST.

26. A note of the hearing that took place on 25<sup>th</sup> February 2020 was issued to parties.

27. By email dated 13<sup>th</sup> March 2020, the Third Party Applicant provided a response to the Direction. He informed the Tribunal that he had taken various statements from tenants, witnessed by a police officer. The lease was not available as the tenant had left the Property. Information regarding a claim for Universal Credit by the same tenant was provided. An explanation was provided that the notification letter to the Landlord was hand delivered on 11<sup>th</sup> October 2019, in the presence of a police officer witness. A tenancy agreement for a further tenant, SP, was also provided.

28. Further procedure was then delayed due to the lockdown in response to the COVID-19 pandemic.

29. By letter dated 3<sup>rd</sup> December 2020, parties were notified of a Case Management Discussion set down for 14<sup>th</sup> January 2021, to be conducted by telephone conference.

30. On 18<sup>th</sup> December 2020, a Direction was issued by the Tribunal to the Third Party Applicant ordering the following by 6<sup>th</sup> January 2021:

1. An update in relation to whether or not any repairs have been carried out to the Property;
2. An update as to the current occupants of the Property.

31. By email dated 11<sup>th</sup> January 2021, the Third Party Applicant responded to the Direction, as follows:

*I heard back from 2 of the 4, tenants at this address who I originally spoke to back in November 2019.*

*Sean (Patrick) Deuchars, Moved in to flat November 2019 and moved out of this flat 14 December 2020*

*Rorie Murdoch, Moved into this flat October 2019 and moved out of this property 23 December 2020.*

*I received confirmation that the property is still occupied and operating as a let property. I also received confirmation that the only repair carried out was repairs to the front windows and roof leak into the living room. All other repairs listed in the original report are still outstanding.*

*I am still attempting to contact the current tenants.*

32. A Case Management Discussion ("CMD") took place by telephone conference on 14<sup>th</sup> January 2021. Neither party was in attendance.

33. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that parties had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the parties upon the material before the Tribunal.

34. The Tribunal noted that, in terms of Rule 17(4) it may do anything at a CMD which it may do at a hearing, including making a decision.

35. The Tribunal considered whether this was a tenancy to which the repairing standard as set out in section 14 of the Act applies. Section 12 of the Act provides an exemption for tenancies which do not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the Property for a holiday. The Tribunal noted that the tenancy agreements provided as part of the application purported to be agreements for holiday lets. However, the Tribunal was satisfied on the information before it that tenants had been residing at the Property for periods exceeding 31 days, and that tenants had not been occupying the Property for a holiday, therefore the exemption provided within the Act did not apply, and there were tenancies to which the repairing standard applied.

36. No application may be made under section 22 of the Act unless the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard duty. The Tribunal considered, on the information before it, that the Third Party Applicant had given proper notification to the Landlord of the work that required to be carried out for the purposes of complying with the repairing standard duty.

37. The Tribunal noted that, although some repairs had been carried out, further repairs were allegedly outstanding. Under normal circumstances, the Tribunal would have arranged an inspection of the Property. This was not possible due to the continuing effects of the COVID-19 pandemic. In these circumstances, the Tribunal decided that it would be necessary to arrange an inspection at the earliest possible time. Parties were asked to provide the Tribunal with any relevant documentation or representations should any further work or investigations be carried out in the interim.

38. By email dated 22<sup>nd</sup> January 2021, Mr Fortune notified the Housing and Property Chamber ("HPC") that he had not been notified of the CMD that took place on 21<sup>st</sup> January 2021. The Tribunal decided, in terms of Rule 39(1) to review its decision at its own instance.

39. By Direction dated 16<sup>th</sup> February 2021 the Tribunal ordered the following:

The Landlord is required to lodge the following information and documentation with the First-tier Tribunal for Scotland (Housing and Property Chamber), Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT by 8<sup>th</sup> March 2021:

5. The identity of the person that he alleges is now the Landlord of the Property, given that EHPL Ltd. has been dissolved;
6. Identification of the recipient of all rental income for the Property;

7. Details of all repair works carried out to the Property since 5<sup>th</sup> November 2019;
  8. A copy of the most recent Electrical Installation Condition Report for the Property;
  9. A copy of the most recent Gas Safety Record for the Property.
40. By email dated 24<sup>th</sup> February 2021, Mr Fortune stated he was the owner of the Property but he was not the Landlord under the contract/lease. The Landlord was Edinburgh Holiday and Party Lets Limited. As a result, he stated that he was unable to comply with the Direction.
41. A review hearing was set down for 19<sup>th</sup> March 2021 by telephone conference.
42. On 19<sup>th</sup> March 2021, the day of the hearing, a person identifying themselves as 'Mr Edward' joined the telephone conference. This person was abusive towards the hearing clerk and refused to disclose his reasons for joining the telephone conference. A further unidentified person also dialed into the telephone conference and remained silent when asked to identify themselves. Mr Fortune was contacted to ascertain whether 'Mr Edward' was his representative. Mr Fortune said this person was not his representative, but he had passed this person the call-in details as he wished to participate on behalf of Edinburgh Holiday and Party Lets Limited. No further information was provided to confirm the identity and status of this person, and the second participant did not identify themselves. The hearing did not proceed.
43. By Direction of the Tribunal dated 16<sup>th</sup> April 2021, the Third Party Applicant was ordered to lodge the following documents, as previously referred to, by 30<sup>th</sup> April 2021:
- (i) Statements from witnesses Markov and Irwin dated 2<sup>nd</sup> October 2019
  - (ii) Statements from witnesses Murdoch, Dunja and Clegg dated 1<sup>st</sup> November 2019
  - (iii) Statement from witness Paunovski dated 7<sup>th</sup> February 2020
44. By email dated 18<sup>th</sup> April 2021, Mr Fortune raised issues regarding data protection legislation in relation to the statements referred to in the Direction.
45. By email dated 28<sup>th</sup> April 2021, the Third Party Applicant lodged four of the statements required by the Direction, notifying the Tribunal that a further two statements were held in storage. The statements were as follows:

### **Statement from RM on 1/11/19**

Statement taken by David Ross (DR), witnessed by PC Keith Brown

RM's DOB included

Location of statement – 13 3f1 Gillespie Crescent Edinburgh

DR – Are you working or in full time education?

RM – Full time student at Queen Margaret University

DR – When did you move in here?

RM – I moved in 27/10/19 and agreed a lease on 22/10/19

DR – Do you know what type of contact you have?

RM – I told him I need at least a month's occupancy

DR – Personal contact details obtained from RM

DR – Are you related to anybody in the flat?

RM – No and apparently this is a 7 bedroom place.

### **Statement from RD on 1/11/19**

Statement taken by David Ross (DR), witnessed by PC Keith Brown

RD's DOB included

Location of statement – 13 3f1 Gillespie Crescent Edinburgh

DR – Are you working or in full time education?

RD – studying at University of Edinburgh

DR – When did you move in here?

RD – I moved in 16/9/19

DR – When do you plan to leave?

RD – I don't know 1 year or end of University

DR – How did you find this property?

RD – I think on internet

DR – Are you related to anybody who lives here?

RD – Nobody in property.

DR – How many people live here?

RD – Definitely more than 3

DR – Who is the Landlord?

RD – I don't know for sure. One guy called Alex met me and gave me keys and signed contract. I went to their office to pay rent in cash at 2 Corstorphine High Street and paid Alex the money.

DR – Can you describe Alex?

RD – 25, curly hair, I think Scottish, height about 1.72

DR – Personal contact details obtained from RD

### **Statement from JC on 1/11/19**

Statement taken by David Ross (DR), witnessed by PC Keith Brown

JC's DOB included

Location of statement – 13 3f1 Gillespie Crescent Edinburgh

DR – When did you move in here?

JC – I moved in 20/07/19

DR – When will you move out?

JC – Probably April

DR – How many people live here?

JC – 7 in total

DR – Are you related to anybody that lives here?

JC – No not at all.

DR – Are you employed or on benefit?

JC – Just found a job yesterday and I was on Universal Credit with this address noted.

DR – What's your Landlord's name?

JC – I believe it is Mark Fortune, I could recognise the voice but can't visibly recognise Landlord.

DR – Have you a contract?

JC – Yes

DR – Any outstanding repairs

JC – They fixed the washing machine and dishwasher, but nothing else.

DR – Personal contact details obtained from RD

### **Statement from SP on 7/2/20**

Statement taken by David Ross (DR), witnessed by PC Keith Brown

Location of statement – 13 3f1 Gillespie Crescent Edinburgh  
SP's DOB included

DR – When did you move in here?

SP – I moved in 23/12/19

DR – When do you think you will leave?

SP – Probably May this year

DR – How many people live here?

SP – Currently 7

DR – Can you name them?

SP – Enyo, Omer, Rorie, Shaun, Rei and Mathew

DR – Do you know your Landlord's name?

SP – Mark Fortune, I have never met him maybe met his son.

DR – Who do you pay rent to?

SP – Bank Account

DR – Have you a contract?

SP – Yes I have one, it is a holiday let agreement for 1 month.

DR – Do you treat this property as your main home?

SP – Yes, studying here

DR – Which University?

SP – Napier University

DR – Are any of the tenants related or in a relationship with each other.

SP – No

DR – Personal contact details obtained for SP

46. By email dated 29<sup>th</sup> April 2021, Mr Fortune objected to the format and content of the statements, stating they were fake.

47. On 11<sup>th</sup> May 2021, the Third Party Applicant lodged two further statements as required by the Direction, stating that the statements had been copied from a notebook. The statements were as follows:

**Statement from MI on 2/10/19**

Statement taken by David Ross (DR), witnessed by PC Keith Brown

Location of statement – 13 3f1 Gillespie Crescent Edinburgh

DR – When did you move in here?

MI – Moved in July 23, 2019

DR – Have you got a contract?

MI – Yes a Holiday Let

DR – Are you here on holiday?

MI – No

DR – Do you treat this as your main home?

MI – Probably not as between homes and mail goes to parents.

DR – Do you know your Landlord's name?

MI – As far as I'm aware it is Mr Fortune and he goes with Alex on gumtree, he communicates by email. Sorry can't view email address.

**Statement from EM on 2/10/19**

Statement taken by David Ross (DR), witnessed by PC Keith Brown

Location of statement – 13 3f1 Gillespie Crescent Edinburgh

DR – When did you move in here?

EM – Moved in Sept 11 around then

DR – Were you given a contract?

EM – Yes a monthly contract that is renewed every month

DR – Do you consider yourself to be on holiday?

EM – No I'm studying

DR – How many stay here?

EM – I think about 6.

48. By email dated 11<sup>th</sup> May 2021, Mr Fortune stated that the original notebook in which the statements were taken ought to have been lodged by the Third Party Applicant.

49. The review hearing took place by telephone conference on 12<sup>th</sup> May 2021. Mr David Ross attended on behalf of the Third Party Applicant. Mr Fortune was in attendance. There were three media observers in attendance.

50. Mr Fortune raised a preliminary matter in relation to the notification allegedly made by the Third Party Applicant dated 8<sup>th</sup> October 2019. It was his position that it was made to him as owner of the Property and not as landlord. The tenancy agreements stated the landlord was EHPL Ltd. The company has its own legal identity and he is not the landlord in law. He has given permission to the company to let the Property. He refuted the idea that he should have to provide any documentation to prove that the company was entitled to grant leases. He was unclear as to whether he was the registered proprietor of the Property, despite being shown as such on the Land Register of Scotland
51. Mr Fortune referred to previous court cases that had established that the company was a legally incorporated company and stated that the Tribunal would be '*stepping on the toes of the Crown*' if it found otherwise.
52. Mr Fortune raised an issue in relation to the notice dated 8<sup>th</sup> October 2019. The notice contained the wrong postcode. This postcode had been used in relation to a previous case. It was his position that the Third Party Applicant had served this notice at the postcode address rather than the correct address. He pointed out that the Third Party Applicant had previously stated in response to a Direction of the Tribunal that he had hand-delivered the letter in the company of a third party. No evidence had been provided by the third party, no Sat Nav evidence had been provided to show the Third Party Applicant attended the correct address, and no CCTV evidence was made available. The paperwork was drawn up at '*the eleventh hour*' and Mr Ross's paperwork was being reviewed by his employer following concerns raised by Mr Fortune. He had been informed that hand-delivered items were always marked to show that was the case, but that did not happen with this notice.
53. Mr Ross stated that he had not been aware of the postcode issue. He was reminded by the Tribunal that this issue had been raised in its Direction of 25<sup>th</sup> February 2020, and that he had addressed this issue previously. Mr Ross reiterated that he had delivered the notice to the correct address, notwithstanding any error in the postcode, in the presence of a police officer. He said that he is familiar with the area. Responding to questions from the Tribunal as to why a police officer was involved, Mr Ross stated that, due to the history of the case, it was deemed best to have a police officer present.
54. Responding to questions from the Tribunal, Mr Ross said he had taken statements from occupants in response to concerns about the condition of the Property, the main concern relating to the windows. He visited the Property in October 2019 and took statements from two tenants regarding the condition of the Property. The tenants indicated that they intended to stay in the Property for more than the one month referred to in their leases. The tenants were told that the statements may be used

in legal or licensing proceedings. A neighbour had initially raised concerns about repairing issues.

55. Mr Ross said he was not aware how many tenants were living in the Property. The repairing issues arose in July 2019. He spoke to the tenants in October and November 2019. There were tenants in the Property in December 2020. He had since tried to make contact in writing, but he received no response.

56. Mr Fortune's position was that no tenant had complained about the repairing issues. He was concerned that each tenant had been asked different questions during the process of taking statements. A number of those questioned had told him the statements were not a true reflection of what was said. One tenant had told him he did not want to give a statement. He felt bullied and pressured and it had resulted in him being late for university. The tenant had said that the Third Party Applicant and his witness had banged on all the bedroom doors and had 'rounded everyone up' into the living room to take their statements.

57. Mr Fortune referred to a previous position put forward by the Third Party Applicant in relation to a lease said to have been granted to the tenant JC by a company called 4M Ltd. The Third Party Applicant had stated in correspondence to the Tribunal that the lease was no longer available from the local authority. Mr Fortune stated that he found this perplexing and that there must be a paper trail to avoid benefit fraud. He pointed to a discrepancy between the previous statement attributed to JC that his landlord was 4M Ltd. and paragraph 6 of the recent statement whereby JC stated that his landlord was Mark Fortune. The lease was never lodged and JC appeared to have vanished.

58. Mr Fortune said the statements should have been typed up and signed. Mr Ross should have lodged his full notes. One of the tenants had stated in his statement that it was not his permanent home. He wondered if the tenants from whom statements were taken had ever lived in the Property.

59. Responding to questions from the Tribunal regarding his knowledge of whether the tenants that were interviewed by Mr Ross had lived in the Property, whether any tenants were living there at the time of the hearing, and whether any tenants had lived there in excess of the one month provided for in their leases, Mr Fortune said he does not have knowledge of the day to day running of the business, despite being its only director. He resides abroad. He was in the Property at the start of lockdown. He is not party to information regarding the occupants of the Property. All records relating to the business had been destroyed. The Crown had accepted that documents were valid and legal, and that he had no obligation to manage the business on a day to day basis.

60. Mr Ross stated that the statements provided were as recorded in his notebook. They were not formal statements. Some tenants preferred not

to answer all the questions put to them. The enquiries made regarding JC's lease were made of the Department of Work and Pensions, who do not keep copy leases. They confirmed that they would have had to see a lease before making any payments, and that payments of benefits were made to JC from July 2019.

61. Mr Fortune referred to a message dated 30<sup>th</sup> April 2021, that he had received from one of the tenants interviewed by Mr Ross. The tenant had stated that the statement was not a correct reflection of what he had said in October 2019. Responding to questions from the Tribunal, Mr Fortune said that, having discussed matters with his solicitor, he had arranged for a WhatsApp message to be sent to the tenant. He confirmed that the tenant is no longer living in the Property.
62. Responding to questions from the Tribunal, Mr Ross said the Property is a double upper top floor flat in a tenement building. He believed there had been repairs carried out to the front living room and bedroom windows and the roof of the tenement. He had been notified by a neighbour that the window was repaired during lockdown and another third party had also confirmed this. He was unaware if repairs had been carried out to the kitchen window. There was also an issue with a ceiling collapse in the lower floor bathroom, as shown on photographs lodged with the application. He had no evidence of any certification being carried out in terms of gas or electricity. He has not been in the Property since late 2019. At that time, there was a fault light showing on the smoke detection system. There were battery operated alarms throughout the Property but the detector heads had been removed.
63. Mr Fortune said a neighbour had arranged for repairs to be carried out to the roof in February 2020 and all proprietors had been billed. Issues with the roof arose as a result of a poor repair carried out by the local authority around 10 years ago. The roof continued to leak. More recently around £5000 has been spent on roof repairs and investigation. The neighbour arranged for windows to be replaced, having deemed the repairs an emergency, and a bill of £1200 was sent to the Landlord. Mr Fortune was not aware of the alleged bathroom leaks and said the photos lodged by Mr Ross, showing a hole in a ceiling, were eight years old.
64. Mr Fortune mentioned invoices from his accountants which showed various works had been carried out in May 2020. The invoices were for £7000 and £2500. Far from being in a poor state, he said, a sum of £10000 to £15000 had been spent on the Property before Mr Ross visited. No invoices were lodged with the Tribunal.
65. Mr Fortune said when he was in the Property at the start of lockdown, in or around March 2020, new bathrooms, including showers and tiling, had been installed. Decorating had been carried out to the hall and bedrooms. There was a new washing machine. It was his position that a

sum of around £20000 had probably been spent on the Property in 2020.

66. Mr Fortune said the smoke alarm system was HMO compliant in 2009. There are hard-wired alarms and a sprinkler system. Mr Ross would not know how to operate the smoke detection system and would not know if it was working or not. Mr Fortune was unaware of any contact from the HSE or the fire service in regard to this matter.

67. Mr Fortune described the layout of the Property and said there are 3 rooms and a shower room on the upper floor and 3 bedrooms, a living room, kitchen and bathroom on the lower floor. He said he thought the leaking roof issues had eventually been repaired. He was billed for repairs. The internal ceiling had been repainted in the living room. There was no hole in the bathroom ceiling when he was last in the Property.

68. Responding to questions from the Tribunal as to whether there were any tenants in the Property when he was there in or around March 2020, Mr Fortune said there was no one there, so there were either no tenants, or they were all out at the time. There was no sign that people were living there. There did not appear to be a problem with the kitchen window. A new sub-floor had been installed in the kitchen, new linoleum fitted and a new washing machine installed. There is a gas boiler, and he presumed the gas engineer would also have installed a carbon monoxide detector. He was unable to say when the boiler was last serviced. He does not have a copy of the gas safety record or EICR. It was his position that there are no portable appliances to test under the PAT scheme. It was his position that the landlord is a limited company and they will have the necessary documentation.

69. Mr Ross said he was encouraged to hear that works had been carried out. He confirmed that the photographs he submitted were taken at the time of his visits in October and November 2019, as shown by the date stamps, and were not eight years old. He said he made a referral to the Fire Service following his visit to the Property in 2019.

70. Responding to questions from the Tribunal, Mr Ross said he had tried to contact current tenants in the Property but had not received a response. He said he could try to visit the Property to see what repairs had been carried out.

71. In response, Mr Fortune said the Fire Service had not done anything, which suggested there was no issue. He said that the only person complaining about this property was Mr Ross, suggesting it was a personal issue. He said Mr Ross had been recorded telling tenants to stay put and cause trouble. Tenants had suggested to him that they felt bullied by Mr Ross and that he had upset many people. The date stamp on the photographs lodged with the application only verified the date on the camera. He believed the photos of the hole in the bathroom ceiling were supplied by another tenant. In 2018/2019, £9000 was spent

upgrading the Property. The ceiling issue was a communal issue and had been fixed five or six times.

72. The Tribunal found that the tenants RM, RD, JC, SP, EM and MI resided in the Property for a period of more than 31 days. The Property was their principal home. They were not residing in the Property for the purposes of a holiday. Consequently, the tenancy agreements granted to the tenants were private residential tenancy agreements as provided for in the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), which came into force on 1<sup>st</sup> December 2017. Section 1 of the 2016 Act provides that a tenancy is a private residential tenancy where it is let to an individual as a separate dwelling, the tenant occupies the property, or any part of it, as their only or principal home, and the tenancy is not of a type that is excluded in terms of Schedule 1 of the 2016 Act. Paragraph 6 of Schedule 1 states that a tenancy cannot be a private residential tenancy if its purpose is to confer on the tenant the right to occupy the let property for a holiday. The Tribunal was satisfied that the tenancies are tenancies to which the repairing standard as set out in the 2006 Act applies.

73. The Tribunal found that Mr Fortune was the registered owner of the Property and the sole director of the company Edinburgh Holiday and Party Lets Limited (SC577943). The Tribunal was satisfied that notification of required repairs dated 8<sup>th</sup> October 2019 was made to the Landlord by the Third Party Applicant on 11<sup>th</sup> October 2019 by hand-delivery at the correct address, notwithstanding the inclusion of an incorrect postcode.

74. By Order dated 17<sup>th</sup> May 2021, Edinburgh Holiday and Party Lets Limited (SC577943), 2 Corstorphine High Street, Edinburgh, EH12 7ST was added as a party to the application.

75. By Direction dated 17<sup>th</sup> May 2021, the parties were directed as follows:

### **Third Party Applicant**

The Third Party Applicant is required to:

1. Make inquiries to ascertain whether or not the Property meets the repairing standard and provide a report to the Tribunal;
2. Make inquiries regarding access to the Property for the purposes of an inspection, should that be required, and provide a report to the Tribunal.

### **Landlords**

The Landlords are required to provide the Tribunal with:

1. An update in relation to all repair works carried out to the Property since 5<sup>th</sup> November 2019, including providing invoices and photographs, where appropriate, to indicate whether or not the Property meets the repairing standard;
2. A copy of the most recent Electrical Installation Condition Report for the Property;
3. A copy of the most recent Gas Safety Record for the Property.

76. By email dated 10<sup>th</sup> June 2021, the Third Party Applicant responded as follows:

On 19 May 2021 I received an email from a Mr Andrew Wills who stated that they did not want me to visit 13 3f1 Gillespie Crescent.

On 24 May 2021 Mr Mark Fortune emailed me direct to confirm that I did not have his permission to enter his flat at 13 3f1 Gillespie Crescent.

On 2 June 2021, myself and PC Keith Brown visited 13 3f1 Gillespie Crescent.

There were 2 residents in the property, they were asked if we could enter the property and they both agreed. The relevant Covid questions were asked and came back as negative. Both tenants were advised that their landlord had specifically told the Council that they do not have his permission to enter 13 3f1 Gillespie Crescent, but as residents of the property they had the right to allow us access and both happy to allow us access.

During a discussion with the tenants it was noted that both tenants had lived at 13 3f1 Gillespie Crescent for over 6 months and that there are a total of 7 tenants living at this address.

Both David Ross and PC Brown asked if an Andrew Wills lived at 13 3f1 Gillespie Crescent and were informed that no Andrew Wills lives there and has not been an Andrew Wills living there during the time the tenants have stayed there.

The property was inspected in relation to the previous breaches of the repairing standard that have been reported to the Tribunal and a report is attached.

Contact details for both tenants have been recorded by David Ross and PC Keith Brown and can be made available to the Tribunal if they require them.

77. The report from the Third Party Applicant stated as follows:

Work that was reported to Housing Chamber 11/11/19  
Condition of repairs 2/6/21

**1. Damaged window in living room, in dangerous condition requires urgent attention.**

Window frame was repaired, window mechanism was not tested.

**2. Broken window in front bedroom currently boarded up.**

Couldn't access bedroom but appears to have been repaired by observing from outside.

**3. Repair leak from upper bathroom into lower bathroom**

Repaired and evidence that work has been carried out to lower bathroom. Tenants confirmed that no further leaks.

**4. Investigate and repair water leaks into living room ceiling.**

Still appears to be an on-going issue. Tenants confirmed contractors had been out, but roof still leaks when it rains.

**5. To repair hard wired panel smoke detection system**

Panel system still faulty, panel showing 2 error messages that require attention and some temporary smoke detectors had been removed from rooms.

**6. To repair kitchen window.**

Still appears to be in poor condition

**7. To ensure CO detector is fitted**

Still couldn't locate this

**8. To ensure gas safety certificate is carried out.**

No evidence that this was in place

**9. To ensure appropriate electrical safety certificates are obtained.**

No evidence that this was in place

**10. To repair kitchen flooring (not initially reported to owner)**

Flooring repaired

**11. To repair cooker hob as not all the rings working (not initially reported to owner)**

Not sure of condition as not tested during visit.

78. By email dated 11<sup>th</sup> June 2021, Mr Fortune responded as follows:

I am surprised you have sent me this.

I am not the landlord as defined by contract law!  
you have made a statement of fact that 4m Ltd is or was  
the landlord, no evidence of this alleged lease was ever  
supplied.

I will simply wait on your outrageous statements and appeal  
to the higher tribunal and or court of session

Meantime in light of the outrageous statements of fact I have  
started a complaint to the judicial office.

79. No response to the Direction was received from Edinburgh Holiday and Party Lets Limited.

80. An inspection of the Property was scheduled to take place on 30<sup>th</sup> August 2021, with a hearing to take place by telephone conference on 6<sup>th</sup> September 2021.

81. By email dated 13th August 2021, Mr Fortune stated:

There is currently 2 people in the flat who have tested positive for COVID - the letting agent was advised yesterday as they needed to track and trace others from the flat. There is also an international traveller who arrives on 29th Aug who has advised they will need to isolate/quarantine for 10 days as they are from an Amber county and not vaccinated. Access to the property will not be granted to any person who does not hold a license to occupy unless I or my letting agent are supplied evidence of a double vaccine and a negative COVID test issued within 24 hours of any visit in order to safeguard not only staff but vulnerable people within the property. Should you wish to enter the property at any point you will require a warrant issued by a sheriff at Edinburgh.

81. By email dated 26<sup>th</sup> August 2021, the Third Party Applicant stated:

Unfortunately I have not been able to arrange access for the Tribunal's visit on Monday 30 August. Due to this and the Landlord's confirmation that there were safety concerns due to Covid cases in the property, could this visit be re-scheduled to a future date.

82. The inspection was cancelled after the Chamber Administration determined that it was not safe to proceed.

83. By Direction dated 1<sup>st</sup> September 2021, parties were directed to provide the following by 5<sup>th</sup> October 2021:

### **Third Party Applicant**

The Third Party Applicant is required to:

3. Attend at the Property and take photographic and/or video evidence, and any other available evidence, of the following matters:
  - (i) Kitchen, front bedroom and living room windows – to ascertain whether they are in a proper state of repair and in good working order;
  - (ii) Repair works to the lower bathroom;
  - (iii) Water leak into living room ceiling;
  - (iv) Faulty smoke detection system;
  - (v) Position of carbon monoxide detector, if fitted.

### **Landlords**

The Landlords are required to provide the Tribunal with:

4. An update in relation to all repair works carried out to the Property since 5<sup>th</sup> November 2019, including providing invoices and photographs, where appropriate, to indicate whether or not the Property meets the repairing standard;
5. A copy of the most recent Electrical Installation Condition Report for the Property;
6. A copy of the most recent Gas Safety Record for the Property.

84. By email dated 5<sup>th</sup> October 2021, the Third Party Applicant responded to the Direction as follows:

After receiving confirmation from the owner that access was not permitted, I have subsequently contacted tenants who I made contact with in June 2021. Unfortunately, despite chasing this up the tenants have failed to reply to any of my emails or texts. Therefore, I have not been able to re-visit this property to check on the current position.

Please find attached photos, that were taken in June 2021, with permission of the then tenants and when accompanied by PC Keith Brown. Photos show that repairs had been carried out, to the living room window, the upstairs shower room and the downstairs bathroom. Still concerns over condition of living room roof, kitchen window, the fire detection system and no evidence of gas or electric safety certification.

85. An inspection of the Property was set down for 25<sup>th</sup> October 2021, with a hearing scheduled to take place by telephone conference on 1<sup>st</sup> November 2021, and parties were notified of the same.
86. By email dated 21<sup>st</sup> October 2021, Mr Fortune stated that unvaccinated travellers from outwith the UK would be moving into the Property before the inspection and would require to self-isolate, and that one occupant had tested positive or was showing signs of Covid in the last week. Mr Fortune stated that he had advised the commercial landlord not to 'open the flat for viewing' on the date of the scheduled inspection.
87. The inspection and hearing were postponed as the Chamber Administration were unable to make contact with either party to complete pre-inspection Covid-19 questionnaires. It was determined that it was not safe to proceed with the inspection.
88. An inspection was set down for 13<sup>th</sup> December 2021, with a hearing scheduled to take place by telephone conference on 17<sup>th</sup> December 2021, and parties were notified of the same.
89. By email dated 29<sup>th</sup> October 2021, Mr Fortune stated that the owner of the Property had a hospital appointment on 13<sup>th</sup> December 2021, requesting a further date for the inspection.
90. By letter dated 2<sup>nd</sup> November 2021, Mr Fortune was asked to comply with Rule 28 in respect of postponement of the inspection.
91. By email dated 2<sup>nd</sup> November 2022, Mr Fortune stated the following:

We will ask the person but as it's a personal health issue which is privileged they may or may not supply or supply redacted due to an operation. No person or party can discriminate due to health issues.

92. By email dated 8<sup>th</sup> December 2021, Edinburgh Holiday and Party Lets Limited stated the following:

Edinburgh Holiday and Party Lets Limited are no longer the company letting (from Mr Fortune) and sub letting the property- Our contract was taken over / awarded to another party.

We therefore under GDPR can not contact any person within the property to confirm visits, safety or covid infections.

93. By email dated 10<sup>th</sup> December 2021, Mr Fortune stated the following:

We have been advised by the company we lease / rent the above property to that a visitor to the property (I presume a workman or furniture delivery man) has tested positive for covid omicron.

As such the property and occupants may be infected and I believe must now isolate or take further tests.

I believe the “landlord” 3rd party company will send a person to the inspecting visit on Monday but they can not guarantee said person has not been in close contact with others in the property or indeed the workman detailed above at an additional property yesterday, they are attempting a track and trace exercise.

It has been accepted in a criminal case under Proceeds of Crime legislation that I am not the landlord in law regards the resident's, although I am a commercial landlord in regards the commercial contract between myself and the 3rd party but not party under that commercial contract for any repairs etc.

94. The inspection and hearing set down respectively for 13<sup>th</sup> and 17<sup>th</sup> December 2021 were postponed as the Chamber Administration was unable to make contact with either party to complete pre-inspection Covid-19 questionnaires. No details were provided for current tenants. It was determined that it was not safe to proceed with the inspection.

95. By Direction dated 21<sup>st</sup> December 2021, parties were directed to produce the following by 17<sup>th</sup> January 2022:

### **Third Party Applicant**

The Third Party Applicant is required to:

4. Provide a detailed report of his attempts to contact the tenants of the Property and the reasons why he did not respond to attempts by the Housing and Property Chamber to determine whether access would be available prior to the inspection scheduled for 13<sup>th</sup> December 2021;

5. Provide an indication of how he sees the case proceeding to a conclusion if tenants cannot be contacted and the Property cannot be accessed;
6. Inform the Tribunal whether he is authorised to report the concerns regarding the alleged faulty alarm system to the Scottish Fire and Rescue Service or any other appropriate body, and, whether he has done so.

### **Landlord**

The Landlord is required to provide the Tribunal with:

7. An update in relation to all repair works carried out to the Property since 5<sup>th</sup> November 2019, including providing invoices and photographs, where appropriate, to indicate whether or not the Property meets the repairing standard;
  8. A copy of the most recent Electrical Installation Condition Report for the Property;
  9. A copy of the most recent Gas Safety Record for the Property;
  10. The name of any relevant organisation or person sub-letting the Property from the Landlord.
96. By email dated 22<sup>nd</sup> December 2021, Mr Fortune stated the following, attaching an invoice dated 14<sup>th</sup> June 2021 which referred to a service of the fire alarm system, and other items, having been carried out:

Firstly I am in law not the landlord and do not “sub let” the property. I can’t therefore confirm who I sublet the property to. I issue a **commercial licence** on my properties to 3rd parties who can sub let etc

I have managed to obtain the last service / certificate for the fire alarm system - the 3rd party respondent continues to mislead the tribunal that the said alarm does not work - indeed the last service was very limited in cost which would further suggest it was working at the time of service

The 3rd party Mr Ross I recall advised the tribunal at the last case management that he had previously advised the Health and Safety executive and the Fire authorities- non of those took any action, they took no action because they found him to be misleading them as well no doubt , Mr Ross would have us believe they took no action for “no reason”

Mr Ross as your attached letter confirms has failed to engage on numerous times, it should be noted he reported Mr Fortune to the procurator fiscal between 2004-2010 on approx 4 occasions, all of which Mr Fortune was acquitted by the Sheriff, it should also be noted that Mr Ross evidence was chastised by the Sheriff, he was deemed an unreliable witness and I'd go as far as to suggest the sheriff did not believe him and found his evidence unreliable. This case should be dismissed

I have further sought from the other owners copies of communal roof repairs that they instructed, covering the roodf above my property

97. By email dated 21<sup>st</sup> January 2022, the Third Party Applicant stated:

Thank you for the updates in relation to this property and for confirmation that a contractor visited in June last year in relation to the smoke detection system.

I can confirm that I have received confirmation from Scottish Fire and Rescue Service (SFRS) that a crew attended this property on 3 December 2021. Officers from SFRS fitted temporary battery operated smoke detection to the communal areas of this property, due to the lack of detection that they found when they visited.

I await any instructions from the Tribunal, if you require to verify the attendance of officers from SFRS, please contact [details provided]

98. By letter dated 23<sup>rd</sup> February 2022, the Tribunal wrote to the Scottish Fire and Rescue Service requesting evidence under Rule 21 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in relation to the inspection that took place on 3<sup>rd</sup> December 2021.

99. By email dated 13<sup>th</sup> May 2022, the Scottish Fire and Rescue Service responded as follows:

On 3rd December 2021 I received an email from D Ross, a PRS Enforcement Officer for City of Edinburgh Council (CEC), regarding a property at 13 3f1 Gillespie Crescent , Edinburgh, EH10 4HT.

It would appear that CEC staff attended the property and were granted access by one of the tenants, in order to carry out an inspection on the basis of suspecting that the property is being ran as an Unlicensed HMO (UHMO). CEC staff were informed that there were 7 or 8 persons living within the property, meaning that it meets the criteria for an UHMO, as it does not have any required license. CEC staff observed that there was a fire alarm panel present that requires servicing as it appeared

not to be operating properly. The property did have some temporary standalone battery detectors fitted, but most were missing. I was requested, on behalf of SFRS, to try to gain access to the property in order to install some single point detection (SPD) to help reduce any potential risk of fire within the property.

Whether the property is a standard domestic property or an HMO (licensed or otherwise), given the number of bedrooms and persons staying there, it would need a suitable fire warning and detection system that complies with the British Standards and the current smoke detection guidance in Scotland, which SPD does not. The reason for SFRS fitting SPD was to ensure the safety of the tenants, lowering the potential risk of fire, as an interim measure until the landlord/agent carried out the necessary improvements.

I tried to make telephone contact with one of the tenants from the property, using contact details provided to me by D Ross from CEC. I was unable to make contact with the tenant and left a voicemail for them to make contact with myself to discuss the lack of detection within the property. I then contacted my operational colleagues at Tollcross Fire Station and tasked them with doorstepping the property later in the afternoon/early evening, after most people would have finished work and would be at home. The purpose of this was to gain access to the property, speak to the tenants, provide fire safety advice and fit SPD as required to help reduce any potential risk of fire within the property.

Colleagues from Tollcross Fire Station attended the property at approximately 20:00 hours on 3<sup>rd</sup> December 2021 and managed to gain access. My colleagues were able to carry out a Home Fire Safety Visit (HFSV), provide fire safety advice and fit appropriated SPD within the property. Upon receipt of confirmation from my operational colleagues of their attendance and being able to carry out a HFSV, I informed D Ross of our (SFRS) actions and outcomes.

100. An inspection of the Property was scheduled for 29<sup>th</sup> June 2022, with a hearing to take place by telephone conference scheduled for 29<sup>th</sup> July 2022, and parties were notified of the same.
101. By email dated 9<sup>th</sup> June 2022, Mr Fortune stated that residents would be advised to refuse entry to the Property for the forthcoming inspection.
102. By email dated 16<sup>th</sup> June 2022, Mr Fortune advised the Tribunal to obtain a warrant for entry to the Property for the purposes of inspection, stating 'no warrant, no entry'.

103. By email dated 24<sup>th</sup> June 2022, the Third Party Applicant was asked to provide details of attempts made with the tenants to ensure access for the forthcoming inspection.

104. By email dated 27<sup>th</sup> June 2022, the Third Party Applicant wrote that he had attempted to contact the tenants without any success.

105. By email dated 27<sup>th</sup> June 2022, Mr Fortune stated that the Tribunal had no legal authority to enter the Property or seek permission to enter from the owner or landlord, or to suggest to a resident that they have permission. He stated that security had been booked and anyone trying to enter would be refused, and anyone found within the Property removed, followed by legal action. Mr Fortune also stated that a resident had tested positive for Covid and a new resident moving in on 28<sup>th</sup> June demonstrated possible monkey pox infection.

106. By further email dated 27<sup>th</sup> June 2022, Mr Fortune stated that access would not be granted to the Property, reiterating the concerns about Covid and monkey pox, and stating that an interdict was being sought by the owner.

107. By email dated 28<sup>th</sup> June 2022, Mr Fortune was asked to provide a copy of the interdict.

108. By email dated 28<sup>th</sup> June 2022, Mr Fortune stated that the interdict '*will be served in accordance. There will be no entrance tomorrow in part due to the unlawfulness of the tribunal and public health. Therefore any court order breached will be reported to the court.*'

109. By email dated 28<sup>th</sup> June 2022, Mr Fortune stated that an interdict was attached. There was no attachment to the email and no interdict was served.

### **The Inspection**

110. An inspection of the Property took place on 29<sup>th</sup> June 2022. Both Members were in attendance accompanied by two venue assistants. There was no attendance by the Landlord or the Third Party Applicant. Two tenants were in the Property during the inspection. One tenant informed the Tribunal that he had lived in the Property for approximately one year.

111. The Property is a double upper top floor flat within a traditional tenement building, with a living room, kitchen, upper and lower bathroom and seven bedrooms.

112. The Tribunal found the large bay window in the living room to be in overall poor condition. The upper rail of the right side sash window was taped. There was rot to the side of the lower right sash. There was rot to

the central lower sash and the external seals had failed. There was rot to the left side lower sash and outer sill.

113. There was extensive water damage to the ceiling and wall to the left side of the bay window in the living room.
114. Externally, there was decay to the stonework adjacent to the living room window.
115. The Tribunal was unable to gain access to the bedroom adjacent to the living room. The window was photographed from outside.
116. The kitchen window was in poor condition. There was a large gap at the base of the window lining to the left side.
117. The lower bathroom had been renovated with new sanitary fittings, ceiling and lighting, but the décor was incomplete, and the vinyl was not secured to the floor.
118. There was a Quickzone fire alarm panel in the main entrance hall. It was lying open and there was no key available. There was no electricity to the Property and there was a constant warning sound as a result of this.
119. There were two ceiling mounted smoke detectors on each of the ceilings of the main entrance hall, living room and upper floor landing. There were two ceiling mounted heat detectors on the ceiling of the kitchen.
120. There was a wall mounted gas boiler in the kitchen. There was no CO detector in the kitchen.
121. Following the inspection, a document comprising a schedule of photographs and inspection summary was issued to parties.

## **The Hearing**

122. A hearing took place by telephone conference on 29<sup>th</sup> July 2022. Mr David Ross was in attendance on behalf of the Third Party Applicant. Mr Fortune was in attendance.
123. The Legal Member explained the reason for the hearing, which was to consider the findings of the Tribunal following an inspection of the Property on 29<sup>th</sup> June 2022, and whether the Property meets the Repairing Standard. The Legal Member explained the possible outcomes, and the order of proceedings for the hearing.
124. Following an intervention from Mr Fortune that included irrelevant information, abusive language, and an allegation that the Legal Member had a conflict of interest, Mr Fortune left the conference call. Mr Ross was

then asked to leave the conference call to allow the Tribunal to consider matters.

125. The Tribunal decided to bring the hearing to a close due to the behaviour of Mr Fortune and the allegation of a conflict of interest.

126. The conference call was reconvened and parties were informed of the Tribunal's decision.

127. A Direction dated 3<sup>rd</sup> August 2022 was issued by the Tribunal, directing Mr Fortune as follows:

Mr Fortune must provide details of the Legal Member's alleged conflict of interest in order that the matter can be investigated. Details should include, if possible, a case reference number, names of the parties involved, and relevant dates, or as much information as Mr Fortune is able to provide.

128. By email dated 5<sup>th</sup> August 2022, Mr Fortune responded:

Until the corrupt Ms Forbes answers how I am the landlord as defined under the regulations to refer to the tribunal I will not answer further, indeed it appears she is in breach of the Data protection act if I am as indicated not the landlord to those who have stayed in the property

129. By Direction dated 15<sup>th</sup> August 2022, parties were directed as follows:

Parties should provide their written representations and response to the matters raised in the Inspection Summary and Schedule of Photographs previously circulated to parties, following the Tribunal's inspection of the Property on 29<sup>th</sup> June 2022.

### **Reason for the Direction**

The Tribunal has carried out an inspection of the Property and parties have been provided with the Inspection Summary and Schedule of Photographs. The Tribunal will reach a decision as to whether the Property meets the repairing standard as set out in section 13 of the Housing (Scotland) Act 2006 by considering the findings of the inspection and any written representations lodged by parties. A further opportunity will be provided to parties to comment on written representations received before a decision is made.

In reaching a decision, the Tribunal will also take into account the written representations made by Mr Fortune regarding his status in these proceedings. The Third Party Applicant is invited to make representations in this regard.

130. By email dated 16<sup>th</sup> August 2022, Mr Fortune stated 10 days was not enough time for him to find and source the information in relation to the alleged conflict of interest, which dated back to 2008-2012, stating that he would continue to locate 'the cases etc.'

131. By unsigned letter dated 20<sup>th</sup> August 2022, Edinburgh Holiday and Party Lets Limited wrote to the Tribunal, stating:

We are advised that the above case has called previously for a case management discussion and that although our documents have been referred to as tenancy agreements [Attachment 1] we have not been party to those hearings and prejudiced as such, it is calling in the name of Mark Fortune who is not in the landlord of the residents.

Please note the contractual obligations are in law between Edinburgh Holiday and Party Lets Ltd [EHPL] a company registered in Scotland SC577943 and the resident. You will no doubt be aware of clear case law in regards the legal identity of a Limited Company. We understand from previous papers passed to us that Mr David Ross referred to witness statements confirming the landlord was ourselves or in one case 4m Ltd notwithstanding no paperwork from 4m Ltd was produced. Indeed we understand he admitted the 'witness statements' lodged were not in reality statements but his own document written up at a later date based on his recollection of what was said, the 'witness statements' also were unsigned, these documents [witness statements] are therefore uncorroborated and hearsay.

We are not an agent for Mr Fortune, leases and licences are issued by EHPL as its own legal identity and as such EHPL are the landlord, EHPL had a full repairing & insurance contract with Mr Fortune to lease from him on a commercial licence the property at 13 Gillespie Crescent and others, a contract already accepted as valid and legitimate by a Sheriff @ Edinburgh Sheriff Court. We draw you to a similar situation accepted by the tribunal [Ref: FTS/HPC/CV/21/0419] clearly you do not disagree with Neil Kinnear QC? We do not operate as a letting agent or other in relation Mr Fortune and rent collected by EHPL is not passed to Mr Fortune, indeed should the property remain empty EHPL are still under an contractual obligation to make payment to Mr Fortune.

We understand an unlawful inspection was made at the property in July 2022 without our representative being present. The residents have confirmed to our solicitor that they did not grant entry to the property, we therefore call on you to confirm the name of the person(s) who allowed you to enter, failing it will be accepted you entered unlawfully and without a court order and

legal action will be instructed for breaking into the property. The property meets all requirements, it is not for the tribunal to decide how a person lives or how clean a property is. Having spoken to the owner of all properties in the stair we are aware that a communal roof repair has been undertaking over the last 4 years at a cost of several thousands of pounds to actress a leak into the lounge, this is a communal repair and out-with our control, we understand that a number of visits were made by a registered roofing company we are aware the roof damage stems from an Edinburgh City Council 'Stair Partnership' renovation which was carried out to a substandard condition. We are aware that new windows were fitted to the lounge area and bedroom in 2020 by a neighbour who instructed works without our permission as the person legally liable for such and again we called on that person to make good their work. Further an insurance claim was made in early 2020 in regards a water leak into the bathroom, again this bathroom was stripped out and reinstated, it is not for the tribunal to dictate the décor of said renovation. We have been made aware that the owners of the stair 12-14 are wishing a communal repair of stone work and external painting inc windows. We understand Mr Ross has on more than one occasion instructed residents NOT to leave when their licence has ended, he has allegedly told residents to stay and he would afford them protection offering them Residential Tenancy status whilst aware that is not what they asked for or accepted, legal action has been instructed against Mr Ross personally – indeed a person who rather than reset the Fire Alarm control panel when activated continued to open it was asked to leave and immediately quoted David Ross, he went further to suggest David Ross was aware what he was doing in relation the Fire Alarm panel. Indeed Mr Ross alleged the Fire Alarm was not operating, a certificate was sent to Mr Fortune at his request which confirmed it was operational and strangely when next checked it had again been tampered with. It would appear Mr Ross is now picking on our company because of his personal grievances with Mr Fortune, we have been advised by the Crown Office that Mr Ross has unsuccessfully reported Mr Fortune on over 7 occasions, only once was Mr Fortune found guilty, in that he applied for an HMO 1 week late! The other reports were dismissed by a Sheriff or not reported for charge. Having been chastised by the Sheriff he now thinks he can abuse the Tribunal.

Mr Ross lodged 'tenancy agreements' as required to do in bring an action as a 3rd party, he was aware of the Landlords name by sight of those 'agreements', he lodged 'witness statements' and a narrative all confirming the residents were in contract with EHPL, he did not as the Act sets out right to us as the landlord prior to seeking action which is unlawful, for that reason alone this. His email to the tribunal date 11/11/19 @ 17.03 speaks for

itself, not only does he confirm he 'wrote to the owner Mark Fortune' he does not state 'he wrote to the landlord' which as the Act dictates would be the normal wording, the email goes on to confirm the residents were issued with the documents lodged as tenancy agreement but further confirms to the tribunal that a person Clegg had applied for Universal Credit and stated his landlord was 4m Ltd, that in itself asks the Question why Mr Clegg has not been investigated for benefit fraud? He further suggests the company was struck off as a company, had he checked the company number on the tenancy agreements correctly he would have been aware that was incorrect! He clearly made this statement for some other reason as no competent person would have made such a mistake at Companies Property.

The application must be rejected immediately, if not questions will be asked to our MSP as to why the tribunal is wasting public funds and an appeal will be lodged with the Upper tribunal. There appears an abuse of process which someone at the tribunal appears to be facilitating.

132. By email dated 22<sup>nd</sup> August 2022, Edinburgh Holiday and Party Lets Limited were notified that they had informed the Tribunal in December 2021 that they were no longer the landlord, and, therefore, not a party to the case.
133. By email dated 22<sup>nd</sup> August 2022, Edinburgh Holiday and Party Lets Limited responded as follows:

We have a contract as of 2019 when the action was started and as such the landlord. You have continually referred to FORTUNE as landlord not and never as we understand ourselves EHPL

The contract was cancelled in April 2020 due to COVId We entered again a contract as a landlord in 2021 Oct It is not for you to decide - it is a legal point that only the tribunal can reply on

WE NOW SEEK LEAVE TO APPEAL YOUR DECISION to the upper tribunal

134. By email dated 24<sup>th</sup> August 2022, the HPC responded as follows

The refusal to accept your representations is not an appealable decision. It is simply the case that we can only accept representations from parties.

The matter has now been passed to the Tribunal and they have confirmed that, despite the contradictory information previously

provided, you have now been added as a party, and your representations will be taken into account and crossed to the other parties.

Please find attached a copy of the Inspection Summary and Schedule of Photographs. Should you wish to make any further representations on the content of the document, please provide the same within 10 days of today's date.

135. By email dated 24<sup>th</sup> August 2022, Edinburgh Holiday and Party Lets Limited responded as follows:

In light of the below we shall now seek court orders as we EHPL were noted on the 3<sup>rd</sup> party application

Regardless we were the landlords when the contracts / leases were issued, were issued at the point the application was made.

Because we were at one point not the landlord is irrelevant

Please note the following. The documents you refer to as tenancy agreements are covered by GDPR and the tribunal nor the 3rd party sought permission to use, refer or other. These documents have not been redacted and under the data protection act must now be kept out of property not referred to until either in redacted or our permission is sought as they were further subject to a non disclosure clause

Failing such you will be reported as will the 3rd party to the data commissioners office

136. By email dated 25<sup>th</sup> August 2022, the Third Party Applicant made the following representations:

### **Outstanding Repairs**

The Tribunal inspected this property in relation to a number of outstanding repairs first reported by the City of Edinburgh Council to the Tribunal in November 2019. A summary of these repairs which were outstanding in November 2019 is below;

1. Damaged window in living room, in dangerous condition requires urgent attention
2. Broken window in front bedroom currently boarded up
3. Repair leak from upper toilet/shower room into lower bathroom
4. Investigate and repair water leaks into living room ceiling
5. To repair hard wired panel smoke detection system
6. To repair kitchen window
7. To ensure CO detector is fitted

8. To ensure gas safety certificate is carried out
9. To ensure appropriate electrical safety certificates are obtained.
10. To repair kitchen flooring
11. To repair cooker hob as not all the rings working

Having reviewed the Inspection Summary and Schedule of Photographs gathered during the Tribunal's visit to 13 3f1 Gillespie Crescent on 29 June 2022, it appears that points 2 and 3 have been resolved. The emergency work to the living room window, to make it safe has also been carried out, although other repairs to the same window are still required for point 1.

All other repairs listed above appear to still be outstanding since the date of referral in November 2019.

**The status of Mr Fortune in relation to the property at 13 3f1 Gillespie Crescent, Edinburgh.**

The owner of the property at 13 3f1 Gillespie Crescent is Mr Mark Fortune. Within the referral to this Tribunal in November 2019, the City of Edinburgh Council provided evidence that the tenants at 13 3f1 Gillespie Crescent had been provided with Holiday Let agreements which refer to Edinburgh Holiday & Party Lets Limited. The referral also provided the reasons why we are satisfied that 13 3f1 Gillespie Crescent is not being used as a holiday let, but is being used as a residential let property.

Mr Mark Fortune is also the sole Director of Edinburgh Holiday and Party Lets Limited, which is a registered company in Scotland (SC577943), with an address given as PO Box 46, Mail Box 46, (Not a Place of Business), 2 Corstorphine High Street, Edinburgh.

The status of Mr Mark Fortune in these proceedings as both the owner of 13 3f1 Gillespie Crescent, and Director of Edinburgh Holiday and Party Lets Limited, is in our view a legal matter for the Tribunal.

137. By email dated 26<sup>th</sup> August 2022, Mr Fortune stated as follows:

the document that was sent ONLY had photos.  
 In regards the attached document to this email please note;  
 The email is written by Tom Veitch he is not the 3rd party applicant that person by the Act of Parliament is David Ross.  
 Therefore only David Ross can reply as in law it was he to whom the direction was given. An application would be required to change the representative from David Ross to another- this has not been done

The attached does importantly confirm that the application was made specifically as the tenants were issued with tenancy documents from Edinburgh Holiday and Party Lets Ltd and importantly in law if there were no tenancy agreement it would not be a rental property, the residents may be staying as part of their employment or free of charge as a relative and as such the tribunal has no jurisdiction- the applicant clearly accepted the property for rented / leased etc under the tenancy agreements lodged. In law regardless of ownership it is the landlord that is taken to the tribunal, although it may be normal the owner is the landlord in this and many other properties the owner is not the landlord and indeed Mr Veitch accepts in his response that Mr Fortune is the owner and EHPL is the issuer of the tenancy agreement - thus the landlord.

Further he appears to suggest in the last 2 paragraphs "Mr Mark Fortune is also the sole Director of Edinburgh Holiday and Party Lets Limited, which is a registered company in Scotland (SC577943), with an address given as PO Box 46, Mail Box 46, (Not a Place of Business), 2 Corstorphine High Street, Edinburgh."

As the tribunal is well aware, clear legal case law states that the company is its own legal identity and regardless of directors is not and cannot be held to be said director

"The status of Mr Mark Fortune in these proceedings as both the owner of 13 3f1 Gillespie Crescent, and Director of Edinburgh Holiday and Party Lets Limited, is in our view a legal matter for the Tribunal."

Again the legal case law is very clear and unless the applicant can meet the requirements the corporate veil can't be breached. The company and Mr Fortune can not be classed as the same person Given Mr Veitch clearly accepts the landlord was EHPL and given they were not advised prior to the action sought, indeed Mr Ross accepted he wrote to Mr Fortune "as the registered owner" the action must fall due to requirements the Act not being followed

The applicant can re issue the letter setting out any issues he believes are an issue to the landlord and if he believes there are not addressed issue an application to the tribunal in essence a competent action

Failing such any orders will be appealed to the upper tribunal and legal action continued against the corrupt Mrs Forbes (address previously advised)

138. By email dated 27<sup>th</sup> August 2022, Edinburgh Holiday and Party Lets Limited stated as follows:

In regards the attached letter, we were never sent as the landlord any such report....

Mr Veitch has not been to the property nor was he there originally, he is therefore unable to say what has or has not changed since David Ross

For your information we are swear the following works WERE carried out

New window fitted to bedroom

New window fitted to lounge

(Both these covered the repairs sought, if further work is now required after 2 years this in law would not be covered by the original notice)

It should also be advised that the windows were replaced without our consent spas the landlord by the owner of flat 2F1 and if such is not up to standard the liability passes to him / his tradesman

The bathroom and shower room were both fully removed and replaced including a new floor and ceiling. The cost of these works were approx £20,000 and at the same time the workmen painted the hallways, the kitchen, the rear bedroom and also REPLACED the kitchen linoleum- again after 2 years if this has become worn it is not covered by the original notice as it has been replaced and any photo taken by David Ross in Dec 2019 will show a different linoleum/ wear and to suggest otherwise is missing the tribunal

In regards the leak into the lounge, this is a direct result of poor workmanship by agents of the applicant- it was carried out as a communal repair under the city of edinburgh Council stair partnership and is out with the landlord or indeed owners sole liability- we are aware of granting access on 6 occasions for roofing contractors to carry out communal repairs, arranged by other property owners which we understand has cost over £7000. It appears the other owners wish to continue with the same roofing company on the same issue!

Gas / electric and fire alarm certificates were supplied as of Feb 2020 and an additional repair of the fire alarm system was carried out on 14/6/21 thus the notice was adhered to as the panel was fixed, inspected and working - the notice of works relates to Dec 2019 or at best when the applicant was made - it does not cover in law an ongoing timeframe just because the

tribunal did not sit, indeed Parliament did not intend such to become a never ending document- that being the case the tribunal could use such to hold properties sans landlords indefinitely rather than as the Act dictates fix the works and then if further works are required in the future a party issues a new application

The oven and hob have been confirmed working by the residents- it required to be cleaned which is the responsibility of parties staying in any property

Please also confirm when we the landlord (as defined by the lodged "Tenancy Agreements") notified by the 3rd party respondent of the work required as laid out in the Act Section 22(3) of the Housing (Scotland) Act 2006

## **Tribunal discussion**

### **Notification of Landlord**

139. The Tribunal considered, at the preliminary hearing stage, that notification had been made upon the landlord, as Mr Fortune is the sole director of the company Edinburgh Holiday and Party Lets Limited (SC577943) (hereinafter referred to as "EHPL Ltd.") and the registered owner of the Property. Further representations having been made on this point, and new information having been provided by EHPL Ltd., the Tribunal decided to consider it again.

140. Notification of works required was made upon Mr Fortune at the registered address of EHPL Ltd. by the Third Party Applicant, who inserted the words on the document '*as the registered owner*'. It is Mr Fortune's position that this negates the notification, as it should have been made upon the landlord, EHPL Ltd.

141. The Third Party Applicant named EHPL Ltd in the application form as the landlord, and it was noted that the landlord in terms of the tenancy agreements lodged with the Tribunal as part of the application was designated as EHPL Limited (Edinburgh Holiday and Party Lets), with the name of the account to which rent was payable in terms of the bank details document issued to tenants as an accompaniment to the contract stated as '*mefortune*'.

142. In the Notice of Acceptance issued by the Tribunal, the Respondent was named as EHPL Ltd., and notification of the application was served upon Mr Fortune, EHPL Ltd, 2 Corstorphine High Street, Edinburgh, EH12 7ST.

143. Mr Fortune stated on 27<sup>th</sup> January 2020 that EHPL Ltd was no longer in existence, and he requested the papers be served on him at his '*domicile address*'. Thereafter, Mr Fortune continued to engage with the Tribunal by attending hearings, lodging copious representations on matters relating to

the application including repairing matters, lodging an invoice, emailing and attempting to prohibit the Third Party Applicant representative from attending at the Property, claiming to have discussed matters with tenants and to have sought copies of documents from other owners in relation to communal roof repairs, providing information as to why inspections should not go ahead, and referring in emails to EHPL Ltd. as his 'letting agents'. From 24<sup>th</sup> to 28<sup>th</sup> June 2022, he submitted several emails trying to ensure that the inspection of the Property did not take place, including references to booking security and seeking an interdict, both of which were intended to stop the inspection from taking place. He appeared, thus, to have been holding himself out as a representative of the landlord.

144. Notification was made upon EHPL Ltd. at the start of the process, and documents were served on the company again during the period from 17<sup>th</sup> May to 8<sup>th</sup> December 2021, at which time someone purporting to represent the company stated they were no longer the landlord. Thereafter, Mr Fortune refused to provide details of the landlord.

145. At no time before August 2022, did EHPL Ltd. respond to any notifications or Directions served upon them. By communications dated 20<sup>th</sup> and 22<sup>nd</sup> August 2022, an unnamed person purporting to represent EHPL Ltd. stated the company had not been the landlord from April 2020 to October 2021, which directly contradicted the information from Mr Fortune, and the information contained in EHPL Ltd.'s email of 8<sup>th</sup> December 2021.

146. The Tribunal was informed by an unnamed person purportedly making representations on behalf of EHPL Ltd. on 20<sup>th</sup> August 2022 that a full repairing and insurance contract exists between Mr Fortune and Edinburgh Holiday and Party Lets Limited. No evidence of any such contract has been provided, other than the tenancy agreements lodged with the application.

147. Section 22(3) of the Act, provides:

*No application under this section may be made unless the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with that duty*

148. The Tribunal considered the purpose of the notification required by section 22(3) of the Act. The purpose is to provide information to the landlord that repairs are required. Although the Tribunal thought it unfortunate that the Third Party Applicant had included the words 'as registered owner' in the notification, it did not consider that this negated the purpose or effect of the notification. The purpose of the notification was fulfilled by drawing to the attention of the sole director of EHPL Ltd. that repairs were required.

149. The Tribunal takes the view that notification was made upon the landlord EHPL Ltd., by service upon its sole director, Mr Fortune.

### **Third Party Applicant representative**

150. The Tribunal does not consider there is any merit in EHPL Ltd.'s suggestion that the Third Party Applicant cannot change its representative during the process. The Third Party Applicant is City of Edinburgh Council. It is for them to decide upon their representative at any stage in the process.

### **Conflict of interest**

151. No further information was received from Mr Fortune regarding the alleged conflict of interest. The Legal Member has no recollection of any dealings with Mr Fortune prior to the commencement of this application. In the absence of any evidence of a conflict of interest, there is no reason for the Legal Member to recuse herself.

### **Observations**

152. The Tribunal observed that the progress of this application has been protracted by several factors, including the Covid-19 pandemic. The Rules require parties to assist the Tribunal in furthering the overriding objective. That Rule was not complied with in this case, with a failure by both parties to comply with Tribunal Directions and requests for information. It was apparent throughout the progress of the application that the tenants in the Property were reluctant to engage with the Third Party Applicant, for whatever reason. The Tribunal was disappointed to find that the tenants present at the inspection had no knowledge of the application or inspection. The Tribunal would have expected the Third Party Applicant to have informed the tenants, perhaps by mail, of the inspection. EHPL Ltd. and Mr Fortune appeared, at times, to be trying to subvert the procedure by failing to provide information, and providing contradictory information.

153. Despite the assertion of the person making representations on behalf of EHPL Ltd. that electric and gas safety certification had been supplied in February 2020, no such documentation was presented to the Tribunal.

### **Findings in Fact**

154.

- (i) The Landlord is the registered owner of the Property which is registered in the Land Register for Scotland under Title Number MID101053.
- (ii) The Landlord is the sole director of the company Edinburgh Holiday and Party Lets Limited (SC577943) sometimes trading as EHPL Ltd. (Edinburgh Holiday and Party Lets).
- (iii) The Property is a seven-bedroomed double upper tenement flat.

- (iv) The Property is a House in Multiple Occupation in terms of section 125 of the Act.
- (v) Tenancy agreements in respect of the Property between EHPL Ltd. (Edinburgh Holiday and Party Lets) and tenants RD, RM and SP were put in place between July and December 2019.
- (vi) The tenancy agreements granted to tenants RD, RM and SP purported to be made under the 1988 Act and to be for a period of one month for the purposes of holiday accommodation.
- (vii) Tenant MI was granted a holiday let of the Property in July 2019.
- (viii) Tenant EM was granted a tenancy of the Property by renewing monthly contract in September 2019.
- (ix) The tenants RM, RD, JC, SP, EM and MI resided in the Property for a period of more than 31 days.
- (x) The Property was the principal home of the tenants RM, RD, JC, SP, EM and MI.
- (xi) The tenants RM, RD, JC, SP, EM and MI were not residing in the Property for the purposes of a holiday.
- (xii) The tenancy agreements granted to the tenants RM, RD, JC, SP, EM and MI were private residential tenancy agreements.
- (xiii) Notification of required repairs dated 8<sup>th</sup> October 2019 was made to the Landlord by the Third Party Applicant on 11<sup>th</sup> October 2019.
- (xiv) The Property does not meet the repairing standard in respect of the living room and kitchen windows, and the roof and living room ceiling.
- (xv) The Property does not meet the repairing standard as no Electrical Installation Condition Report or Gas Safety Record has been provided.
- (xvi) The Property does not meet the repairing standard as the fire alarm system is not in proper working order.
- (xvii) There is no evidence that the landlord has complied with the duties in respect of fire safety for Houses in Multiple Occupation.
- (xviii) The Property has no provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (xix) The Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

## **Decision**

155. The Tribunal determined that:

**(a)The Property is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of the Housing (Scotland) Act 2006)**

- (i) The Property is not wind and watertight and in all other respects reasonably fit for human habitation due to water ingress through the roof and living room ceiling and the resultant damage to the interior plasterwork/decor.
- (ii) The Property is not wind and watertight and in all other respects fit for human habitation due to the condition of the living room and kitchen windows.

The Tribunal did not consider there was any merit in EHPL Ltd.'s assertion that, if a repair was carried out after notification, any further disrepair constituted a new issue and should not be considered as part of the application. The Tribunal is tasked with determining whether the Property meets the repairing standard, and, at the time of inspection, the living room and kitchen windows did not meet the repairing standard. The Tribunal was not able to inspect the downstairs bedroom window as access was not available.

**(b)The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.**

There is no current EICR and Gas Safety Certificate for the Property.

**(c)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**

The Tribunal made no findings in respect of this section.

**(d)Any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.**

The Tribunal made no findings in respect of the cooker and kitchen flooring, as these items had not been formally notified to the Landlord.

**(e)Any furnishings provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.**

The Tribunal made no findings in this regard, as no complaint was made regarding furnishings despite this section being ticked on the application form.

**(f) The Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.**

The Tribunal took into account the representations made by the Scottish Fire and Rescue Service, and all parties. The Tribunal could not be satisfied at inspection that the system for detecting fires and giving warning in the event of fire was in working order. The invoice supplied by Mr Fortune is dated June 2021, at which time it would appear the fire system had been serviced and was in proper working order.

The Tribunal did not consider there was any merit in EHPL Ltd.'s assertion that, if a repair was carried out after notification, any further disrepair constituted a new issue and should not be considered as part of the application. The Tribunal is tasked with determining whether the Property meets the repairing standard, and, at the time of inspection, it was not evident that the alarm system was in working order, or that the system in place met the particular requirements for a House in Multiple Occupation.

**(g) The Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.**

There was no evidence of any provision to meet this requirement within the Property.

**(h) The Property does not meet the tolerable standard.**

The Property does not meet the tolerable standard in respect of the water ingress to the living room.

### **Decision**

156. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

157. The decision of the Tribunal was unanimous.

### **Right of Appeal**

**154. 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.**

Where such an appeal is made, the effect of the decision and 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 decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# H Forbes

Legal Member and Chairperson

Date: 8<sup>th</sup> November 2022