

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/18/1357

Title no: ANG9404

Flat 1/R, 39 Provost Road, Dundee, DD3 8AF ("The Property")

The Parties:-

**FINDLAY CONNOR residing at Flat 1/R, 39 Provost Road, Dundee, DD3 8AF
(represented by Dundee City Council ("the Applicant"))**

**MAMUN HOSSAIN and MANIR HOSSAIN residing at 2/L, 25 Caird Avenue,
Dundee, DD3 8AS ("the Landlords")**

Whereas in terms of their decision dated 4 September 2018, The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the Landlords have failed to ensure that:-

- (a) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

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

In particular the tribunal requires the landlord:-

- (a) to obtain a specialist report from a timber specialist expert on the presence or otherwise of any dry rot or any other timber infestation within the Property.
- (b) to provide a copy of the report to the Tribunal immediately upon receipt.
- (c) to implement any works recommended in that report to eradicate dry rot within the Property.
- (d) to make good any damage occasioned in carrying out those works and to redecorate where necessary.
- (e) to liaise with the proprietor of the upper floor flat to carry out the necessary repair works to the communal joists and to eradicate the dry rot contained therein.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 2 months from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.


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

In witness whereof these presents type written on this and the preceding page(s) are executed by Ewan K Miller, Chairman, Solicitor, Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Tribunal at Dundee on 4 September 2018 before this witness:-

Ewan Miller

_____ Chairperson

___ (witness)


Lindsay Johnston
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/18/1357

Flat 1/R, 39 Provost Road, Dundee, DD3 8AF (“The Property”)

The Parties:-

FINDLAY CONNOR residing at Flat 1/R, 39 Provost Road, Dundee, DD3 8AF (represented by Dundee City Council (“the Applicant”))

MAMUN HOSSAIN and MANIR HOSSAIN both residing at 2/L, 25 Caird Avenue, Dundee, DD3 8AS (“the Landlords”)

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 Landlords had complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlords and the Applicant at the hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 6 June 2018, the Applicant, on behalf of the Tenant, applied to the Housing and Property Chamber for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application by the Applicant stated that they considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) 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.
3. By Minute of Decision dated 14 June 2018, a Convener, with delegated authority on behalf of the President of the Housing and Property Chamber,

intimated a decision to refer the application under Section 22 (1) of the Act to a Tribunal.

4. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Applicant.
5. Following service of the Notice of Referral the Landlords made no written representations to the Tribunal.
6. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Ms G Wooley, Ordinary Member) inspected the Property on the morning of 22 August 2018. The Applicant was represented by Mr Lindsay Watson of Dundee City Council. He was accompanied by Ms Catherine Mackay, also of Dundee City Council, who was observing. Mr Manir Hossain was present for the Landlords. A Mr John Arnott was also present as access was required to the upper floor flat above the Property. The upper floor flat was owned by his son.
7. Following an inspection of the Property the Tribunal held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee, DD3 0AX. Again Mr Watson and Ms Mackay from the Applicant were present. Mr Manir Hossain from the Landlords was present. He was accompanied by Mr Sanat Ghatak who would assist if Mr Hossain was unsure of any point.
8. The Applicant submitted that he had been approached by the owners of the flat directly above the Property. There had been leaks from a damaged downpipe to the rear of the Property some time ago and this had led to water ingress in to the tenement. As a result of this dry rot had spread and was affecting the upper floor flat and also, in all likelihood, the Property. Mr Watson highlighted the terms of a specialist report that the upper floor proprietor had received from Peter Cox Preservation, a reputable timber specialist company. This highlighted that there was dry rot to the mutual floor joists between the Property and the flat directly above it. Mr Watson indicated that whilst he had had some initial contact with the Landlord and had suggested that they obtain their own specialist report, matters had stalled. In an attempt to move matters forward and to assist the upper floor proprietor the local authority had exercised their powers to submit a third party application to the Tribunal.
9. The Landlords submitted that they were willing to do any work necessary to address any issues. He indicated through Mr Ghatak that his son had spoken to Mr Watson but that there had not been any progress as he thought Mr Watson was still to come back to him (a fact Mr Watson denied). Mr Hossain had also indicated at the inspection that he had been trying to contact the Landlords but the Landlords were never in the property above. The property was empty and the Landlords did not live in it so this was never likely to prove a method by which the Landlords would be able to contact the owner of the upper floor flat.

Summary of the issues

10. There was only one issue to be determined and that was whether there was dry rot within the Property which did not comply with the repairing standard. A related point was if there was dry rot did it also impact on any communal items within the tenement.

Findings of fact

11. The Tribunal found the following facts to be established:-

- There was dry rot in the joists between the Property and the flat directly above it.
- It was not possible within the confines of the inspection to determine whether there was dry rot within other areas of the Property itself but there was a significant risk that this was the case.

Reasons for the decision

12. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection and the written submissions from the Applicant. The Tribunal first inspected the rear bedroom at the Property. There was no evidence of any dry rot visible but given the nature of dry rot this was not unusual – dry rot would likely travel in the joists and wooden lathes and beams behind the surface finishes. The Tribunal then inspected the equivalent rear bedroom in the flat directly above the Property. The floor was exposed and the communal floor joists could be seen. There was evidence of dry rot in several locations and it was apparent that dry rot had indeed been present. The dry rot that was visible did not appear to be currently active. However the nature of dry rot was that it could be activated again if moisture levels increased. It was also impossible to tell whether there was still active areas of dry rot that was spreading out of sight of the exposed areas.

The Tribunal then inspected the kitchen in the Property as it had become apparent after viewing the upper floor flat that the kitchen area may also be affected. Again there was no definitive sign of dry rot although the Tribunal was concerned about an area around the kitchen window which may be showing early signs of dry rot being present. During the course of the discussion at the Hearing it became apparent that the Landlords had carried out, a year or so ago, some works in the kitchen to strip out affected areas. It appeared from the conversation at the hearing that the Landlords had not used a timber specialist, as would be the norm, and it was unlikely that there were any guarantees. The Tribunal was concerned with this. To properly treat dry rot generally requires the services of an expert in specialist timber works. The Tribunal was concerned that the Landlords had not fully appreciated the dangers that dry rot can present to not only the Property but to the larger tenement. Dry rot, if left unattended, can represent a structural risk and therefore could be a breach of the repairing standard.

In the circumstances, the Tribunal was satisfied that dry rot was present in the communal joists with the upper floor flat. The Tribunal was concerned that there was a significant risk that dry rot was also present in the Property itself. The Tribunal was satisfied that the fact that there were repairs required to communal joists did fall within the ambit of the repairing standard. Section 15 of the Act makes it clear that all communal parts of a tenement can fall within the ambit of the repairing standard.

In the circumstances the Tribunal was of the view that the Landlords would require to carry out investigative works and obtain a proper timber specialist report on the Property. They would then require to carry out any appropriate remedial works highlighted by that report. They would also require to liaise with the upper floor proprietor to agree a programme of works to attend to the common joists. It may be prudent for one contractor to deal with both properties but that was a matter for the parties to liaise and agree on.

The Tribunal considered how long the Landlords would require to address the works. A timber specialist report should only take a matter of days to obtain. Any works required may take a couple of weeks but both the upper floor flat and the Property were presently empty and therefore works could proceed at pace. In the circumstances the Tribunal was satisfied that an RSEO was appropriate with a timescale of 2 months.

During the course of the inspection the Tribunal noted that there was no sign of any smoke alarms within the Property. This was unacceptable and the Landlords would require to address this. The Landlords required to install a heat detector in the kitchen and smoke detectors in the hall and lounge. All three would require to be mains wired and interlinked and comply with the relevant regulations. A carbon monoxide detector also needed to be installed in the correct place in the kitchen. Whilst outwith the ambit of this decision, the Tribunal emphasised to the Landlords that they would expect them to carry out these works before the Property was re-let.

Photographs taken during the course of the inspection are annexed to this Decision for information.

Decision

13. The Tribunal accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
15. The decision of the Tribunal was unanimous.

Right of Appeal

16. 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 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.

Effect of section 63

17. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Ewan Miller

Signed Chairperson

Date 4/7/18

This is the Schedule of photos taken on 22 August 2018 referred to in the foregoing Decision

Ewan Miller



1R Potential dry rot in kitchen windowsill 2



1R Potential dry rot in kitchen windowsill 1



2R dry rot in floorboards



2R dry rot joist 2



2R dry rot joist 1



2R fruiting bodies



Front Elevation