

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**

ChamberRef: FTS/HPC/RT/18/0266

Sasine description: ALL and WHOLE the westmost basement Flat of Tenement 10 Garland Place, Dundee, on Lot of ground, II described in a Feu Contract to which William Henderson Tosh was a party recorded in the Division of the General Register of Sasines for the County of Angus on 16th April 1870.

**Property at B/1 10 Garland Place, Dundee, DD3 6HE
("the Property")**

The Parties:-

**Mrs Moira Kane residing at B/1 10 Garland Place, Dundee DD3 6HE
("The Tenant")**

**Barn Properties Limited, Melville House, Monimail, Cupar, Fife, KY15 7RJ
("The Landlord")**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee
DD1 3BA
("the Third Party Applicant")**

NOTICE TO: Barn Properties Limited ("the Landlord")

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

- (a) The property is wind and water tight and in all other respects reasonably fit for human habitation;

- (b) The structure and exterior of the property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order;
- (d) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
- (e) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

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

In particular the tribunal requires the landlord to:-

- (a) instruct a suitably qualified Damp Proofing Specialist to investigate the cause of dampness in the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the works have been completed satisfactorily in order to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) instruct a suitably qualified Timber Specialist to investigate the floorboards in the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the works have been completed satisfactorily in order to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and to ensure that the floor is in a reasonable state of repair and proper working order;
- (c) instruct a suitably qualified contractor to repair or replace the panel heater located in the south bedroom of the Property to ensure it is in a reasonable state of repair and in proper working order;
- (d) instruct a certified Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) which report should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor, and carry out such works as are necessary to rectify any identified issue in the EICR and provide the Tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
- (e) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government Guidance for the satisfactory provision for the detection and warning of fires and

current building regulations and exhibit a Building Warrant and Completion Certificate from Dundee City Council in respect of the installation of same; and

- (f) instruct a suitably qualified contractor to clear the rear drying green to ensure it is in a reasonable state of repair.

The tribunal order that the works specified in this Order must be carried out and completed within the period of three months 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 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 (are executed by Morag Leck, solicitor, chairperson of the tribunal at Glasgow on 16/5/18 before this witness:-

L Wardlow

witness

name in full

20 York Street Address

Glasgow

G2 8GT

M Leck

chairperson



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

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

Chamber Ref: FTS/HPC/RT/18/0266

**Property at B/1 10 Garland Place, Dundee, DD3 6HE
("the Property")**

The Parties:-

**Mrs Moira Kane residing at B/1 10 Garland Place, Dundee DD3 6HE
("The Tenant")**

**Barn Properties Limited, Melville House, Monimail, Cupar, Fife, KY15 7RJ
("The Landlord")**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee
DD1 3BA
("the Third Party Applicant")**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (the Act) in relation to the Property, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Tribunal consisted of-

**Morag Leck (Legal Member and Chair)
Robert Buchan (Ordinary member)**

Background

1. By application received on 5th February 2018, the Third Party Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The house is wind and water tight and in all other respects reasonably fit for human habitation (as required by section 13(1)(a) of the Act);
 - (b) 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 (as required by section 13(1)(b) of the Act);
 - (c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order (as required by section 13(1)(d) of the Act);
 - (d) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed (as required by section 13(1)(e) of the Act); and
 - (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (as required by section 13(1)(f) of the Act).
3. The Third Party Applicant attached details of the following complaints to the application :-
 - 1) *Damp in the living-room, north bedroom and bathroom, and the south bedroom and kitchen. In addition leakage from the bath area has saturated the partition through to the adjacent bedroom where skirting boarding and flooring are decayed.*
 - 2) *The living-room wall mounted panel radiator is badly damaged and scorch marks are evident directly above. This heater should not be used. Heater in south bedroom should not be used. Heater in south bedroom does not work.*
 - 3) *The living room spotlights are faulty.*
 - 4) *The bathroom light is also difficult to switch on. All electrical faults should be inspected and repaired or replaced by a suitably qualified electrical engineer. Repair/ improvement works should be put in hand immediately to ensure the safety of occupants and an Electrical Installation Report clear of any C1 or C2 items is required.*
 - 5) *Smoke and heat detectors provision is not up to current requirements. These should be installed by a suitably qualified electrician. The current minimum standard is to provide at least; one functioning smoke alarm in the room which is frequently used by occupants for general daytime living purposes. One functioning smoke alarm in every circulation space such as hallways and*

landings. One heat alarm in every kitchen. All alarms should be interlinked. The number of the alarms will depend on the layout and size of the house. A Building Warrant is required.

- 6) The lower sash window in the south bedroom is ill fitting and should be rehung or replaced.*
 - 7) Signs of dampness are evident in the entrance close and basement stairwell which may be as a result of leakage from one of the upper floor flats. This should be investigated and cause repaired. Close and stair redecoration is required in places.*
 - 8) Whilst there is a security entry system in place, the rear access door to the block is secured to prevent drug users entering from the rear.*
 - 9) Stair window paintwork is in poor order. These should be redecorated*
 - 10) Rhone and downpipes are choked and leaking in places. These should be cleared.*
 - 11) Stonework is stained and scaling in places and a number of open joints were observed. These joints should be sealed.*
 - 12) The rear drying green is very badly overgrown and unusable. This requires to be cleared.*
4. By Minute dated 23rd February 2018, a Convener of the Tribunal with delegated powers under section 23A of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal for a determination.
 5. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Third Party Applicant on 9th March 2018. An inspection of the house and a hearing were fixed for 18th April 2018.
 6. Following service of the Notice of Referral, no written representations were received from any of the parties other than confirmation of attendance at the inspection and hearing from the Third Party Applicant on 20th March 2018.

The Inspection

7. The Tribunal inspected the Property on the morning of 18th April 2018. The weather conditions were dry and overcast.
8. The Property is a basement flat in a tenement property forming part of a terrace of similar buildings dating from around 1890. It is located in proximity to the city centre, close to university and college campuses in Dundee. The accommodation comprises two bedrooms, living room, kitchen and bathroom. .
9. The Tenant Mrs Moira Kane was present at the inspection. The Landlord's representative Mr Mark Evans was in attendance. Mr Donald Graham from Dundee City Council as the representative of the Third Party Applicant also attended. Mr Evans explained that he had been instructed by the Landlord to carry out repairs required to the property and repair work was ongoing during the time of the inspection. Photographs were taken and are attached as a Schedule to this decision.

The Hearing

10. Following the inspection of the Property the Tribunal held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee. The Third Party Applicant was represented by Mr Graham. Mr David Barn, Director of Barn Properties Limited, who confirmed his company was the Landlord of the Property, attended together with Mr Evans who had been present at the inspection. The Tenant did not attend.
11. It was agreed in respect of the procedure to be adopted at the hearing that the Tribunal would look at each repair issue set out in the application in turn.
12. Thereafter the Tribunal considered the issues in the following order:-

12.1 Dampness in the Property

Mr Graham explained that damp testing in the property had been carried out by a Council surveyor. His report indicated dampness in every room in the property apart from the hall. Reference was made to the damp meter readings from the cupboard in the corner of the north bedroom which Mr Graham accepted had not been specifically mentioned in the report.

Mr Barn submitted that the property was a basement flat. He had owned it for quite a few years. There had been previous issues with damp and these had been attended to every time. He pointed out that the Tenant had not been in the flat for long and he had trouble getting access during her tenancy. Mr Graham confirmed that Mr Barn had previously been in touch with his office regarding access.

Mr Evans acknowledged that there had been significant dampness identified on the exterior wall in the north bedroom cupboard although it was not as wet as it was previously prior to the repair work which had been carried out by him to the bridge at the front entrance of the building. Mr Evans also pointed out there was no dampness in the south bedroom or kitchen and Mr Graham advised again that his application was based on the Council surveyor's report.

Mr Barn explained that three of the flats were managed by a Property Factor Management Company. Another tenant had recently asked for money for the roof. He suggested that other owners tended to contribute if the proposed repair affected their property.

Mr Buchan, the Ordinary Member of the Tribunal, suggested that he had the impression that the dampness had been there for some time and Mr Barn agreed that he had damp issues in the past prior to the current tenancy. He had dealt with this by having the dampness treated and rooms redecorated.

Mr Evans referred to the work he was currently undertaking at the property on behalf of the Landlord. He suggested that the reference to flooring in the application was unclear. The Tribunal had pointed out floorboards in the bedroom which were rotten during the inspection. His understanding was that flooring was to be replaced but the application had not mentioned floorboards. The Tribunal noted that the reference to flooring had been considered as including floorboards.

12.2 Panel radiators

Mr Graham noted from the inspection that the damaged radiator in the living-room had been replaced although the scorch marks were still clearly evident on the wall.

Mr Barn and Mr Evans then advised that redecoration work was planned for the property as part of the ongoing work.

The Tribunal referred to the Tenant advising that the heater in the south bedroom was not working and Mr Evans said that a new heater would be put in that bedroom although the current one had only been put in recently.

Mr Buchan expressed surprise that a property of this size in 2018 relied on electric panel heaters to heat the property and that it must be expensive to run. It was not part of the application but the consequences of the damaged radiator in the living-room were apparent and could have been severe.

12.3 Spotlights in living-room

It was noted these had been repaired so were no longer an issue.

12.4 Bathroom light fitting

Mr Barn stated that he had an electrician out three times in the last year to fix the pull cord switch in the bathroom. He didn't know if the difficulty was caused by pulling too hard on the cord. However in order to eliminate the problem, the pull cord switch would be removed and a new switch placed outside. He also advised that two electrical faults had been reported and attended to.

Mr Graham added that when he attended the property last year the pull cord switch had been difficult to use.

12.5 Smoke and heat detectors

Mr Graham explained that as these had not been in place at the time of the inspection it was mandatory to write out to the Landlord advising what the current requirements are. He referred to the scorch marks on the living-room wall above the radiator which had raised concerns.

Mr Barn did not recollect receiving the first notification from the Council in October 2017 setting out the issues with the property. He accepted the position as regards the smoke and heat detectors. He added that he had been unaware of the change in legislation in 2015 and was going on a programme to make sure all his properties were up to standard. He also confirmed that he had not applied for a Building Warrant.

Mr Graham pointed out that even if the detectors were installed a Building Warrant application would require to be made retrospectively.

The Tribunal noted that there was no Electrical Installation Condition Report (EICR) available for the property and the responsibility of a Landlord to provide this.

12.6 Window sash in south bedroom

Mr Graham indicated the initial report from the surveyor suggested a draught was coming in from the gap in the window which had been felt during his inspection although no draught was felt today.

Mr Barn said that he could get someone from the window industry to look at the window.

12.7 Dampness in the close and basement stairwell/ Close and stair redecoration required

Mr Graham indicated that there was some evidence of dampness on the close wall and coming downstairs as pointed out at the inspection. It seemed to be in the middle of the building. Environmental Health were not aware of any issues.

Mr Buchan suggested that the dampness coming down through the middle of the building appeared to have been doing so for some time.

Mr Evans referred to his comments during the inspection when he had explained that there was a long term leak coming from the ground floor flat above the bathroom of the property. It had taken some weeks before they could contact the letting agent to get that problem sorted out.

Mr Buchan suggested that the damp meter readings taken by him were consistent with the wall drying out.

Mr Barn said there had been previous problems with the bathroom due to the flat above.

In relation to the close and stair redecoration Mr Graham acknowledged this would be a common repair.

Mr Barn pointed out the building did not have a factor as he had mentioned previously.

12.8 Rear Access door to building

Mr Barn expressed concern that the rear access door had been opened. He suggested safety issues had arisen due to people coming into the close and hanging about in the basements. A previous tenant had been given a fright by an intruder.

Mr Graham pointed out there was only one other exit from the building. There had previously been a fire in the building further down the street so it had been a concern that the rear access door was nailed shut.

12.9 Stair Window

Mr Barn confirmed this window would be painted. The Tribunal pointed out that the window cord was broken but that this had not been notified to the Landlord.

12.10 Condition of rhones/downpipes.

Mr Graham acknowledged these were also joint issues for every owner in the block as was the stonework and rear drying green.

Mr Evans explained that the front downpipe had been blocked. When he cleared away debris at the front, he found a drain which had also been blocked and the drain was cleared too.

12.11 Condition of Stonework

Mr Evans stated that the open joints outside of the living-room at the front of the building had been repointed.

Mr Buchan pointed out that some open joists had also been noticed at the rear of the property during the inspection.

12.12 Rear drying green

Mr Barn submitted that the rear drying green had been overgrown for a long time. He used to cut the grass but vagrants came into the back area and he had found syringes there. He had stopped cutting the grass when no longer well enough to do so. Mr Evans added that his employee, who was currently clearing the back area, had already found some syringes that morning.

Mr Graham suggested it might be worthwhile considering adding a security entry system at the back of the building.

Mr Barn pointed out that a security entry system would not address the issue of persons loitering around the back area of the building. The property was near a health facility where drug users went daily and the back alley was an ideal spot for them.

Mr Graham suggested that if it was identified that people were accessing the close through the rear entry then the community wardens could be asked to pay particular attention to the area.

Additional comments were made by Mr Barn that he had previously cleared out the basement as the Tenant had complained of scratching noises and he had used Strathearn Pest Control to deal with that. He had also sent repair workers along several times to address repair issues that the Tenant had raised last year. It was his view that the problems had started when he had refused to provide a letter advising that the tenancy was being terminated and since then she had made various complaints.

The Tribunal asked if parties had any other closing submissions.

Mr Graham expressed concern at the length of time it had taken before any repair works were commenced by the Landlord.

Mr Barn stated that he had been involved with properties since 1980 and this was the first time that he had issues like this.

Summary of the issues

13. The issue to be determined is whether the house meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1) (b)

Findings of fact

14. The Tribunal finds the following facts to be established:

- a) The Tenant entered into a Short Assured Tenancy Agreement with the Landlord with a start date of 1st June 2015. The Tenant continues to occupy the Property.
- b) The Landlord is recorded on the lease as Barn Property.
- c) Barn Properties Limited is the registered owner of the Property. The Landlord's Registration number is 119369/180/09450 and the owner of the Property is stated as David Barn t/a Barn Properties.
- d) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- g) The Third Party Applicant notified the Landlord by letter dated 13rd October 2017 of all the repair issues detailed in the application.
- h) The Tribunal at its inspection on 18th April 2018 carefully checked the items which were the subject of the complaint and observed the following:-
 - i) Damp meter readings were taken in the bathroom and high moisture readings were recorded at the lower part of the external wall. The pull cord switch in the bathroom had been replaced but the switch remained difficult to use.
 - j) New skirting board had been fixed in the north bedroom. The floorboards at the skirting adjacent to the bathroom were rotten. Damp meter readings were taken in that area which demonstrated a slight moisture level. There were two cupboards in the north bedroom. The boiler cupboard adjoining the bathroom also had soft floorboards. A damp meter reading in the other cupboard which abutted the external wall of the building also indicated a degree of moisture level.
- k) Damp meter readings were taken in the south bedroom at the external wall to the rear of the building. There were no moisture levels recorded. The bedroom

window was found to have a noticeable gap in the window frame. The Tenant advised that the heater in the bedroom had been refitted but was not working properly as it only worked intermittently when full on.

- l) Damp meter readings were taken in the kitchen and meter readings recorded no evidence of dampness. There was no heat detector in the kitchen.
- m) Damp meter readings were taken in the living-room. These were clear below the window to the front of the building. High moisture levels were recorded from damp meter readings taken at the corner of the external wall adjacent to the wall recess. Scorch marks were noticeable above the radiator on the recess wall. The tenant confirmed the damaged radiator had been removed. A new radiator had been affixed to the wall. The living room spotlights had been changed and the light was functioning. There was no smoke detector in the living room.
- n) A battery operated smoke detector was located in the hallway.
- o) No Electrical Installation Condition Report (EICR) was available.
- p) The rear door of the building was open and access available. An employee of Mr Evans was working in the drying green area removing debris. The drying green area was badly overgrown and rubbish, including furniture had been left adjacent to the rear walls of the building. The pathway to the rear gate of the building was indiscernible. A number of open joints and flaking masonry were observed on the rear wall of the building.
- q) The paintwork of the stair window on the basement landing of the property was in poor order.
- r) Damp meter readings were taken in the entrance close and basement stairwell which indicated various degrees of dampness. The close and stairwell were in need of redecoration in places.
- s) The stonework at the front was observed to be in a better state of repair than that to the rear of the building. Rhone and down pipes had been cleared and repointing work undertaken by Mr Evans on behalf of the Landlord. A significant amount of debris was gathered in the lower ground area directly in front of the windows of the property.

Reasons for the decision

- 15.** The Tribunal were concerned at the state of the property in general and the period of time which had elapsed since notification of the required repairs to the Landlord before any repair works were commenced

The Tribunal noted the Landlord's submissions regarding difficulties with gaining access to the Property but were of the view that, given the nature of the some of the repairs required, any issues regarding access should have been resolved by the Landlord as a matter of urgency.

16. The Tribunal considered each of the complaints made by the Third Party Applicant in the application namely :-

16.1 Dampness in the Property

The Third Party Applicant had complained that there was damp in the living-room, bathroom, two bedrooms and kitchen of the property.

Whilst the Tribunal accepted the Landlord's explanation regarding dampness caused by previous leaks in relation to the area beside the bathroom, the Tribunal did not accept that all of the areas of dampness identified and the high damp meter readings obtained during the inspection related to residual damp problems. The Tribunal were of the view that that specialist investigation would be required to establish the cause of damp in the property and any necessary repairs required.

The Third Party applicant had complained that flooring in the bedroom was decayed. The Tribunal had noted rotten floorboards in the bedroom during the inspection and been advised that the flooring was to be replaced. The Tribunal were of the view that the issues with the floorboards should be considered as part of the specialist report referred to above. The Tribunal were also of the view that the flooring would require to be replaced.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (a) and (e)) with regard to the above.

16.2 Panel radiators

The Third Party Applicant had complained that the panel radiator in the living room was damaged and the radiator in the south bedroom did not work.

The Tribunal noted that the radiator in the living-room had been replaced and an undertaking to replace the radiator in the bedroom given by Mr Barn. The new radiator would require to be properly functioning and attached safely to the wall.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (d)) in this regard.

16.3 Spotlights in living-room

The living-room lights had been replaced

16.4 Bathroom light fitting

The pull cord switch in the bathroom was difficult to use and the bathroom light switch was to be replaced.

There was no EICR as required by law. The Tribunal considered that an EICR should be obtained for the property to include PAT testing which would demonstrate that all electrical issues within the property had been satisfactorily addressed.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (d)) with regard to the above.

16.5 Smoke and heat detectors

The Tribunal agreed with the Third Party Applicant's complaint that smoke and heat detector in the property did not meet current requirements. The Tribunal considered that the installation of appropriate equipment should be addressed as a matter of urgency by the Landlord and the required Building Warrant obtained.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (f)) in this regard.

16.6 Window sash in south bedroom

The Third Party Applicant had also complained that the lower sash window in the south bedroom was ill fitting. The Tribunal noted an apparent gap in the window frame which the Landlord had undertaken to have a window specialist look at. The window could open and shut.

The Tribunal considered the window to be in reasonable working order and determined that there was no failure to comply with the repairing standard in this regard.

16.7 Dampness in the close and basement stairwell/ Close and stair redecoration required

The Tribunal noted that the Landlord had highlighted difficulties in arranging repairs/ maintenance of the common parts of the building due to the absence of a factoring agreement.

The Tribunal considered that there may have been dampness issues in the common parts for some time and that there were areas within the close and stairwell where redecoration may be required. The Tribunal observed that a maintenance management scheme for the building would be desirable to address ongoing issues in relation to these common areas but having regard to the overall condition of the building, the Tribunal did not determine there was a breach of the repairing standard by the Landlord in this regard.

16.8 Rear Access door to building

The Tribunal noted that the complaint regarding the rear access door had been dealt with.

16.9 Stair Window

The Third Party Applicant had stated that the paintwork of the stair window on the landing was in poor order. The Tribunal noted that the Landlord had undertaken to paint this window and did not determine there was a breach of the repairing standard by the Landlord in this regard.

16.10 Condition of rhones/downpipes

The Third Party Applicant also complained that the rhones and downpipes were choked and leaking in places. The Tribunal noted from the inspection that Mr Evans had pointed out that the front downpipe had been cleared and a blocked drain also cleared. There was no indication of a problem at the front of the building at this time. The Tribunal observed that further problems were likely until the replacement of the old original rainwater fittings with more modern substitutes.

16.11 Condition of Stonework

The Third Party Applicant also complained that the stonework was stained and scaling in places and a number of open joints were observed. The Tribunal had noted some open joints and flaking masonry during the inspection. The Landlord had repaired some open joints at the front and undertaken to repair some at the rear wall of the building.

In considering the two complaints relating to the rhones/downpipes and the stonework, the Tribunal took into account the fact that the Property was the basement flat of a tenement building dating from around 1890. The Tribunal considered that the overall condition of the building was therefore in keeping with its age and type of construction. The Tribunal were satisfied that, given the age and character of the building, the Property met the repairing standard in this regard.

16.12 Rear drying green

The Third Party Applicant had also complained that the rear drying green was very badly overgrown and unusable. The Tribunal noted the state of the rear drying green at the inspection.

It was of concern to the Tribunal that there required to be a path to the back lane from the rear door of the building for use as a fire exit from the building.

The Tribunal accepted that this was a common area but were of the view that in addition to safety issues, there were also concerns regarding the tenant's enjoyment of the property being restricted by the state of the rear drying green. The Tribunal considered that it was the Landlord's duty under section 14(1) and also within the Landlord's power and discretion to have the rear drying green cleared in order to be used by the tenant. The Tribunal noted that work in this common area was already being undertaken on the Landlord's behalf.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (b)) in this regard.

Decision

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

Right of Appeal

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may 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.

M Leck

Signed

..... Date

16/5/18

Chair and Legal Member

This is the Schedule of
Photographs referred to in
the housing decision
M Leck

Photographs taken during the inspection of
B/1, 10 Garland Place, Dundee, DD1 3BA



Front



Front of the flat

Photographs taken during the inspection of
B/1, 10 Garland Place, Dundee, DD1 3BA



The Street



Rear of the block

Photographs taken during the inspection of
B/1, 10 Garland Place, Dundee, DD1 3BA



Recently repaired front door step



Front door



Front drain

Photographs taken during the inspection of
B/1, 10 Garland Place, Dundee, DD1 3BA



Rear Garden



Stairwell

Photographs taken during the inspection of
B/1, 10 Garland Place, Dundee, DD1 3BA



Damp in rear wall



Rear bedroom window