



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RT/21/1646

Property : Flat 1/2 63 Arcadia Street, Glasgow G40 1DX (“Property”)

**Parties:**

Glasgow City Council, 231 George Street, Exchange House, City Chambers Complex, Glasgow G1 1RX (“Third Party Applicant”)

Mark Munro-MacSwan, Flat 1/2 63 Arcadia Street, Glasgow G40 1DX (“Tenant”)

Azuno Limited, c/o 1st Lets Scotland, 68 Woodlands Road, Glasgow G3 6HA (“Landlord”)

1st Lets Scotland, 68 Woodlands Road, Glasgow G3 6HA (“Landlord's Representative”)

**Tribunal Members:**

Joan Devine (Legal Member)

Lorraine Charles (Surveyor Member)

**DECISION**

The Tribunal determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property in respect that the Property does meet the Repairing Standard in respect of Section 13(1)(a) of the Act. The Tribunal therefore refuses to issue a repairing standard enforcement order. The Tribunal's decision is unanimous.

**Background**

1. By application dated 8 July 2021, the Third Party Applicant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Housing (Scotland) Act 2006 (“Act”).
2. In the application, the Third Party Applicant stated that they believed that the Landlord had failed to comply with their duty to ensure that the Property met the repairing standard as set out in Sections 13(1) (a) of the Act. The application stated that the Landlord had failed to ensure that:

- the house is wind and watertight and in all other respects reasonably fit for human habitation.
3. The Third Party Applicant made the following complaint in the application and in the notification communications to the Landlord :
    - the property is not wind and watertight and windows in each room showed signs of water ingress and severe damp / mould around the window frames and ledges – the window in the kitchen also appeared dangerous.
  4. Under normal circumstances, the Tribunal would arrange for the Surveyor Member to carry out an inspection to assist in the determination by the Tribunal of the Application. Unfortunately, this was initially not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a Case Management Discussion (**CMD**) was arranged, in order to discuss further procedure in the case and to ascertain if an inspection was required or if other evidence is available or can be agreed.
  5. A CMD took place on 8 November 2021. Reference is made to the note of the CMD dated 8 November 2021. The outcome of the CMD was that the Tribunal decided that it was necessary to arrange an inspection of the Property in order for the Tribunal to decide whether the works proposed by the Landlord's Representative at the CMD would be adequate to ensure that the Property was wind and watertight. An inspection was arranged for 17 March 2022.

### The Inspection

6. The Tribunal inspected the Property on 17 March 2022. The weather was cold and overcast. The Landlord's Representative was present at the inspection as was the new tenant, Amy Phillips. The Tribunal noted moisture readings around the windows and condensation and some historic mould. Reference is made to the schedule of photographs prepared by the Tribunal following the inspection.

### Direction

7. The Tribunal issued a Direction dated 4 August 2022 ("Direction") in which the Tribunal sought information regarding the works carried out to the Property since the CMD and whether water ingress was ongoing.
8. The Landlord's Representative provided further information and photographs taken by a contractor to the Tribunal. In their submission they told the Tribunal that the windows had been sealed and there had been no further water ingress at the Property.

### The Evidence

9. The evidence before the Tribunal consisted of :
  - The Application
  - Land Register report relating to the Property
  - The oral representations of the Landlord's Representative at the CMD

- The Tribunal's inspection of the Property
- The submission and photographs provided by the Landlord's Representative in response to the Direction

### Findings in Fact

10. The Tribunal made the following findings in fact:

- 10.1. The Tenant had lived in the Property but had vacated before the date of the CMD.
- 10.2. The tenancy was a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- 10.3. The tenancy of the Property was managed by the Landlord's Representative.
- 10.4. The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
  - 10.4.1. All windows in the flat had new seals and no draughts were noted.
  - 10.4.2. Moisture readings within a normal range around window 1 in the lounge. Some condensation noted.
  - 10.4.3. High moisture reading in left hand corner of window 2 in the lounge. Condensation visible and historic mould noted.
  - 10.4.4. High moisture reading in top left hand corner of window in bedroom 2. Condensation visible and historic mould noted.
  - 10.4.5. Medium moisture reading in top left hand corner of window in bedroom 1 (with ensuite). Condensation visible and historic mould noted.
  - 10.4.6. Historic water ingress noted in kitchen. Moisture readings within a normal range.
  - 10.4.7. Window in kitchen opens and closes. Hinges appeared secure.

### Reasons for the Decision

11. Having considered the information provided by the Landlord's Representative at the CMD, the issues noted at the inspection of the Property and the information provided in response to the Direction, the Tribunal determined that the Property does meet the repairing standard as required by Section 13(1)(a) of the Act.

12. Moisture readings within acceptable range. Water ingress appeared historic from inspection. Windows showing higher than normal levels showed no recent water staining and appeared to require additional time to dry out. Additional photographs were requested from the agent and contractor. The photographs received showed no evidence of mould, internal condensation or recent water ingress.

### Decision

13. The Tribunal determined that the Landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has not failed to ensure that the Property meets the repairing standard in that the Property is wind and watertight and in all other respects reasonably fit for human habitation.

14. The Tribunal therefore refuses to make a repairing standard enforcement order.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Joan Devine  
Legal Member**

**Date : 20 October 2021**