

# **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/18/3017**

**Sasines Description:** That flatted dwellinghouse known as and forming the southeast most house on the third floor (3/1, formerly 3/2) above the ground floor of the tenement known as and forming 2 Bright Street, Lochee, Dundee and being the subjects more particularly described in and disposed by Disposition by Hacienda Properties Limited in favour of Jemima Miller Hughes recorded in the Division of the General Register of Sasines for the County of Angus on 12 October 1978.

**3/1(L), 2 Bright Street, Dundee, DD2 3DE ("the Property")**

**The Parties:-**

**Mr Dean Robertson, residing at 3/1, 2 Bright Street, Dundee ("the Tenant")**

**Dundee City Council, City Chambers, Dundee (represented by Mr Stuart Cuthill ("the Applicants"))**

**Miriam Edith Lynch, residing at 9 Byron Street, Dundee ("the Landlord")**

Whereas in terms of their decision dated 24 January 2019, 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 the House is:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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;
- (c) The installations in the Property 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;
- (d) 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 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 carry out such investigations as are necessary to the roof of the larger tenement of which the Property forms part to identify all areas of water ingress and to carry out such repairs as are required to render the Property properly wind and watertight.
- (b) Upon eradication of the water ingress to the Property to carry out redecoration works as are necessary to the front and rear bedrooms to render them compliant with the repairing standard.
- (c) To install a hardwired interlinked heat and smoke detection system within the Property compliant with the relevant regulations.
- (d) To produce a clear Electrical Installation Condition Report showing no items marked "C1" or "C2".
- (e) To carry out such repair or replacement to the rear rhones and drains in order that they are in proper working order and free of vegetation.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 4 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.**

In terms of Section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

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

C Robertson

Legal Member

Claire Louise Robertson (name in full)

### 33 Yeaman Shore

Dundee, DD1 4BJ

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

**Chamber Ref: FTS/HPC/RT/18/3017**

**3/1(L), 2 Bright Street, Dundee, DD2 3DE ("the Property")**

**The Parties:-**

**Mr Dean Robertson, residing at 3/1, 2 Bright Street, Dundee ("the Tenant")**

**Dundee City Council, City Chambers, Dundee (represented by Mr Stuart Cuthill ("the Applicants"))**

**Miriam Edith Lynch, residing at 9 Byron Street, Dundee ("the Landlord")**

**Tribunal Members:**

**Ewan K Miller (Legal Member)**

**Mark Andrew (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) in relation to the house concerned, and taking account of the evidence obtained by the Tribunal at the inspection of the Property, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. By application dated 5 November 2018 the Applicants applied to the Private Rented Housing Panel 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 by the Applicants stated that they considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;

- (b) 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;
  - (c) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- 3. By letter dated 7 December 2018 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
- 4. Following service of the Notice of Referral neither party made any further written representation to the Tribunal.
- 5. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr M Andrew, Ordinary/Surveyor Member) inspected the Property on the morning of 17 January 2019. The Tenant was present along with Mr Cuthill for the Applicant. Mr Alan Henricks was also present from Shelter. The Landlord was neither present nor represented.
- 6. Following the inspection of the Property the Tribunal held a hearing at The Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee. Mr Cuthill was present for the Applicants. The Landlord was neither present nor represented. The Tenant and the Applicants advised that the Tenant had moved into the Property in 2017. The Tenant's mother and the Landlord knew each other and they had initially let him move in as a favour. He was however paying rent and the Landlord had been cashing the cheques in this regard. The Tenant and the Applicants submitted that there had been a long standing issue with this particular tenement and that there was water ingress occurring. Abatement notices had been served by the Local Authority on 21 August 2017 and 9 November 2017 in relation to roof works that were required. Mr Cuthill of the Applicants indicated that the Council were trying to encourage the various Landlords to co-operate and carry out works. Some works had been done. However these repairs had not dealt with all of the relevant areas of disrepair or had been ineffective. Mr Cuthill highlighted that the Landlord was elderly and was currently in respite care. The Council had been trying to encourage her to appoint an agent in order that matters could be dealt with more quickly.

### **Summary of the issues**

- 7. The Tribunal noted that there were five areas of complaint notified by the Applicants to the Landlord. These five issues required to be determined by the Tribunal and were:-
  - a. Whether there was water ingress to the Property (and particularly the front and rear bedrooms) via the roof of the larger tenement of which the Property formed part.

- b. Whether re-decoration of the front and rear bedrooms was required.
- c. Whether there was adequate smoke and heat detection in the Property in line with the repairing standard.
- d. Whether there was an Electrical Installation Condition Report indicating that the Property met the repairing standard.
- e. Whether the rear rhones at the Property were in proper working order and otherwise met the repairing standard.

### **Findings of fact**

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

- It was clear that there was water ingress to the Property via the roof of the larger tenement and therefore the Property was not wind and watertight and did not meet the repairing standard.
- Water damage had occurred in the front and rear bedrooms and redecoration would require to be carried out once roof repairs had been carried out and were effective.
- The Tenant had installed a couple of battery powered smoke alarms. However there was no hardwired smoke and heat detection system and therefore the Property did not meet the repairing standard in this regard.
- No Electrical Installation Condition Report had been provided in line with the relevant legislation and accordingly this was a breach of the repairing standard.
- The rear rhones at the Property had significant amounts of vegetation growing in them and it was readily apparent that they were not in proper working order and did not meet the repairing standard.

### **Reasons for the decision**

9. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection of the Property.

The Tribunal first inspected the rear bedroom. Whilst the levels of damp were relatively low at the date of the inspection it was apparent that water was ingressing into the Property and damaging the Property. It was apparent that further roof repairs were required to address this.

The Tribunal also inspected what would normally be the lounge of the Property but the Tenant was currently utilising this as the main bedroom. Again, there was visual evidence of water penetration and damage to the

ceiling and walls of the Property. Upon using a damp meter the Tribunal established that there were high levels of dampness still present. It was readily apparent that water was still penetrating into the Property from the roof.

The Tribunal inspected the Property to establish what heat and smoke detection systems were present. Other than a couple of battery powered alarms installed by the Tenant for his own safety, there were no hardwired and interlinked smoke and heat detectors as required by the relevant legislation.

There was no Electrical Installation Condition Report available. Given the extent of water penetration in the Property it was essential that a clear Electrical Installation Condition Report was obtained. This would require to show no items marked "C1" or "C2" and the Landlord would require to carry out any works necessary to ensure this occurred.

A visual inspection of the rear of the larger tenement showed that the rhones above the Property had significant amounts of vegetation in them and were clearly not functioning properly. This would exacerbate the water penetration into the Property.

The Tribunal also noted that the lighting in the common stairwell was damaged and also that there was no heating within the Property either. Whilst not the subject of complaint, the Tribunal was of the view that this would have also fallen beneath the repairing standard and would encourage the Landlord to address these issues as well.

10. The Tribunal considered the timescale in which the Landlord would require to address the work. The Tribunal did note that the Landlord was elderly and in poor health and that this was the only rental property she owned (she had inherited it from her mother). She was not an experienced landlord and was clearly unfamiliar with the relevant legislation. Whilst the Tribunal had some sympathy for her position she was accepting rent for the Property and the issues in relation to the Property were well known to her and had existed for some time. Whilst it may be difficult to obtain the consent of all the proprietors within the block to carry out communal repairs, nonetheless it was incumbent upon her to do so. If she felt unable to manage this on a practical level then it was open to her to appoint an agent who could take this up on her behalf. At the end of the day the Tribunal was satisfied that the Property was below the repairing standard and that there were significant safety concerns around the electrics and lack of smoke detection system. Accordingly the Tribunal did not feel it could give any longer period than 4 months for the Landlord to carry out the works.

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

### **Decision**

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

### **Right of Appeal**

14. **A landlord or tenant aggrieved by the decision of the Private Rented Housing committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.**

### **Effect of section 63**

15. 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.

E Miller

Signed .....

Chairperson

Date .....

24/1/17



*This is the schedule faced to in the property during visit*  
*24/12/19*  
Schedule of photographs of 3/1 (L), 2 Bright St. Dundee taken on 17<sup>th</sup> January 2019



3 Bright St., Dundee (red door) Flat 3/1(L) is 3<sup>rd</sup> floor rear of the property



Back bedroom wall showing damp wrinkled and stained wallpaper

Schedule of photographs of 3/1 (L), 2 Bright St. Dundee taken on 17<sup>th</sup> January 2019



Ceiling of back bedroom showing affected area beside wall. Cracked, damaged and likely to fail



Ceiling of front living room (used by tenant as bedroom) showing hole through which water drips

Photographs taken by M H T Andrew FRICS FAAV FARLA on 17<sup>th</sup> January 2019

Schedule of photographs of 3/1 (L), 2 Bright St. Dundee taken on 17<sup>th</sup> January 2019



Ceiling of front living room showing further area affected by damp penetration



Wall at corner of front living room beneath hole in ceiling. Front and gable walls exhibited damp.

Photographs taken by M H T Andrew FRICS FAAV FARLA on 17<sup>th</sup> January 2019

Schedule of photographs of 3/1 (L), 2 Bright St. Dundee taken on 17<sup>th</sup> January 2019



Battery operated (non-compliant) smoke alarm fitted by tenant in bedroom (used as living room)



Battery operated (non-compliant) smoke alarm fitted by tenant in kitchen

Photographs taken by M H T Andrew FRICS FAAV FARLA on 17<sup>th</sup> January 2019

Schedule of photographs of 3/1 (L), 2 Bright St. Dundee taken on 17<sup>th</sup> January 2019



Rhone pipework to back bedroom. Full of vegetation and incapable of proper working.



Light in common stair outside flat door not working (lights switched on).

Photographs taken by M H T Andrew FRICS FAAV FARLA on 17<sup>th</sup> January 2019

Schedule of photographs of 3/1 (L), 2 Bright St. Dundee taken on 17<sup>th</sup> January 2019



Fan heater in front bedroom (used as Living room by tenant) provided by tenant.

The only form of space heating in the flat.

Photographs taken by M H T Andrew FRICS FAAV FARLA on 17<sup>th</sup> January 2019