

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/RP/22/4443

Title No: ROX3731

1 Drygrange Mains Farm Cottage, Melrose TD6 9DJ ("The Property")

Mr Austin Law, previously residing at 1 Drygrange Mains Farm Cottage, Melrose TD6 9DJ ("the former tenant")

Ms Aileen Fisher, Taradale Properties, Millbank Road, Clovenfords, Galashiels TD1 3LZ ("the landlord")

Tribunal Members: Richard Mill (Legal Member) and Greig Adams (Ordinary Member)

Decision

The property does not meet the repairing standard. The landlord has not evidenced compliance with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. The former tenant applied to the tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property. This application was dated 20 December 2022.
2. In July 2023 the tribunal, having had received confirmation from the tenant that the tenancy had been terminated determined to continue the application given that it raises essential matters of health and safety for the general public and any new occupier.
3. The tribunal has had difficulty engaging the landlord meaningfully. An initial inspection and hearing was arranged to take place on 26 June 2023 which was postponed on the application of the landlord. A further inspection and

hearing arranged to take place on 24 July 2023 was similarly postponed on the application of the landlord. The landlord had provided an undertaking that the property would not be relet and that there was an intention to carry out works with the intention of selling the property acknowledging that there were relevant defects.

4. The landlord has failed to engage and, in particular, comply with two Directions which have been issued in this process to produce relevant documentation. The latter was dated 21 July 2023 and contained a clear warning in terms of the Scottish Tribunals (Offences in relation to Proceedings) Regulations 2016. The landlord has failed to produce any evidence of the property's compliance with the repairing standard.

Findings in Fact

5. The tribunal makes the following findings in fact:
 - a. The title to the subjects known as 1 Drygrange Mains Farm Cottage, Melrose TD6 9DJ is held by the landlord under Title number ROX3731.
 - b. The landlord has failed to provide evidence that the property complies with the Scottish Government Statutory Guidance to have provision for the detection of smoke, heat and carbon monoxide.
 - c. The landlord has failed to provide adequate documentary evidence that the electrical and gas supplies in the property are safe.

Reasons for Decision

6. The tribunal determined the application having regard to the bundle of papers which were made available.
7. The tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference as regards the matters contained in the RSEO.
8. The tribunal has attempted to personally inspect the property on two occasions without success due to lack of entry. It is not necessary nor proportionate to seek to do so again. Given the serious concerns for the public at large, the tribunal has proceeded to part determine the application without any further delay. The tribunal has restricted their findings at this stage to the most serious health and safety concerns with regards to the electrical and gas supplies and the lack of smoke, heat and carbon monoxide detectors in the property.
9. The tribunal requires to determine matters on a balance of probabilities. The landlord has failed to engage in this tribunal process and failed to adhere to the tribunal's direction. It is more likely than not that the property does not

comply with basic safety requirements in those circumstances. The landlord has ignored the tribunal's communications and requirements.

10. The tribunal determined to make a Repairing Standard Enforcement Order (RSEO). The tribunal determined that the landlord be provided with a period of 4 weeks to carry out and evidence that these works which is reasonable given the nature and extent of the works.
11. The landlord should take note that failure to comply with the RSEO is a criminal offence.
12. The landlord should further take note that re-letting the property subject to the RSEO is a criminal offence.
13. The tribunal reserves the right to issue a further RSEO in respect of the additional matters raised in the application once the landlord engages and entry is permitted.

Right of Appeal

14. 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.
15. 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.

In witness whereof these presents type written on this and the preceding 2 pages are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 1 November 2023 before this witness:-

R Mill

Legal Member

C McNaught

Witness

Cathy McNaught Name

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