

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

**Statement of Decision of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under section 60(5) of the  
Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/23/1148**

**Flat 1-1, 129 John Street, Dunoon, Argyll, PA23 7BL being the subjects  
registered in the Land Register of Scotland under Title Number ARG657  
("the Property")**

**The Parties:-**

**Stephen Wilson residing formerly at Flat 1-1, 129 John Street, Dunoon,  
Argyll, PA23 7BL ("The former Tenant")**

**Alister MacAlister residing at 134 John Street, Dunoon, PA23 7BN ("The  
Landlord")**

**Tribunal Members:**

**Jacqui Taylor (Chairperson) and Nick Allan (Ordinary Member)**

**1. Background**

1.1 The Tenant leases the Property from the Landlord in terms of the Private Residential Tenancy between the parties.

1.2 The Tenant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

**2. Application**

The application by the Tenant dated 15<sup>th</sup> March 2023 stated that he considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. He advised that the Property is not wind and watertight and in all other respects reasonably fit for habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order; the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and the Property does not meet the tolerable standard.

In particular the application stated that the work that needed to be carried out was as follows:

- 2.1 One smoke alarm in the Property.
- 2.2 Mould on every window.
- 2.3 Two windows are broken and do not seal. They let in wind and water.
- 2.4 The electric heating system is unaffordable and does not work.
- 2.5 The bathroom is unfinished or sealed.
- 2.6 Mould and mildew on bathroom ceiling.
- 2.7 No hot water from bathroom sink tap.
- 2.8 Shower thermostat broken.
- 2.9 Water tank in loft space leaking.
- 2.10 Kitchen sink waste held together with plastic bags.
- 2.11 Leaking mouldy velux.
- 2.12 Electrics trip daily.
- 2.13 Cracked exterior walls let in wind.
- 2.14 Cracked walls and ceilings caused by roof leak.
- 2.15 Live wires.
- 2.16 No wall insulation where windows surround ( can feel cold and wet on walls as well as visible damp and mould).
- 2.17 Kitchen unit collapsed.
- 2.18 Condensation on living room windows.
- 2.19 Hot water unaffordable and comes out of the tank brown and murky.

### **3. Notice of Acceptance**

On 11<sup>th</sup> May 2023, Martin McAllister, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received between 13<sup>th</sup> April 2023 and 19<sup>th</sup> April 2023, and he referred the application under Section 22 (1) of the Act to a Tribunal.

### **4. The First Inspection and Hearing**

4.1 The Tribunal inspected the Property at 11.00 am on 21<sup>st</sup> July 2023. **Following the inspection** the case called for an inperson Hearing at Dunoon Sheriff Court at 13.00.

The Tenant attended the inspection and both parties attended the hearing.

4.2 Following the First Inspection and Hearing the Tribunal determined that the Landlord has failed to comply with the duties imposed by Sections 13 (1) (a), 13(1)(b), 13(1)(c), 13(1)(d), 13(1)(h), and 14(1)(b) of the Act. The Tribunal issued a decision and Repairing Standard Enforcement Order, both dated 7<sup>th</sup> August 2023.

The Repairing Standard Enforcement Order was in the following terms:

*'Whereas in terms of their decision dated 7<sup>th</sup> August 2023 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 and in particular the Landlord has failed to ensure that: the Property is wind and watertight and in all other respects reasonably fit for habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order; any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order; 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 proper working order; the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property complies with the Tolerable Standard.*

*The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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:*

*'ONE. Exhibit a valid and compliant EICR Certificate.*

*TWO Install:*

- (i) One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.*
- (ii) One functioning smoke alarm in every circulation space, such as hallways and landings.*
- (iii) One heat alarm in every kitchen and*
- (iv) All alarms should be interlinked and the installation should comply with the regulations.*

*THREE: Repair or replace the windows in the living room to render them in proper working order.*

*FOUR: Repair or replace the velux window to render them in proper working order.*

*FIVE: Repair or replace the electric panel heaters to render them in proper working order.*

*SIX: Repair the electric shower to render it in proper working order.*

*SEVEN: Repair the cracked ceilings in the main bedroom and living room to render them in a reasonable state of repair.*

*EIGHT: Repair the cracked bathroom tiles to render them in a reasonable state of repair.*

*NINE: Repair the bathroom ceiling to render it in a reasonable state of repair.*

*TEN: Repair the defective seal to the wet wall in the bathroom to render it in a reasonable state of repair.*

*ELEVEN: Repair the sink in the bathroom to render it in proper working order.*

*The Tribunal orders that these works must be carried out and completed by 30<sup>th</sup> October 2023.'*

#### **5. Reinspection Dated 13<sup>th</sup> December 2023.**

The Tribunal, attended at the Property at 11.00 am on 13<sup>th</sup> December 2023.

The Tenant was present at the inspection. The Landlord did not attend and was not represented.

Photographs were taken during the inspection and are attached as a Schedule to this Decision.

#### **6. Written Submissions on behalf of the Landlord.**

The Landlord's solicitor sent written submissions to the Tribunal dated 25<sup>th</sup> January 2024 which stated that the required works had not been completed timeously due to problems obtaining access. He confirmed that the Tenant had vacated the Property on or around 28<sup>th</sup> December 2023 and since then the Landlord has completed the required works.

#### **7. Reinspection Dated 15<sup>th</sup> May 2024.**

The Tribunal, attended at the Property at 11.00 am on 15<sup>th</sup> May 2024.

The Tenant had previously vacated the Property and was no longer a party to the application. The Landlord attended the inspection.

The Tribunal inspected all items detailed in the RSEO and found as follows:

#### *ONE. Exhibit a valid and compliant EICR Certificate.*

The EICR certificate had not been produced to the Tribunal.

#### *TWO Install:*

*(iv) One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.*

*(ii) One functioning smoke alarm in every circulation space, such as hallways and landings.*

*(iii) One heat alarm in every kitchen and*

*(iv) All alarms should be interlinked and the installation should comply with the regulations.*

The required alarms had not been installed. However, during the inspection the Landlord fitted smoke alarms but he was unable to interlink them.

#### *THREE: Repair or replace the windows in the living room to render them in proper working order.*

New UPVC double glazed windows had been installed in the living room and they were in proper working order.

*FOUR: Repair or replace the velux window to render them in proper working order.*

The Landlord advised that the external lead on the roof where the velux window intersects with the roof had been repaired and there had been no further water ingress. There was no evidence of water ingress from the velux window at the inspection.

*FIVE: Repair or replace the electric panel heaters to render them in proper working order.*

New electric panel heaters had been installed throughout the Property.

*SIX: Repair the electric shower to render it in proper working order.*

The electric shower was in proper working order.

*SEVEN: Repair the cracked ceilings in the main bedroom and living room to render them in a reasonable state of repair.*

The cracks to the bedroom and living room ceilings had been satisfactorily repaired.

*EIGHT: Repair the cracked bathroom tiles to render them in a reasonable state of repair.*

The cracked bathroom tiles had been replaced with a wet wall.

*NINE: Repair the bathroom ceiling to render it in a reasonable state of repair.*

The bathroom ceiling had been satisfactorily repaired.

*TEN: Repair the defective seal to the wet wall in the bathroom to render it in a reasonable state of repair.*

The seal to the wet wall had been satisfactorily repaired.

*ELEVEN: Repair the sink in the bathroom to render it in proper working order.*

The sink in the bathroom had been satisfactorily repaired.

## **8. Hearing Dated 15<sup>th</sup> May 2024.**

This case called for a conference call Hearing at 15.00 on 15<sup>th</sup> May 2024. The Landlord attended the hearing.

The Landlord confirmed that following the inspection he had installed five new smoke alarms throughout the property and they were now interlinked. He had sent the Tribunal a video and photographs confirming this.

The Landlord also confirmed that he had paid an electrician to carry out the required electrical work to the Property. He was certain that a valid EICR certificate had been issued but he could not locate a copy. He would send it to the Tribunal within the next few days.

## **9. Decision**

### **9.1 Completed items:**

The Tribunal were satisfied that the following items of the RSEO had been satisfactorily completed for the reasons stated:

THREE: Repair or replace the windows in the living room to render them in proper working order.

FOUR: Repair or replace the velux window to render them in proper working order.

FIVE: Repair or replace the electric panel heaters to render them in proper working order.

SIX: Repair the electric shower to render it in proper working order.

SEVEN: Repair the cracked ceilings in the main bedroom and living room to render them in a reasonable state of repair.

EIGHT: Repair the cracked bathroom tiles to render them in a reasonable state of repair.

NINE: Repair the bathroom ceiling to render it in a reasonable state of repair.

TEN: Repair the defective seal to the wet wall in the bathroom to render it in a reasonable state of repair.

ELEVEN: Repair the sink in the bathroom to render it in proper working order.

### **9.2 Variation of the RSEO.**

In connection with items One and Two of the RSEO:

ONE. Exhibit a valid and compliant EICR Certificate.

TWO Install:

- (i) One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
- (ii) One functioning smoke alarm in every circulation space, such as hallways and landings.
- (iii) One heat alarm in every kitchen and
- (iv) All alarms should be interlinked and the installation should comply with the regulations.

The Tribunal acknowledged that the Landlord had instructed the EICR report and had not received a copy of the report from his contractor. The Tribunal

also acknowledged that the Landlord had sent the Tribunal photographs of the newly installed smoke alarms but they were unable to determine if they were interlinked.

In the circumstances the Tribunal considered that it was reasonable to vary the RSEO as follows:

(FIRST) Items THREE to TEN, inclusive, of the RSEO are deleted as they have been satisfactorily completed.

(SECOND) The date for completion of Items ONE and TWO of the RSEO is extended to 15<sup>th</sup> June 2024.

10. The decision of the Tribunal was unanimous.

**11. 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.

# J Taylor

Signed

Chairperson

Date: 23<sup>rd</sup> May 2024