

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Determination: Housing (Scotland) Act 2006: Sections 26 and 27**

**Chamber Ref: FTS/HPC/RP/23/2492**

**12 Craigiellaw Farm Cottages, Lingniddry, East Lothian, EH32 0PY being part of the subjects comprising one and a half acres of ground and more particularly described in the Feu Charter by Trustees of the Deceased Francis Wemyss Charteris Douglas, Earl of Wemyss and March recorded in the Division of the General Register of Sasines applicable to the County of East Lothian on 16 July 1928 (“the Property”)**

**The Parties:-**

**Mr Stuart Tait and Mrs Kimberly Tait, residing at the Property (“the Tenant” and “the Applicant”)**

**The First Grandchild’s Fund, Lord Wemyss Trust, Estate Office, Longniddry, East Lothian, EH39 0PY (“the Landlord” and “the Respondent”)**

**Tribunal Members:**

**Martin McAllister, Solicitor (Legal Member) and Greig Adams, Chartered Surveyor (Ordinary Member) (“the tribunal”)**

**Decision**

**The tribunal determined:**

**(One) that the Landlord had failed to comply with a repairing standard enforcement order (RSEO) dated 15 December 2023 and that a notice of failure be served on the local authority (Section 26 of the Housing (Scotland) Act 2006;**

**(Two) that a rent relief order be made reducing the rent payable under the tenancy by 15% (Section 27 of the Housing (Scotland) Act 2006).**

## Background

1. By application dated 23 July 2023, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act. The application is in terms of Section 22 (1) of that Act.
2. The Applicant and Respondent are parties to a private residential tenancy agreement in respect of the Property.
3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order and that any furnishings provided by the provided under the tenancy are capable of being used for the purpose for which they are designed.
4. Specifically, the application states that the Property does not meet the repairing standard in a number of aspects:
  - 4.1 Windows throughout the Property are not wind and watertight.
  - 4.2 Windows cannot be fully opened and closed
  - 4.3 Moisture build up and mould.
  - 4.4 Deficiencies in ventilation, heating and thermal insulation.
  - 4.5 Kitchen storage unit placed directly above gas cooker.

## Inspection and Hearing 1 December 2023

5. The tribunal inspected the Property on 1 December 2023 and a Hearing was held on the same day. A repairing standard enforcement order ("RSEO") was made in the following terms:

### The landlord was required to

- 5.1 To instruct a competent condensation specialist such as a Chartered Building Surveyor or Property Care Association accredited specialist/company to undertake a fuller Condensation Assessment of the Property to provide recommendations to address the underlying cause(s) of condensation and to provide the report to the Tribunal for further consideration.**

- 5.2 To repair or replace the windows such that all windows serving the Property are capable of being opened and closed fully as designed and without any significant impairment; have no broken panes; are reasonably draughtproof; are free from timber decay; are free from any cracked or defective glazing putties; are free from defective perimeter sealants; free from damaged/missing sections of astrigals and to ensure that all mortice and tenon joints are not open and watertight on completion whilst allowing for any remedial decoration works on completion of such works.**
- 5.3 To remove or relocate wall units positioned over the gas range cooker to ensure that no wall units are located within a 750mm distance from the top surface of the cooker.**
- 5.4 The tribunal determined that the RSEO required to be complied with by 31 January 2024.**

#### **Inspection on 19 August 2024**

6. The Legal Member and the Ordinary Member inspected the Property on 19 August 2024. A copy of a Re-Inspection Report prepared by the Ordinary Member is attached to this Decision and is referred to for its terms.
7. Mrs Tait was present at the inspection and there was no appearance by the Respondent.

#### **Hearing on 19 August 2024**

8. A Hearing was conducted by teleconference. Mr and Mrs Tait were present and there was no appearance by the Respondent.
9. The Ordinary Member set out the findings from the inspection. He stated that the windows throughout the Property had been renewed and that the wall units above the gas range cooker had been removed.
10. The Ordinary Member stated that there were no apparent visual dampness indicators within the kitchen and that works had been carried out to remove base wall units to the external wall. He said that strapping and lining works appeared to have been carried out but that the specification of the works was unknown.
11. The Ordinary Member said that no remedial works had been carried out within the entrance vestibule and that heavy mould contamination remains and that active condensation was occurring.

12. Mrs Tait said that she and her husband were happy with the works which had been done. She said that her understanding is that a dampness specialist had inspected the Property but that she had never been provided with a copy of any report.

### **Discussion and Determination**

13. The tribunal had regard to Section 26 (2) of the 2006 Act:

*Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must-*  
*(a) serve notice of the failure on the local authority, and*  
*(b) decide whether to make a rent relief order.*

14. The tribunal noted that, at no time, had the Respondent participated in the Tribunal process despite appropriate notifications having been served on them.
15. The tribunal determined that, from the findings from the inspection, the Respondent had carried out some works as required by the RSEO.
16. The Respondent had not fully complied with the RSEO. They had not provided a report from a competent condensation specialist and there was evidence of continuing active condensation in the vestibule area.
17. The tribunal determined to serve notice on the local authority of the Respondent's failure to comply with the RSEO.
18. The necessity to ensure that a property complies with the repairing standard is important and the existence of condensation in the Property is a departure from that obligation. The Respondent had not submitted a report from a competent condensation specialist. The tribunal took these matters into account when exercising its discretion as to whether or not to make a rent relief order and to what percentage should be applied to the reduction of rent.
19. The tribunal determined that it would be appropriate to make a rent relief order. The amount by which the rent due under the tenancy is reduced is a matter of discretion and the tribunal determined that a rent relief order of 15% be made to reflect the effect on the Applicant of the landlord's failure to comply with the RSEO. This reduces the rent payable under the tenancy by 15% of the rent which would, but for the order, be payable.

**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.**

**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 McAllister

M J. McAllister,  
Solicitor, legal member of  
Tribunal.  
25August 2024