



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)**

**Chamber Ref: FTS/HPC/RT/23/3108**

**Re: Property at 3 Balmain Cottages, Fettercairn, AB30 1DA (“the Property”)**

**Parties:**

**RR Brown and Sons, Balmain Farm, Fettercairn, Laurencekirk, AB30 1DA (“the Landlord”);**

**Faith Allan, 3 Balmain Cottages, Fettercairn, AB30 1DA (“the Tenant”); and**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, AB51 3WT (“the Third Party Applicant”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Anderson (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 Repairing Standard Enforcement Order (RSEO), determined that the Landlord has failed to comply.**

**The Tribunal further imposed a Rent Relief Order of 50% of the monthly rent due and determined that notice of the failure be served on the local authority.**

**Background**

- 1 Reference is made to the decision of the Tribunal dated 24 January 2024 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act, in that they had failed to comply to ensure that the property met the Repairing Standard. The Tribunal therefore made a RSEO. The works required by the RSEO were:-

- (i) Instruct a timber and damp specialist to investigate the damp and mould within the property and produce said report to the Tribunal for further consideration. The said timber and damp specialist should be provided with a copy of the Tribunal's decision for reference;
- (ii) Instruct a roofing contractor to inspect both chimneys and carry out such repairs as are necessary to ensure the property is wind and watertight;
- (iii) Repair or replace the kitchen tap to ensure it is in proper working order;
- (iv) Repair or replace the guttering to ensure it is in a reasonable state of repair; and
- (v) Carry out such redecoration as may be required following recent works undertaken by the Landlord and following the completion of the works under (ii).

The Tribunal ordered that the works be completed within a period of eight weeks from intimation of the RSEO on the parties. A copy of the decision and RSEO was intimated to both the Landlord, the Third Party Applicant and the Tenant on 29 January 2024.

### **The Reinspection**

- 2 The Tribunal inspected the property on 11 June 2024. The weather conditions were cool with recent showers of rain and similar conditions over the preceding few days. The tenant was in attendance and permitted access. A representative for the third party applicant, Emma Bain, was present as was Robert Brown on behalf of the landlord.
- 3 The Tribunal noted that a report and quotation prepared by Martin Property Care Ltd, dated 24 April 2024, had been sent to the third party applicant, which they then forwarded to the Tribunal. The report referred to a sketch plan which was not provided to the Tribunal. The report described finding dampness in the hall, lounge, kitchen and bedroom. The initial part of the report stated that the source of the dampness was not apparent and outlined remedial work in general terms whilst referring to the sketch plan. This involved stripping areas of plaster, applying a plastic membrane damp proof course and replastering. The Report went into some further detail in relation to the lounge, specifying rising damp at the gable and associated remedial treatment of this area. The Report did not refer to the Tribunal decision of 24 January 2024, and in particular the dampness disclosed therein.
- 4 The Tribunal found during the reinspection that repairs had been carried out to the lower section of the wall in the hallway, adjacent to the lounge, but did not rectify the dampness on the other side of the wall, within the lounge. This area was found to remain affected by damp. Repairs had been carried out to the lower section of the lounge gable, but dampness remained to the untreated upper section of the gable, right up to ceiling level, where there was an area of

peeling wallpaper. The report did not refer to the dampness in bedroom one, which was found to be unchanged since the initial inspection by the Tribunal. Within bedroom two, the section of wall linings beneath the window had been replastered. The report did not refer to the dampness to the chimneybreast and adjacent ceiling, nor the dampness to the lower section of the partition between the two bedrooms, as described in the decision previously issued by the tribunal. Within the kitchen, new plaster was seen to the wall to the side of the fridge freezer location. However, the adjacent wall face around the corner, behind the appliance, which was exposed with the removal of the fridge was seen to be mouldy and was found to be damp when tested with a moisture meter. This area must have been readily apparent to the contractor carrying out repairs to the adjacent wall. Generally, the areas of new plasterwork showed dampness when tested, but the work had been carried out only a few weeks earlier and it is possible that these areas of plaster had yet to fully dry out. It was clear from the re-inspection that there were unresolved and untreated dampness within the property that had been clearly described in the Tribunal's decision of 24 January 2024 which had been issued to the parties.

- 5 Externally two small areas of render to the main chimney had been patch repaired. However it was apparent that the render remained defective. Exposed brickwork, cracks and bulged render were visible. The cement work at the junction of the chimney and slating was cracked. The vulnerable upper face of the chimney head, around the chimney can, could not be seen clearly from ground level. Two lengths of guttering above the main entrance door and the outside corner section of the guttering adjacent to the kitchen chimney had been replaced. However, at the south east elevation, there remained a poorly made joint. As it was not raining during the re-inspection, the adequacy of the rainwater goods could not be verified.
- 6 The kitchen tap had been replaced and was reported by the tenant to be working satisfactorily.
- 7 There had been no redecoration following the completion of works undertaken to date.
- 8 Photographs were taken during the re-inspection and are included in the attached schedule. The re-inspection report was issued to parties on 26 June 2024. Parties were advised to notify the Tribunal in writing if they wished a hearing to make additional submissions, otherwise the Tribunal may proceed to make a decision on the basis of the information before it. No representations were received from the Landlord nor the Third Party Applicant. The Tribunal therefore concluded that it had sufficient information to make a proper determination of the issues and determined not to hold a hearing.
- 9 **Findings in Fact**

The Tribunal found the following facts to be established:-

- 10 The Landlord and Tenant entered into a tenancy agreement for the property which commenced on 3 November 2021.
- 11 The property suffers from damp and mould. The property is not presently wind and watertight.
- 12 The guttering pertaining to the property is not in a reasonable state of repair. There is at least one open joint.
- 13 The chimneys pertaining to the property are not in a reasonable state of repair. There are cracks to the rendering.
- 14 The Landlord has failed to take reasonable efforts to comply with the RSEO.

### **Reasons for decision**

- 15 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties and the findings of the Tribunal's re-inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application. Neither party had requested a hearing following the re-inspection and both had been explicitly told that the Tribunal could make a decision in the absence of a hearing.
- 16 The Tribunal considered the terms of the RSEO. Despite the RSEO having set out the Tribunal's requirements of the Landlord, in terms of ensuring that the damp specialist instructed had regard to the Tribunal's decision of 24 January 2024, the damp report provided did not address all of the areas of damp and mould that had been identified within the property. It was clear from the Tribunal's re-inspection that there was a continued presence of damp and mould in the property based on the damp readings and evidence of staining and marking. The Landlord had however failed to adequately address these defects by instructing a full specialist report, which took into account the Tribunal's decision. This was a clear requirement of the RSEO and there appeared no reasonable explanation as to why this had not been done.
- 17 Whilst some attempts had been made to carry out works to the chimney and guttering, there remained visible defects evident from the Tribunal's re-inspection. The Tribunal further noted that, in areas within the property where work had been undertaken by the Landlord, the internal decoration had not been made good. It appeared that the Landlord had made a half-hearted attempt to carry out some works, but had not fully appreciated the gravity of the disrepair issues and the requirement to ensure the RSEO was fully complied with. The Tribunal had particular concerns regarding the upcoming winter period and the potential impact on the Tenant as a result of the condition of the property.
- 18 The Tribunal therefore had regard to Section 25 (1) of the Act which states:-  
“(1) *The first-tier tribunal which made a repairing standard enforcement order*

*may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.*" With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. In light of the serious nature of the disrepair and the ongoing impact on the occupants the Tribunal was not of a mind to revoke the RSEO.

- 19 The Tribunal then considered Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply.
- 20 The Tribunal accepted that the Landlord had made some efforts to carry out the works required by the RSEO. However the Tribunal could not ignore the fact that the Landlord had failed to adequately address what were serious issues of disrepair. They had failed to take reasonable steps to ensure that the property was compliant with the repairing standard. The Tribunal also recognised that these were not new issues. The RSEO had been intimated to the parties on 29 January 2024 and had allowed a period of eight weeks for the Landlord to comply the works. There was no reasonable explanation provided as to why matters had not been satisfactorily progressed in that time. Accordingly the Tribunal so determined that, in the particular circumstances of this case, it would not be reasonable to vary the RSEO and allow further time for the Landlord to comply. It had now been over 5 months since the RSEO had been made, and over 3 months since the initial period for completion of the works had expired.
- 21 The Tribunal then had regard to Section 26 of the Act which states:-*"It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal."* The Tribunal was conscious that the consequence of decision by it that a Landlord has failed to comply with the RSEO could lead to a criminal prosecution. However the Tribunal could identify no reasonable excuse on the Landlord's part. Therefore the Tribunal, having taken the view that the Landlord had failed to progress the works required by the RSEO within a prolonged period of time, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.
- 22 Having concluded that the Landlord had failed to comply with the RSEO, the Tribunal considered whether to make a rent relief order ("RRO") under section 27 of the Act. The Tribunal took the view that, in the circumstances of the application and procedure to date, an RRO was appropriate. The Tribunal took into account the impact of the damp and mould, and ongoing water ingress, on the occupant's health and full enjoyment of the property. Whilst the bedroom and lounge could still be used it was not without discomfort. Furthermore, the internal decoration was unfinished throughout the property, with bare plaster present in several rooms. Accordingly the Tribunal determined that an RRO of 50% of the monthly rent be imposed to reflect the effect of the disrepair on the occupants. The Tribunal further determined that notice of the decision be served on the local authority.

23 The decision of the Tribunal was unanimous.

### **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.**

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or 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 determined.

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# R O'Hare

1 August 2024

 Legal Member/Chair

**Date**

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