

Housing and Property Chamber
First-tier Tribunal for Scotland



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 24(1) of the
Housing (Scotland) Act 2006**

Case Reference FTS/HPC/RT/24/1366

**The Haven, 27 St John Street, Stranraer, DG9 7EW being the subjects
registered in the Land Register of Scotland under title number WGN3910 (“the
Property”)**

The Parties:

**Ms Amanda Green, Dumfries and Galloway Council, Housing and Licensing
Standards, Malitia House, English Street, Dumfries, DG1 2HR (“Third Party
Applicant”)**

**Mr Kenny Chung, formerly residing at 9 Fisher Street, Stranraer, DG9 7LH and
now at 71 Dalrymple Street, Stranraer (“The Landlord and Respondent”)**

**Ms Natasha McGaw or Alexander, formerly residing at The Haven, 27 St John
Street, Stranraer, DG9 7EW (“The Tenant”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Carol Jones (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 made by the Tribunal on 4 September 2024, determined that
the Landlord has not complied with the Order and that the failure to comply
should be notified to the local authority. The Tribunal was unable to make a Rent
Relief Order.**

BACKGROUND

1. Reference is made to the decision of the Tribunal dated 4 September 2024 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 as the property did not meet the Repairing Standard. The Tribunal therefore made an RSEO.
2. The RSEO required the Landlord to complete the following work within 6 weeks of the date of the RSEO:
 1. Instruct an inspection and testing of the entire electrical installation in the Property for the purposes of preparing an Electrical Installation Condition Report. The report should be prepared by a suitably qualified electrician registered with NICEIC, SELECT or NAPIT. The report shall be produced to the tribunal and be in clear terms with no outstanding items marked C1 or C2 to ensure that all electrical fittings and fixtures within the Property are in working order and meet the repairing standard. In the event that the landlord has supplied any portable appliances as part of the tenancy then evidence of satisfactory PAT testing must also be supplied.
 2. To have prepared and produce to the tribunal a current Gas Safety Record for the property prepared by a suitably qualified and gas safe registered engineer which shows that the boiler, all associated pipework, radiators and any other gas appliances have been checked, repaired as necessary and are in a safe and proper working order.
 3. Ensure there are sufficient smoke and heat detectors in the property, that they are all in the correct position, in proper working order and interlinked to comply fully with current Scottish Government Guidance for the satisfactory provision for the detection and warning in the event of fire and suspected fire and provide evidence to the Tribunal.
 4. Repair or renew the defective windows in the bathroom, kitchen and living room to ensure that they are in a reasonable state of repair and proper working order, can be easily opened and closed and that there are no gaps between the window frames and the windowsills to ensure they are wind and watertight.
 5. Ensure that all rainwater goods and flashings are clear of vegetation and allow water from the roof to drain away properly.
 6. Repair or replace as necessary the external rainwater goods, gutters and downpipes to leave them in a reasonable state of repair and in proper working order without any leakage, including ensuring that the gutters and downpipes are properly aligned to make sure the property is watertight, the structure and exterior of the property are in a reasonable state of repair and that the property meets the tolerable standard.
 7. Ensure that the chimney is cleared of vegetation.
 8. Carry out any necessary repairs to the external hall windowsill and clear vegetation from that sill.
 9. Instruct a report from a suitably qualified roofing contractor to consider the

roof structure of the property, which assessment should include :- (1) the roof structure, as there appears to be a dip in the ridge line and to assess if the roof structure has been compromised; (2) to assess if any tiles at the verge or ridge (looking from the rear) are damaged or missing; and (3) provide a copy of that report to the Tribunal for further consideration and thereafter carry out all works which are then further determined by the Tribunal as are necessary to ensure the Property meets the Repairing Standard.

3. Following the expiry of the period for completion of the works a re-inspection was scheduled for 13 November 2024.
4. On 13 November 2024, the Tribunal carried out a re-inspection of the Property. Following the re-inspection a report was issued to the parties setting out the Tribunal's findings at the re-inspection. Reference is made to the re-inspection report which is incorporated and held to be part of this decision.
5. The Third Party submitted a written response form dated 20 November 2024 agreeing to the findings in the re-inspection report. No response was received from the Landlord.

REASONS FOR THE DECISION

6. At the re-inspection the following was noted:

7. The following works in the RSEO had been undertaken:-

The landlord has installed two new ceiling mounted smoke detectors in the ground floor vestibule at the front entrance and in the living room. The ceiling mounted heat detector in the kitchen has also been repaired. All smoke and heat detectors were tested at this inspection and found to be in working order. They are all interlinked and comply with current Scottish Government guidance.

The external hall windowsill has been cleared of moss, repairs have been carried out and the sill has been painted.

8. The following works in the RSEO were still outstanding:-

The landlord has not produced a satisfactory Electrical Installation Condition Report or a Portable Appliance Test certificate to the Tribunal. The landlord stated in an email to the Tribunal on 7 November 2024 that "the electrical certificate not been passed by the company SVM Port Services". The Tribunal also received an email from Mr Adam Black, Team Leader Housing Standards at Dumfries and Galloway Council on 11 November 2024. He stated that he had received a telephone call from the landlord who said that the electrician has advised that around £6,000 - £10,000 of work is required to provide a satisfactory EICR and he doesn't have the money to pay for the work to be carried out.

The landlord has not produced a current Gas Safety Record to the Tribunal.

The landlord has not repaired or renewed the windows in the living room, kitchen or bathroom. All windows are in the same condition as at the previous inspection on 7 August 2024, the handles/hinges are defective, and it is still not

possible to open the living room window.

The landlord has not produced any evidence of works to clear the rainwater goods of vegetation. There is still vegetation growth on the flashing at the front dormer window and around the gutter below.

The external rainwater goods, gutters and downpipes are all in the same condition as at the previous inspection on 7 August 2024. Some sections are corroded, uneven and misaligned and there are some loose and damaged fixings.

The landlord has carried out some works to clear the extensive vegetation growth on the chimney however there remains evidence of some vegetation growth.

The landlord has not produced a report on the condition of the roof structure or evidence of works to rectify any identified issues. The roof is in the same condition as at the previous inspection on 7 August 2024.

9. The Tribunal considered the condition of the property at the re-inspection and the written representations received from the Third Party. Having regard to all matters the Tribunal determined that only parts 3 and 8 of the RSEO have been complied with, and parts 1, 2, 4, 5, 6, 7 and 9 remained outstanding. Accordingly, the Tribunal determined that the Landlord has failed to comply with the RSEO. As the tenant at the time of the application has vacated the property the Tribunal was unable to consider a Rent Relief Order (RRO).

DECISION

10. The Tribunal determined that only parts 3 and 8 of the RSEO have been complied with, and parts 1, 2, 4, 5, 6, 7 and 9 remained outstanding, and therefore the Landlord had failed to comply with the RSEO. As the tenant at the time of the application had vacated the property the Tribunal was unable to consider a Rent Relief Order (RRO). The decision of the Tribunal was unanimous.

Section 28 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. Accordingly, the Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

Right of Appeal

Section 64 of the Act provides a right of appeal to a party aggrieved by the decision of the Tribunal 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.

M Barbour

Melanie Barbour

Date: 23 December 2024