

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Sections 26(1) & 27 of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RT/24/1772

Title Description: 37 Main Road, Collin, Dumfries, DG1 4JL being part of the subjects described in the Disposition by James Francis Mundell Mundell in favour of James Frederick Stodart Mundell recorded in the Division of the General Register of Sasines for the County of Dumfries on 18 December 1995.

**Re: 37 Main Road, Collin, Dumfries, DG1 4JL
 (“the House”)**

The Parties:

**Peter Geddes, 37 Main Road, Collin, Dumfries, DG1 4JL
 (“the Tenant”)**

**Fiona Smith, Dumfries & Galloway Council, Housing Standards, Militia House, English Street, Dumfries, DG1 2HR
 (“the Third-Party Applicant”)**

**James Mundell, Braehead Farm, Collin, Dumfries, DG1 4JN
 (“the Landlord”)**

Tribunal Members:

**Susan Christie (Legal Member)
 Andrew Taylor (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’) dated 11 September 2024, determined that the Landlord has failed to comply with the RSEO. The tribunal determined that a Notice of that failure should be served on the

local authority in whose area the House is situated in terms of Section 26(2)(a) of the Act. The tribunal also determined that a Rent Relief Order under Section 27 should be made.

Background

1. On 26 September 2024 the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) issued a Decision requiring the Landlord to comply with the Repairing Standard Enforcement Order(‘RSEO’) made by the tribunal dated 11 September 2024.
2. The RSEO required the Landlord to: -
 - 1) Engage a suitably qualified damp specialist to investigate the causes of dampness at two patches on the walls in the Living Room and at the concrete slab adjacent the front door. Undertake all works recommended; make good all plaster, decoration and flooring.
 - 2) Engage a HETAS qualified chimneysweep to sweep the flue to the multi-fuel burner and provide the Tenant with the appropriate certificate.
 - 3) Repair or replace the front door to the property including all draught excluders and weather bars so that the door is secure, wind and watertight, and capable of being easily opened and closed.
 - 4) Replace the seals to the bathroom window so that the window is secure, wind and watertight, and capable of being easily opened and closed.
 - 5) Investigate and repair the cause of the leak affecting the ceiling to bedroom 1.
 - 6) Make good plaster and decoration.
 - 7) Investigate the subsiding floorboards in the kitchen. Replace floorboards and joists as necessary and carry out any rot works required. Include all making good and replacement of kitchen flooring.
 - 8) Carry out maintenance to double window at rear kitchen so that the window is secure, wind and watertight. Include render repair to mullion, pointing and decoration.
 - 9) Repair or replace gutters throughout the property so that they are watertight and operate efficiently.
 - 10) Complete render repairs to all elevations of property and make good.
3. The Tribunal ordered that the works specified in the RSEO be carried out and completed within a period of eight weeks of the date of service of the RSEO Notice.
4. A typographical error was noted on the original intimations to the Parties, and the corrected RSEO was served on the Parties on 14 November 2024.

The Re-inspection

3. On 22 January 2025 at 10 a.m., the tribunal re-inspected the House.
4. At the time of the Inspection the weather was bright, cold and dry.
5. The tribunal found that the works required in the RSEO to only have been partially addressed as detailed in the Reasons section below.
6. A Schedule of Photographs taken during the inspection is attached to this Decision.

Responses

7. The Parties were provided with a response form to complete in response to the re-inspection findings that were sent to them.
8. The Landlord responded by e mail on 5 February 2025. In summary, although the handwriting was difficult to read, it enclosed a chimney sweep receipt for one chimney swept at the House(not defined which); the bedroom repairs had been done on 16 September 2024 along with valley gutters(2 coats of mastic with fibres), the gutters were done at the same time and chimney and slate repairs; that other work had not been done with reference to joiner costs and the damp readings in the bedroom were noted to be low.
9. The Tenant's Representative responded in two parts. In summary, firstly, to seek a 50% rent reduction due to the kitchen floor not being repaired and being a hazard and that the tenant was unable to make full use of the room; and because the Tenant had incurred costs for redecoration and other expenses. Secondly, accepting that roof repairs to the two valley gutters and lead flashing at the chimney stack took place on 16 September 2024. The front gutter had been repaired at the same time. The roof repairs consisted of fibre coatings and the lead flashings had been replaced. There were no further reports of water ingress.

Reasons for the Decision

10. It was noted by the tribunal at re-inspection that Progress has been made in investigating and repairing the leak at bedroom 1 and making good the ceiling.
11. All works specified in the RSEO have not been completed. The Landlord accepts that this is the position by his response. He refers to non-availability of tradesmen.
12. No application has been made to vary or extend the time for compliance by the Landlord.
13. It would have been of assistance to the Tribunal had the Landlord provided clearer explanations covering all aspects of the work required in the RSEO and volunteered reports, quotations, or receipts for all work done or contemplated.
14. The leak affecting the ceiling in bedroom 1 had been repaired and the Tenant stated that he had carried out the decoration there himself. As no documentation had been produced regarding the extent of any investigations undertaken and the details of the work

carried out there, the tribunal was uncertain if the cause had been fully resolved.

15. The RSEO has not been complied with in relation to the following:

- (1) No evidence has been produced to the tribunal to show that a qualified damp specialist has been engaged to investigate the causes of dampness at two patches on the walls in the Living Room and at the concrete slab adjacent the front door. No work had been undertaken, and there was no visual improvement seen on re-inspection. It was noted by the tribunal on their visual re-inspection that a tarpaulin had been placed over a chimney stack on the roof and tied and this raised some suspicion.
- (2) No HETAS certificate had been produced to the Tenant. Therefore, the flu has not been certified as safe. The Tenant had in addition volunteered information at the re-inspection that he had replaced at his own cost a plate inside the multi-fuel burner and another part.
- (3) The front door has not been repaired or replaced, as required in the RSEO.
- (4) The seals to the bathroom window have not been replaced as required in the RSEO.
- (5) No work had been undertaken, and there was further deterioration seen on re-inspection at the subsiding floorboards in the kitchen. This posed a hazard.
- (6) All work to the kitchen window had not been carried out, or at least not to the satisfaction of the tribunal. Further pointing is required externally and both sashes require to work in terms of security and the ability to open them.
- (7) Render repairs to all elevations of property were not completed.

16. The tribunal was satisfied that a decision could be made on the question of compliance, based on the findings of the re-inspection and the response made, and that the Landlord had been made aware of the requirements of the RSEO, the timescales imposed for works to be completed, and the potential consequences of non-compliance.

17. The tribunal was particularly concerned that the subsiding floorboards in the kitchen, which were the most obvious hazard to the Tenant had not been attended to at all. The plank of wood that had been placed over the main area of subsidence by the tenant, remained in place at the re-inspection. The placing of the plank there did not make the area safe. No evidence of investigations into the root cause of the rot and damp in this room has been given to the tribunal.

Rent Relief Order

18. The works that have not been completed are significant as detailed above, and the persistent water damage that has saturated the timbers not yet and the flooring in the kitchen is of immediate concern to the tribunal. The associated surface damage and surface deterioration poses a hazard to the tenant who is elderly and lives alone. This materially affects the Tenant's use, safety and comfort of the kitchen.
19. No HETAS certificate had been produced to the Tenant. Therefore, the flu has not been certified as safe.
20. No work has been carried out to the front door or the floor adjacent to it and the floor area remains wet.
21. In the circumstances, considering all of the works have not yet been carried out or completed, the tribunal determined that a Rent Relief Order imposing a restriction of rent of 50% is appropriate.
22. The decision of the tribunal is unanimous.

Right of Appeal.

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.

In terms of Section 63 of the Act, 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.

S Christie