

Housing and Property Chamber

First-tier Tribunal for Scotland



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/23/0847

Property: 21b Kirk Brae, Fraserburgh AB43 9BY(‘The House’)

The Parties: -

Felipe Daniel Mendes Da Veiga and Tania Sofia Fernandes Costa residing at 21b Kirk Brae, Fraserburgh AB43 9BY (‘the tenants’)

SWITHROW 17 LIMITED, Kinbog Steading, Fraserburgh AB43 8UB (‘the Landlord’)

Eilidh Mackay, Aberdeenshire Council, Gordon House, Blackall Road, Inverurie AB21 3WA (‘the Third Party’)

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 28 August 2023, determined that the Landlord has failed to comply.

The Tribunal further determine that notice of the failure be served on the local authority and Police Scotland.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Angus Anderson, Ordinary Member (surveyor)

Background

1. By application received on 5 May 2023, the third party applied to the Tribunal for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
 - *the house is wind and watertight and in all other aspects reasonably fit for human habitation*
 - *the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order*
 - *the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order*
 - *The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire*
 - *The housing has satisfactory provision for warning if carbon monoxide is present in a concentration that is hazardous to health*
 - *The house does not meet the tolerable standard*
3. A hearing and inspection took place on 21 August 2023. The landlord was represented by Mr Kenny Watt, sole director of Martylou Ltd, then owner of the property. The Tribunal issued a decision dated 2 August 2023 in terms of which it was determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act. A Repairing Standard Enforcement Order ("RSEO") dated 28 August 2023 required the Landlord to
 1. *Repair or replace the windows to the front of the house to ensure that they are in a reasonable state of repair and in proper working order.*
 2. *Instruct a suitably qualified person to carry out repairs as are necessary to the roof of the property to ensure that the roof above the kitchen window in the house is wind and watertight.*

3. *To repair or replace the rainwater goods to the front and rear of the house to ensure they are in a reasonable state of repair and in proper working order.*

The Tribunal ordered that the works be completed within a period of three calendar months from intimation of the RSEO on the parties.

4. Following the expiry of the period for completion of the works a re-inspection was scheduled for 15 April 2024 with a hearing scheduled for 19 April 2024.

Re-inspection 15 April 2024

5. The Tribunal re-inspected the property at 10am on 15th April 2024. The tenant was in attendance and permitted access. The landlord's representative, Mr Watt was present. Eilidh Mackay attended on behalf of the third party Applicant. It was dry and sunny with similar conditions over the preceding few days.
6. The inspection commenced in the front bedroom. The window had been replaced with a new double glazed, pvc framed unit. Within the lounge, the window had also been replaced with a similar unit. The windows were locked shut and so could not be tested. Significant dampness was noted to the left hand side of the lounge window, with crumbling and blistering plasterwork evident. When tested with a moisture meter, readings of 99% were observed to the affected areas.
7. Within the kitchen, the situation appeared unchanged, however the window frame had been screwed shut since the previous inspection, meaning that there was no way of ventilating the room. As before, staining from previous damp ingress was present to the window lintol and ingoes. When tested damp readings of 20% to 99% were observed.
8. The front cast iron gutter and right hand downpipe had been cleared of vegetation. The gutter and slating above, to the right of the right hand dormer had been overcoated with "flashband", a proprietary sealant tape. Patch repairs had been undertaken to the pointing to the front elevation on the right hand side. At the rear of the building, the situation appeared unchanged. The middle section of the gutter was missing, with short lengths remaining at each end of the eaves. The sections that remained were choked with vegetation.

There were missing slates adjacent to the rear dormer window of the upper flat, with roofing timbers visible. The flashing at the change in roof pitch had been patched with “flashband” which was itself perished and cracked. The skylight over the staircase had slipped down slightly and had been patch repaired with “flashband” and “sterling” board. The rear window of the attic flat, above the kitchen of the subject flat, again was unchanged, appeared in poor condition with decay to timbers and the lower panel was missing.

9. Previously noted additional matters remained as before, with the communal stair windows and skylight being in poor condition and obvious damp ingress to the stairwell. Furthermore, it was apparent that the rear door could not be safely accessed, it was screwed shut and the steps at the exterior were missing. Lead water supply pipes were evident in the communal areas and within the kitchen of the flat.

Hearing on 19 April 2024 and review decision

10. A hearing took place on 19 April 2024 by telephone conference at 2pm. The tenant did not attend. The landlord was not present, nor represented. Ms Mackay attended on behalf of the third party.
11. After hearing from Ms Mackay and taking into account their findings during the reinspection the Tribunal determined that the landlord had failed to carry out the works specified in paragraphs 2 and 3 of the RSEO and proceeded to grant a rent relief order of 60% of the monthly rent. The Tribunal issued a written decision and Rent Relief Order dated 3 May 2024.
12. By email dated 17 May 2024², Mr Watt requested a review of the Tribunal’s decision. Mr Watt’s review was based on the fact that he had not been provided with the correct passcode to allow him to join the teleconference. Mr Watt submitted evidence showing that he had tried to join the call using the incorrect information that had been provided to him.
13. The Tribunal considered that Mr Watt had made proper attempts to join the scheduled teleconference and was unable to do so due to an administrative error as the passcode he was provided did not enable him to do so.
14. The landlord was not able to make representations to the Tribunal at the teleconference through no fault of his own.

15. In terms of rule 39 the Tribunal reviewed its decision and recalled the Rent Relief Order of the same date.

Further procedure

16. A fresh hearing was assigned for 23 September 2024. The hearing was adjourned as Mr Watt was out of the country. Mr Watt stated in an email to the Tribunal on 23 September 2024 that the property had been sold. Martylou Ltd was no longer the owner of the property. The new owner of the property is Switherow 17 Limited. Upon checking the Companies House register it was noted that the new company owning the property also had Mr Kenny Watt also as sole Director and had the same registered address as the previous MartyLou Ltd. The Tribunal amended the application to show the new owner's details as the landlord.
17. A further reinspection and hearing were assigned for 27 and 29 May 2025. A further application was submitted by the third party on 17 October 2024, case reference FTS/HPC/RT/24/4792. An inspection and hearing in respect of that application were also scheduled for 27 and 29 May 2025.

Reinspection on 27 May 2025

18. Mr Watt emailed the Tribunal on 21 May 2025 to state that he would not be available to provide access to the property on the 27 May 2025. He provided no explanation for his lack of availability and did not request a postponement.
19. The Tribunal attended at the property on 27 May 2025. Eilidh Mackay attended on behalf of the third-party. Mr Watt did not attend. The previous tenants had moved out of the property. The Tribunal was unable to gain access to the property or the communal areas and was confined to an inspection of the exterior of the property.
20. The front elevation of the property appeared to be unchanged since the previous re-inspection of April 2024. There was some vegetation growing at the left side of the front cast iron gutter. The gutter and slating above, to the right of the right hand dormer remained overcoated with "flashband", a proprietary sealant tape. The previously noted patch repairs undertaken to the pointing to the front elevation on the right hand side were unchanged. At the rear of the building, again the situation appeared unchanged. The middle

section of the gutter was missing, with short lengths remaining at each end of the eaves. As before, the sections that remained were choked with vegetation. There were missing slates adjacent to the rear dormer window of the upper flat, with roofing timbers visible. The flashing at the change in roof pitch had been patched with “flashband” which was itself perished and cracked. The skylight over the staircase had slipped down slightly and had been patch repaired with “flashband” and “sterling” board. The rear window of the attic flat, above the kitchen of the subject flat, again was unchanged, appeared in poor condition with decay to timbers and the lower panel was missing.

21. Again, the previously noted additional matters remained unchanged, with the communal stair windows and skylight being in poor condition. There was no access to the internal communal areas nor the rear courtyard and the inspection was restricted accordingly.
22. In summary, it was clear that no further repairs had been carried out to the exterior of the property since the previous re-inspection on 15 April 2024.
23. Photographs were taken during the second re-inspection and are included in the attached schedule.
24. A hearing took place via teleconference on 29 May 2025. Ms Mackay attended on behalf of the third-party. Mr Watt was not in attendance. The Tribunal was satisfied that the landlord had been properly notified of the reinspection and the hearing in terms of rule 24 and proceeded with the hearing in their absence in terms of rule 29.
25. Ms Mackay stated that she had not had any contact with Mr Watt since October 2024. She stated that she had spoken with the owner of the upstairs flat who had indicated that he was agreeable to resolving the common repairs issues however since those discussions had taken place that property had again changed hands.
26. Ms Mackay confirmed that after the RSEO was issued she had contacted Mr Watt to provide him with information on how to carry out repairs and in particular where he might find information in relation to common repairs. She provided him with the details of Under One Roof – an organisation that provides information and guidance on common repairs. She advised that the Landlord had sent her screenshots on 11th January 2024 containing text

messages between him and the owner of the upstairs property. These had been lodged with the Tribunal.

27. Ms Mackay confirmed that after the property had been sold she had become aware that the new company was at the same registered address and had Mr Watt also as the sole owner. She stated that Mr Watt was seeking to evade the RSEO by changing ownership of the property in name only. She stated that she was aware that Mr Watt owned 4 other rental properties in the local area. She stated that as was noted at the inspection the property is currently for sale by auction. According to the auction house website the auction was due to take place on the day of the hearing.

Reasons for the decision

28. The Tribunal determined the application having regard to the terms of the application, the written representations, the findings of the Tribunal at the inspection and re-inspections and Ms Mackay's oral submissions at the hearing on 29 May 2025. 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.
29. Based on their findings at both re-inspections the Tribunal was satisfied that that landlord had failed to carry out the works set out in paragraphs 2 and 3 of the RSEO.
30. In terms of section 26 of the Housing (Scotland) Act 2006 the Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—
- (a) unless the period within which the order requires the work to be completed has ended, or*
 - (b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—*
 - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
 - (ii) that the work required by the order is likely to endanger any person.*
31. The Tribunal was satisfied that the work had not been carried out within the required period. The Tribunal then considered whether the landlord's failure to

comply had been because of a lack of necessary rights despite having taken reasonable steps to acquire those rights. The Tribunal had regard to section 16 (5) of the 2006 Act which stated that in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary right.

32. The Tribunal took into account the screenshots lodged by the landlord. The screenshots failed to demonstrate that the landlord had made reasonable steps to discuss common repairs with the owner of the upstairs flat in a reasonable manner. The texts were uncivil and not sufficient to show the landlord was making a genuine effort to resolve the repairs issue. There was no evidence of any attempt to contact the owners of the ground floor properties to agree or coordinate the common repairs. No copies of quotations or reports from tradespersons for the required repairs were submitted. No other evidence was submitted by the landlord to explain his failure to carry out the repairs. In the circumstances the Tribunal determined that the landlord had failed to comply with the RSEO.
33. In terms of section 26(2) of the 2006 Act the Tribunal determines that in light of the landlord's conduct it is appropriate to notify the local authority that the landlord has failed to comply with the RSEO. The police will also be notified that the landlord has not complied with the RSEO. As there are no sitting tenants in the property a Rent Relief Order has not been made.
34. In terms of section 28(5) of the Act, a landlord (and that includes any landlord's successor in title) commits an offence liable on summary conviction to a fine not exceeding £1000 if he or she enters into a fresh tenancy or occupancy arrangement in relation to a house at any time where a RSEO is in effect, unless the landlord has the consent of the tribunal.

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.

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-C Kelly

Chairperson:

Date: 16 June 2025

Housing and Property Chamber

First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

21b Kirk Brae, Fraserburgh, AB43 9BY

Chamber Reference: FTS/HPC/RT/23/0847

Re-inspection: Schedule of Photographs

Inspection Date: 27/05/2025



Photograph 1 Front (Western) Elevation. Vegetation at left side of gutter, gutter lined with "flashband", patch repairs to pointing right hand side front wall. Front windows replaced to first floor.



Photograph 2 Front elevation: Flashband applied to slates, right hand side of dormer



Photograph 3 Front elevation: Vegetation to left side of gutter.



Photograph 4 Rear elevation: Appears unchanged. Gutter missing. Missing slates and deterioration of rear dormer window. Deterioration of skylight and stairwell window.