

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: RP/16/0289**

**Title no: ARG5768**

**21C Main Street, Campbeltown PA28 6AD**

**("the property")**

**The Parties:-**

**The Parties:-**

**John Gamble, residing at the property**

**("the tenant")**

**and**

**Keith Arthur Raeburn, residing at 360 Windmill Road, Ealing, London W5 4UR**

**("the landlord")**

Whereas in terms of their decision dated 16 December 2016, The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") the tribunal requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the landlord:-

- (a) To carry out such repairs as are necessary to the roof and gutter of the property to eliminate the ingress of water to the northeastmost room at the front of the property.
- (b) To repair the plasterwork of the living room ceiling and redecorate as necessary.
- (c) To replace the carpet in the living room as described in paragraph (a) above.
- (d) To produce and lodge with the First tier Tribunal (Housing and Property Chamber) a satisfactory Electrical Installation Condition Report provided by a suitably qualified electrician approved by NICEIC or SELECT.

The tribunal order that the works specified in this Order must be carried out and completed within the period of two months from the date of service of this Notice.

**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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page are executed as follows:

<u>D Preston</u>	Chairing Member	<u>J McAnulty</u>	Witness signature
<u>16 December 2016</u>	Place of signing	<u>45 ROBERTSON</u>	Witness address
<u>GLASGOW</u>	Date of signing	<u>STREET</u> <u>GLASGOW</u>	
		<u>92 8JB</u>	

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **STATEMENT OF DECISION FOR REPAIRING STANDARD ENFORCEMENT ORDER (RSEO) UNDER SECTION 24 HOUSING (SCOTLAND) ACT 2006.**

**Chamber Ref: RP/16/0289**

**Title number: ARG5768**

**21C Main Street, Campbeltown PA28 6AD**

**("the property")**

#### **THE PARTIES**

**John Gamble, residing at the property**

**("the tenant")**

**and**

**Keith Arthur Raeburn, residing at 360 Windmill Road, Ealing, London W5 4UR**

**("the landlord")**

#### **THE TRIBUNAL**

**The First-tier Tribunal for Scotland (Housing and Property Chamber): David M  
Preston and Mike Links**

#### **Decision:**

**The tribunal, having made such enquiries as are fit for the purposes of  
determining whether the landlord had complied with the duty imposed by  
section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as  
"the Act") in relation to the property, and taking account of the representations  
by the tenant:**

- 1. Determined that the landlord had failed to comply with the said duty;**
- 2. Determined to issue a Repairing Standard Enforcement Order under section  
24(2) of the Act; and**
- 3. In respect of the lack of satisfactory provision for the detecting fires and for  
giving warning in the event of fire or suspected fire, the tribunal is unable to  
make any order as the issue had not been raised in the application. However**

**the landlord's attention is drawn to the Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires available on the First Tier Tribunal (Housing and Property Chamber) website.**

**Background:**

1. By application dated 7 September 2016 the tenant applied to the Private Rented Housing Panel 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 ("the Act").
2. The application by the tenant stated that he considered that the landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the landlord had failed to ensure that:-
  - (a) The property is wind and watertight and in all other respects reasonably fit for human habitation
  - (b) The installations in the property 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
3. In particular the tenant complained that water ingress from the roof had caused living room ceiling to fall down leaving 5ft hole in ceiling. The tenant collected water in buckets when it rains. The tenant was concerned about the electrics due to water pouring down the light fittings. The tenant stated that electrical safety checks, roof repairs, ceiling repairs and a replacement carpet were required.
4. By Decision dated 7 October 2016 the President of the Private Rented Housing Panel decided to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
5. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the landlord and the tenant by letter dated 4 November 2016.
6. On 1 December 2016 the functions of the Private Rented Housing Panel were transferred to the First Tier Tribunal (Housing and Property Chamber).
7. Following service of the Notice of Referral no further written representations were received from the tenant and no written representations were received from the landlord.

**Inspection:**

8. The tribunal inspected the property on the morning of 14 December 2016. The tenant was present throughout the inspection. The landlord did not attend and was not represented.
9. The property comprised the northeastmost house on the second floor of a three storey and attic tenement building built approximately 100 years ago and containing two retail shop units on the ground floor and four residential flats on the upper floors. The front wall is of solid stone construction and the roof is pitched and slated (see Photograph 1 of the Photograph Schedule attached hereto)
10. The inspection revealed that in the northeastmost front room (on the right when in the flat) a large section of plaster had fallen from the centre of the ceiling (see photographs 2 and 6). Water apparently coming from the roof was being collected by the tenant in buckets (see photographs 4 and 5) and the carpet beneath was water damaged. The hole in the ceiling plaster was adjacent to the centre light in the room (see photograph 6) and the tenant was afraid to use the light. There was water ingress at the front room window and water was being collected in tubs on the sill (see photograph 4 and 5) .
11. The tribunal observed a broken section of gutter at the northeastmost end of the building in the vicinity of the affected room (see photograph 7). Externally, rainwater was leaking down the front elevation from the defective guttering. At the time of the inspection it was raining heavily.
12. The tribunal did not observe any smoke or heat detectors in the property.

**Hearing:**

13. Following the inspection of the property the tribunal held a hearing at the Kintyre Community Education Centre, Stewart Road, Campbeltown and heard representations from the tenant. The landlord did not attend the hearing. The tribunal was satisfied that the landlord had been advised of the date and time of the hearing. It noted that the landlord had not responded to correspondence from either the tenant or the Private Rented Housing Panel (now the First Tier Tribunal, Housing and Property Chamber). Accordingly the tribunal was satisfied that the landlord had voluntarily waived any right he had to make representations either in writing, in person or by representations and was content to proceed with the hearing and reach a determination in the absence of the landlord.
14. The tenant referred the tribunal to the condition of the flat as seen by them. He confirmed that he had written to the landlord on two occasions (11 June and 29 July 2016) to ask for a signed lease as soon as possible to enable him to sort out the rent. He asked for the landlord's telephone number.
15. The tenant confirmed that there were no smoke or heat detectors in the property.

16. The tenant confirmed that he was afraid to use the centre light in the living room. He also advised that he had not been provided with an Electrical Installation Condition Report (EICR).
17. The tenant said that he had no contact from the landlord following these letters but had received a solicitor's letter advising that the landlord wanted to recover possession of the property.

**Findings of fact:**

18. In reaching its decision the tribunal had regard to:
- a. The application dated 7 September 2016
  - b. Written representations by the tenant
  - c. Copy tenancy agreement dated 11 March 2016 between the tenant and Mr Kenneth Henderson of 36 Pinkerton Road, Crail, Anstruther KY10 3UB.
  - d. Copy letters dated 11 June and 29 July 2016 from the tenant to the landlord
  - e. Copy letter from the landlord to the tenant dated 24 May 2016
  - f. Letter of notification of required work from tenant to landlord dated 29 July 2016 with Post office proof of Delivery.
  - g. Copy Land Certificate Number ARG5768
19. The tribunal finds in fact that:
- a. The tenancy between the parties was constituted by the Tenancy Agreement between the tenant and Kenneth Henderson dated 11 March 2016 and the letter from the landlord dated 24 May 2016.
  - b. The landlord had become heritable proprietor of the property on 5 May 2016, having taken entry on 28 April 2016.
  - c. The tenant had advised the landlord of the issues with the property and of his concerns.
  - d. There were neither smoke nor heat detectors in the property.
  - e. The tenant had not been provided with an EICR.
  - f. The landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Act.

**Reasons for the decision:**

20. Although the Tenancy Agreement dated 11 March 2016 referred to the landlord as Mr Kenneth Henderson, from whom Mr Keith Raeburn had bought the property for the sum of £18,000 on 28 April 2016, and it had not been signed by or on behalf of a landlord, the tenancy had been acknowledged by the present landlord (Keith Raeburn) in his letter dated 24 May 2016.
21. The inspection and the representations from the tenant confirmed that the property was damaged by the ingress of water as a result of which part of the ceiling in the living room had fallen in. Water ingress had damaged the carpets and there was water ingress at the window lintol and on to the window sill.

22. The tribunal considered that in view of the seriousness of the issues found to be established and the significant health and safety risks as a consequence, a period of two months from the date of service of the RSEO would be appropriate for the landlord to carry out the necessary works as specified in the RSEO. The tribunal was mindful of the fact that if the landlord required additional time to complete the works, an application can be made for an extension of the time limit together with an explanation of the steps taken and progress made to that point.
23. The tribunal had not observed smoke or heat detectors and their absence was confirmed by the tenant.
24. The tribunal noted that the landlord was in breach of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property by having failed to provide a valid up to date EICR.
25. In terms of section 14 of the Act a landlord has a duty to ensure that a property meets the repairing standard: "(a) at the start of the lease; and (b) at all times during the tenancy". Although the landlord in the present case was not the landlord at the start of the Tenancy Agreement, he assumed the duties and obligations of landlord on his acquisition of the property. Consequently it was his obligation to ensure that the property complied at the date on which he took over those responsibilities.

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D Preston

Chairman

16 December 2016 Date

PHOTOGRAPH SCHEDULE  
FLAT 202, 21 MAIN ST CAMPBELTOWN PA28  
6AD

REF: HPC/RP/16/0289      DATE: 14<sup>TH</sup>  
DECEMBER 2016



1. FRONT ELEVATION



2. FRONT ROOM CEILING



3. FRONT ROOM CARPET BELOW DAMAGED CEILING:



4. WATER LEAKING ONTO FRONT

ROOM CILL



5. WATER LEAKS AT FRONT ROOM WINDOW LINTOL:



6. LEAKS IN RELATION TO ELECTRIC

LIGHT





7. WATER LEAKING AT DEFECTIVE FRONT GUTTER