

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HCP/RT17/0411

Title no: ABN7224

19 Barrasgate Road, Fraserburgh, AB43 9DQ ("the house")

The Parties:-

Ms Carol Wiseman, c/o Forbes Property, 66 Broad Street, Fraserburgh, AB43 9AS (The Landlord) and Meston Reid and Co, Trustees, 12 Carden Place, Aberdeen, AB10 1UR.

Ms Julia Leonard, Aberdeenshire Council, Housing Strategy, Gordon House, Blackhall Road, Inverurie, AB51 3WA ("Third Party Applicant")

Mr David Franclyn, 19 Barrasgate Road, Fraserburgh, AB43 9DQ ("the Tenant")

1. Whereas in terms of their decision dated 17 January 2018, 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") and in particular that the Landlord has failed to ensure that the house is wind and water tight and in all other aspects reasonable fit for human habitation; that 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; that 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; that the fittings, fixtures and appliances in the house are in a reasonable state of repair and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is a hazardous to health.

The tribunal now 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 to:

- 1) Repair/replace the slates on the front roof to ensure the house is wind and water tight and to prevent ongoing internal dampness in living room and front bedroom.
- 2) Repair the living room window to ensure it is in a reasonable state of repair and in proper working order.
- 3) Repair washing machine waste outlet to ensure free flowing into external drain and ensure external drain grating is free of debris.
- 4) Ensure the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal order that the works specified in this Order must be carried out and completed within the period three 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.

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.

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 pages are executed by Judith Lea, legal member of the Tribunal, at Dundee on 17 January 2018 in the presence of the undernoted witness:-

J Lea

witness

Legal Member

DR. ALISON LAURA HEAP name in full

CALEDONIAN HOUSE Address

GREENMARKET

DUNDEE

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HCP/RT17/0411

Title no: ABN7224

19 Barrasgate Road, Fraserburgh, AB43 9DQ ("the house")

The Parties:-

Ms Carol Wiseman, c/o Forbes Property, 66 Broad Street, Fraserburgh, AB43 9AS (The Landlord) and Meston Reid and Co, Trustees, 12 Carden Place, Aberdeen, AB10 1UR.

Ms Julia Leonard, Aberdeenshire Council, Housing Strategy, Gordon House, Blackhall Road, Inverurie, AB51 3WA ("Third Party Applicant")

Mr David Franclyn, 19 Barrasgate Road, Fraserburgh, AB43 9DQ ("the Tenant")

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 duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence provided by the Third party Applicant, the Landlord and the Tenant, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 7 November 2017 the Third Party Applicant applied to the Housing and Property Chamber 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 Third Party Applicant stated that she 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: - the house is wind and water tight and in all other aspects reasonable fit for human habitation; that 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; that 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; that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is a hazardous to health.
3. By letter dated 20 November 2017 a Convener of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
4. On 5 December 2017, The tribunal issued a Direction requiring the landlord to produce a copy of up-to-date up-to-date gas safety certificate and an electrical installation condition report by a suitably qualified electrician in respect of the house. The landlord's agent provided these on 15th of December 2017
5. On the 15th December 2017 the tribunal received information from the landlord's agent advising that the property was under repossession and Meston Reid and Co were acting as trustees. The inspection and hearing were intimated to Meston Reid and Co.
6. The tribunal comprising Judith Lea, Legal Member and Andrew Murray, Ordinary member inspected the house on the morning of 12 January 2018. The Third Party Applicant's representative Julia Leonard and the Tenant were present during the inspection. The Landlord was not present or represented.
7. Following the inspection of the house the tribunal held a hearing at Fraserburgh Leisure Centre, North Links, Seafeld Street, Fraserburgh. Julia Leonard attended the hearing on behalf of the Third Party Applicant. Neither the landlord or the Tenant attended.

Findings of fact and Reasons for the decision

8. At the hearing the tribunal asked the Third-Party Applicant to confirm which matters she considered still to be outstanding. It was confirmed that the smoke detector issue and the gas safety and electrical condition installation reports had been addressed. The tribunal considered each of the issues raised by the Third Party Applicant in turn.

Gas safety certificate and electrical condition installation reports

Satisfactory up to date documents have been produced

Smoke detectors

It was clear from the inspection that new hardwired interlinked smoke detectors had been installed in the kitchen, lounge, downstairs hall and upstairs hall. The Tenant confirmed that these had been installed very recently. In these circumstances the tribunal found no breach of the repairing standard.

Carbon Monoxide detector

There was a battery carbon monoxide detector on top of the boiler in the cupboard but this should be placed at a horizontal distance of between 1 and 3 meters from the boiler and accordingly requires to be moved.

Roof slates and damp in living room and front bedroom

It was clear at the inspection that a lot of the roof slates at the front of the house were missing and misaligned. The Tenant pointed out evidence of some water ingress in the living room and front bedroom close to the area where slates are missing and misaligned. The tribunal consider that this is a breach of the repairing standard section 13(1)(a) and made an order.

Living room window

It was clear from the inspection that the living room window would not open. There was some mastic in the window frame which the tenant stated he had put in to stop draughts. The tribunal consider that the window is not in proper working order which is a breach of section 13(1)(d) of the repairing standard and the tribunal made an order.

Washing machine drainage

The Tenant explained at the inspection that when he used the washing machine all the waste came up through the external grating and flooded the back yard. It was clear from inspection that the drain was full of debris and the pipework very old. The tribunal consider this to be a breach of section 13(1)(b) and (d) and made an order.

The Third-Party Applicant advised the tribunal is that she understood that bankruptcy proceedings were ongoing against the Landlord. Given the practicalities involved in connection with the ongoing repossession

proceedings and given that the Third-Party Applicant was happy that there were no significant health and safety concerns outstanding the tribunal considered it reasonable to allow three months for the work to be carried out.

A Photographic Schedule is attached to this Decision.

Decision

9. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
10. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The tribunal considered that a period of three months would give the Landlord sufficient time to rectify matters.
11. The decision of the tribunal was unanimous.

Right of Appeal

12. **A landlord, tenant or third party applicant aggrieved by the decision of the tribunal 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.**

Effect of section 63

13. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

J Lea

Signed

Date 17/11/18

Legal Member

**Photograph Schedule – 19 Barrasgate Road Fraserburgh
AB43 9DQ**

Case reference: FTS/HPC/RP/17/0411

Date of Inspection: 12 January 2018



1 Front elevation of 19 Barrasgate Road



2 Front elevation – slipped and missing slates evident



3 Rear elevation



4 Defective lounge window



5 Boiler – note CO2 detector on top of boiler unit



6 Example of internal dampness due to faulty roof slating



7 Blocked rear external drainage outlet from the washing machine

J Lea