

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Variation of Repairing Standard Enforcement Order ("RSEO"): Housing (Scotland) Act 2006 Section 25

Chamber Ref: PRHP/KY5/87/11

Sasines Description: All and Whole the subjects known as and forming 8/10 Ballingry Road, Ballingry, KY5 8EX being more particularly described in the Disposition by Ronald Alexander Clough and Elizabeth Richie Wilson or Clough in favour of said Ronald Alexander Clough dated 21st August and 4th October, both months of 1990 and recorded in the Division of the General Register of Sasines for the County of Fife on 7th May 1991.

8/10 Ballingry Road, Ballingry, Fife, KY5 8EX
("The house")

The Parties:-

Alan Duncan formerly residing at 8/10 Ballingry Road, Ballingry, Fife, KY5 8EX
("the former tenant")

Mr Ronald Clough, 3 Stephen Place, Lochgelly, Fife, KY5 9DP
("the landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having determined on 25 November 2017 that the **RSEO** relative to the house dated 13 July 2011 should be varied, the said **RSEO** is hereby varied with effect from the date of service of this Notice in the following respects:-

1. The period allowed for the completion of the work required by the Order is extended for a further three months.

Subsection 25(3) of the Housing (Scotland) Act 2006 as amended does apply in this case.

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 the house at any time during which an 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(s) are executed by Judith Lea legal member of the Tribunal, at *Balmullo* on the *25/11/17* in the presence of the undernoted witness:-

witness _____ **J Lea** Legal Member

JULIE ANNE GILKINSON name in full

6 BELL STREET Address

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Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision re Variation of RSEO: Housing (Scotland) Act 2006 Section 25

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**Mr Ronald Clough, 3 Stephen Place, Lochgelly, Fife, KY5 9DP
("the landlord")**

Background

The Private Rented Housing Panel issued a Repairing Standard Enforcement Order in July 2011 in the under noted terms:

1. The mice infestation requires eradication to ensure that the property is in all other respects reasonably fit for human habitation.
2. The central heating requires repair to ensure it is in a reasonable state of repair and in proper working order.
3. The dampness in all rooms requires eradication to ensure that the property is water tight and in all other respects reasonably fit for human habitation.

4. The electrics in the property require repair to ensure that the electricity installations in the property are in a reasonable state of repair and in proper working order.
5. The warped doors internal to the property require repair/replacement to ensure they are in a reasonable state of repair and in proper working order.
6. The installations in the house for the supply of hot water require repair to ensure they are in a reasonable state of repair and in proper working order.
7. The installations in the house for the supply of cold water require repair to ensure they are in a reasonable state of repair and in proper working order.
8. The kitchen external door and lock require repair/replacement to ensure it is in a reasonable state of repair and reasonable working order.
9. The front door lock requires repair to ensure it is in a reasonable state of repair and in proper working order.
10. The broken kitchen tiles require repair to ensure they are in a reasonable state of repair and in proper working order.
11. Smoke alarms require to be installed to ensure that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
12. The room vents require repair to ensure they are in a reasonable state of repair and in proper working order.
13. The external front rough casting requires repair to ensure that it is in a reasonable state of repair and in proper working order.
14. The cracked roof tiles to rear require repair/replacement to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation.

The Private Rented Housing Committee ordered that the work specified in the Order be carried out and completed within a period of 16 weeks from the date of service of the Order.

None of the work was carried out by the landlord and accordingly a Rent Relief Order and Failure to Comply Notice was issued and the landlord was reported to the Local Authority and the police. The tenant moved out of the property.

With effect from 1/12/2016 the Private Rented Housing Panel has been incorporated into the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal").

In June 2017, the tribunal enquired of the landlord what the up to date position was with regard to the work being done at the house. The landlord sent in written representations, receipts and a damp proof course certificate.

The ordinary member of the tribunal (Carol Jones) re-inspected the house on 28 August 2017 and found as per the re-inspection report attached to this decision. This report was served on the landlord and the landlord indicated that so far as he was concerned he thought he had done everything that was required by the Order.

In the whole circumstances of the case and given that the landlord had relet the property while the RSEO was still in place, which is a criminal offence, the tribunal fixed a further re-inspection and hearing to allow the landlord to explain his position.

The tribunal, comprising Carol Jones, ordinary member, and Judith Lea, legal member, inspected the house on 17 November 2017. The landlord and the current tenants, Mr and Mrs Baxter, were present. The house was in exactly the same condition as it was when the ordinary member re-inspected on 28 August apart from some work having been carried out to repair the damage caused by the leak in the shower room as shown in the attached photographs.

After the inspection, the tribunal held a hearing at the Benarty Centre, located a few minutes' walk from the house. The landlord attended. The tribunal advised the landlord of the matters it considered were still outstanding in the RSEO and dealt with each of these in turn.

The Electrics in the House

The landlord had advised that the electrics in the property had been rewired by a friend of his who was a retired electrician but he had no certificate for the work. The tribunal explained to the landlord that in order for it to be satisfied that the electrics in the property are in a reasonable state of repair and in proper working order the landlord would require to produce an Electrical Installation Condition Report (EICR) by a suitably qualified and competent electrician. The tribunal advised the landlord that this meant an NICEIC or SELECT registered electrician. The tribunal also advised the landlord that it was a legal requirement for landlords to have an EICR. The landlord confirmed that he would provide one as soon as possible.

Smoke Alarms

The ordinary member of the tribunal advised the landlord of the current requirements for smoke alarms in rented properties. There is currently a hardwired smoke alarm in the hall and a hardwired heat alarm in the kitchen. The landlord did not know whether or not these are interconnected. The tribunal advised the landlord that the smoke alarms should be interlinked and that he required to have one functioning alarm in every living room and every circulation space. The landlord confirmed that he would get an electrician to provide what was required as soon as possible.

Front Door Handle

The tribunal advised the landlord that it had health and safety concerns with regard to the broken front door handle. The landlord stated that he intended to replace the doors and front windows in the house within the next few months. The tribunal advised that the Order did not require the windows and doors to be replaced but required the front

door handle to be repaired to ensure it is in proper working order. The landlord confirmed that he would have the door handle fixed as soon as possible.

Damaged Roughcasting

The two areas of damaged roughcasting have not been rectified by the landlord. The landlord advised that he intended to have this work done at the same time as the windows and doors were replaced. He indicated that the work would be weather dependent but accepted that he should be able to get it done within a period of three months.

The tribunal expressed its concern that a number of health and safety matters were still outstanding after such a long period of time and emphasized to the landlord that his continuing to rent the house to new tenants while he had still not fully complied with the terms of the RSEO was a criminal offence. The tribunal did however acknowledge that a lot of work had been carried out on the house by the landlord. Although there were still a couple of high damp readings found towards the rear of the house, it was clear that damp proof coursing had been installed throughout the house and the serious damp problem seemed to have been eradicated. The current tenants advised that there had been a leak at the bath in the rear bathroom recently which may explain the high damp readings in that area. One of the bedroom doors still does not close properly and the shower room door sticks on the vinyl floor covering but will close. The tribunal do not consider that these are significant matters and the current tenants indicated that they were not causing them a problem. The tribunal accordingly consider that items 1,3,5,6,7,8,10,12, and 14 of the Order have been satisfactorily resolved. In connection with item 2, a new central heating system has been installed and the current tenants confirmed that it is in proper working order. The landlord, however, does not appear to have a Gas Safety Record which is required in law and the landlord confirmed that he would obtain this as soon as possible. As this was not asked for in the original Order and because the current tenants confirmed that the new system is in proper working order, the tribunal cannot require this, but pointed out to the landlord that to continue to let the property without one was in breach of the law and was a potential health and safety issue.

In respect of the matters still outstanding in the RSEO, being items 4,9,11, and 13, the tribunal varied the Order to allow the landlord a further period of three months to fully comply. The tribunal hope that the landlord obtains an ECIR, repairs or replaces the front door lock, and provides adequate smoke alarms to comply with current Scottish Government guidance for properties in the Private Rented Sector as soon as possible given the potential health and safety concerns.

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.

Effect of section 63

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 ..

Date25/11/17.....

Legal Member



Re-inspection report



Date of inspection: 28 August 2017

Reference Number: PRHP/KY5/87/11

Property: 8/10 Ballingry Road, Ballingry KY5 8EX

Surveyor: Carol L Jones MA MRICS

Previous Inspection: The subject property was inspected by a full committee of the Private Rented Housing Panel on 5 July 2011 and as a result a Repairing Standard Enforcement Order dated 13 July 2011 was served on the landlord.

Access: The current tenants, Mr Frank Baxter and Mrs Carol Baxter provided access. They moved into the property around October 2013.

Weather: Overcast, warm with light rain.

In attendance: The tenants, Mr and Mrs Baxter and the landlord Mr Ronald Clough attended the inspection.

Repairing Standard Enforcement Order (RSEO) dated 13 July 2011

Works required by the RSEO:

The Committee now requires the landlord carry out such work as is required to ensure the property meets the repairing standard and that any damage caused as a consequence of carrying out of any works in terms of this Order is also made good (ie; redecoration) before the expiry of the Completion Date.

1. The mice infestation requires eradication to ensure that the property is in all other respects reasonably fit for human habitation.
2. The central heating requires repair to ensure it is in a reasonable state of repair and in proper working order.
3. The dampness in all the rooms requires eradication to ensure that the property is water tight and in all other respects reasonably fit for human habitation.
4. The electrics in the property require repair to ensure that the electricity installations in the property are in a reasonable state of repair and in proper working order.
5. The warped doors internal to the property require repair/replacement to ensure that they are in a reasonable state of repair and in proper working order.
6. The installations in the house for the supply of hot water require repair to ensure they are in a reasonable state of repair and in proper working order.
7. The installations in the house for the supply of cold water require repair to ensure they are in a reasonable state of repair and in proper working order.
8. The kitchen external door and lock requires repair/replacement to ensure it is in a reasonable state of repair and in proper working order.
9. The front door lock requires repair to ensure it is in a reasonable state of repair and in proper working order.
10. The broken kitchen tiles require repair to ensure they are in a reasonable state of repair and in proper working order.
11. Smoke alarms require to be installed to ensure that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

12. The room vents require repair to ensure they are in a reasonable state of repair and in proper working order.
13. The external front rough casting requires repair to ensure that it is in a reasonable state of repair and in proper working order.
14. The cracked roof tiles to rear require repair/replacement to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation.

Works in the RSEO fully or partly undertaken:

(1) The general works carried out by the landlord to upgrade this property before the current tenants moved in around October 2013 will have reduced the risk of vermin infestation and the tenants confirmed they have not had a problem with mice. The landlord did not instruct a pest control company and does not have any written evidence of any specific eradication measures.

(2) The landlord installed a new gas central heating system in August 2013. There is a new combination boiler located in a cupboard off the rear vestibule and all radiators have been replaced. The tenants confirmed the system is operating properly. The landlord stated he does not have a current Gas Safety Record.

(3) The landlord carried out substantial works to eradicate damp at this property and has provided a Certificate of Guarantee for 30 years by a company called "Dampstop" dated 16 November 2012. He has also provided a letter from the company dated 16 November 2012 detailing works done including full treatment of all accessible roof timbers in loft area with dual purpose chemical for woodworm and water ingress, the installation of a damp proof course to all outer walls, inner leaf in small room of hallway, two back rooms, one kitchen area and one boiler room. The landlord informed me he personally stripped back all plasterwork and lined the walls with new plasterboard. Some ceilings have also been replaced. Damp meter readings were taken, moderate moisture levels were found to the base of the walls in every room and some high readings in the front double bedroom (left), rear vestibule/utility area and rear bathroom. There is also currently severe water damage as a result of a leak in the front shower room, this affects the party wall between the shower room and front double bedroom (left). Both sides of this wall are damaged, the bedroom floor is wet and a section of plasterboard surrounding an electrical socket is also missing. The tenant said the leak had been a problem for years but the effects did not become apparent until more recently. She said the source of the leak at the wash hand basin in the front shower room has now been identified and apparently repaired. The tenant also said the water leak has caused problems with the double electrical socket on the bedroom wall.

(4) The landlord informed me that he personally rewired the property with a friend who is a retired electrician prior to the current tenants moving in. He said he does not have a certificate for the work and there is no current Electrical Installation Condition Report for the property.

(5) The landlord has replaced the internal door to the front shower room, it is hard to open and close properly as it sticks to the vinyl floor covering. The landlord has replaced the inner door to the front vestibule with a new timber/glass panel door, this is in proper working order. The tenant has replaced the internal living room doors, all other internal doors are the original ones and they are not warped however the door handle to the rear double bedroom is loose and the catch is not operating properly.

(6) The tenants confirmed the boiler is working properly and there are no issues with the hot water supply.

(7) The tenants confirmed there are no issues with the cold water supply.

(8) The landlord has replaced the external kitchen door and lock. Both are in a reasonable state of repair and proper working order.

(10) The landlord informed me that he replaced the kitchen floor tiles, since then the tenants have laid new vinyl which is in a reasonable state of repair.

(12) It appears that the landlord has removed all room vents at the time of the damp proof works except the one in the rear bathroom, this is in a reasonable state of repair.

(14) The landlord informed me that the cracked roof tiles to the rear pitches of the roof have been replaced and a missing roof tile which caused a recent leak to the kitchen ceiling has also been replaced. There do not appear to be any missing or cracked tiles on the rear pitches of the roof.

Outstanding Works:

(9) The front door lock does not appear to have been replaced and is currently defective. The handle and internal mechanisms are very loose.

(11) The property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. There is only one ceiling mounted smoke alarm in the Hall and one ceiling mounted heat alarm in the kitchen, these are hardwired but not interlinked.

(13) The landlord has not carried out any works to rectify the defective roughcast on the front elevation. There remain areas where the roughcast is cracked, spalling in places and boss.

All photographs taken at the re-inspection on 28 August 2017 (see schedule below)

Comments: This report will be submitted to the First-tier Tribunal for Scotland (Housing and Property Chamber) for their decision.

**Carol L Jones MA MRICS
Ordinary Member (Surveyor)
First-tier Tribunal for Scotland (Housing and Property Chamber)**

31 August 2017

Schedule of photographs taken during the re- inspection of 8/10 Ballingry Road, Ballingry KY5 8EX the ordinary member (surveyor) of the First-tier Tribunal for Scotland (Housing and Property Chamber) on the 28 August 2017.

Reference : PRHP/KY5/87/11

	
Rear vestibule - new boiler	Front shower room - water damage to plaster on party wall adjoining front double bedroom (left)
	
Front shower room - water damage to plaster on party wall adjoining front double bedroom (left)	Front shower room



Front double bedroom (left) water damage to walls/skirting and floor adjoining front shower room



Front double bedroom (left) damage to plasterboard surrounding double socket on wall adjoining front shower room



Front double bedroom (left) moderate damp meter readings to front wall



Front double bedroom (left) high damp meter reading to wall adjoining front shower room



Front double bedroom (left)



Front double bedroom (right)



Hall



Living Room



Kitchen



Kitchen ceiling - water stain to ceiling



Single bedroom to rear



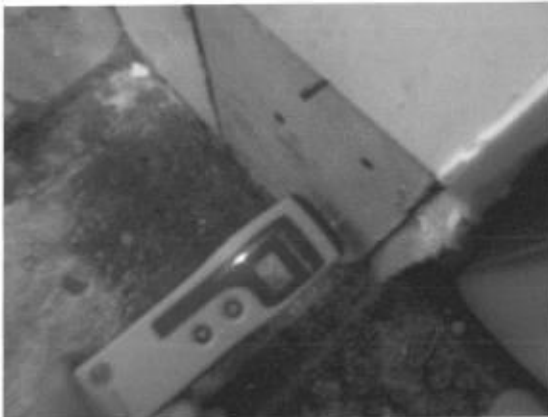
Double bedroom to rear



Rear vestibule/utility room



Rear bathroom



High damp meter reading to base of party wall between rear vestibule and bathroom



High damp meter reading to external wall of rear bathroom



Black spot mould to walls of rear vestibule/utility room



New glass panel door to inner side of front vestibule



New door to front shower room installed by landlord



New door to front shower room - door sticking on vinyl floor



New timber/glass panel door between Living room and Hall - installed by tenants



New timber/glass panel door between Living room and Kitchen - installed by tenants



Double bedroom to rear - original door - defective door handle and catch



New external kitchen door and lock



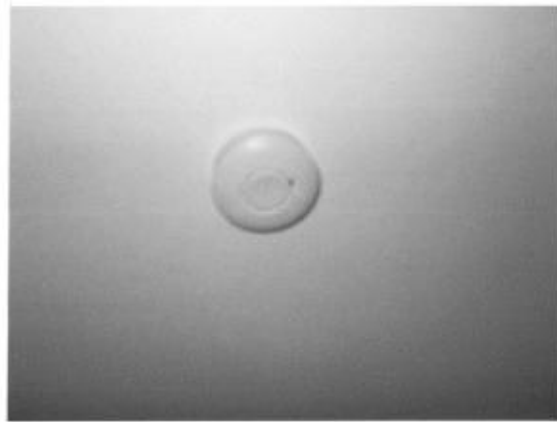
New external kitchen door and lock - viewed internally



Front door - defective lock/loose handle



Kitchen - new vinyl floor covering



Kitchen - ceiling mounted heat alarm



Hall - ceiling mounted smoke alarm



Rear bathroom - vent to external wall



Front elevation - roughcast cracked/spalling/
boss



Front elevation - roughcast cracked/spalling/
boss



DPC injected to base of external walls



DPC injected to base of external walls



Rear elevations showing roof



Rear elevations showing roof



Rear and gable elevations showing roof



Rear elevations showing roof

J Lea

25/11/11

Housing and Property Chamber

First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 8/10 Ballingry Road, Ballingry
KY5 8EX by the First-tier Tribunal for Scotland (Housing and Property Chamber)
17 November 2017

Reference Number : PRHP/KY5/87/11



Front Elevation



Front Shower room - wall adjoining front double bedroom (left) re-plastered/painted



Front Double Bedroom (Left) - wall adjoining front shower room - re-plastered/painted