

# Housing and Property Chamber First-tier Tribunal for Scotland

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First-tier Tribunal for Scotland (Housing and Property Chamber)  
STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/20/0941

Re: ALL and WHOLE those subjects known as and forming **1 Old Post Office Close, High Street, Anstruther** being a tenement of land bounded by Wightman's Wynd, Anstruther Easter and being the subjects more particularly described in Disposition in favour of Margaret Catherine Davidson Kerr recorded in the Division of the General Register of Sassiness for the County of Fife on Sixth July Nineteen Hundred and Forty Three ("The Property")

## **The Parties:-**

Ms Amanda Coote residing 1 Old Post Office Close, High Street East, Anstruther, KY10 3DQ ("the Tenant")

and

Murray & Wilson (Joiners) LTD, residing at White Gables, Ladywalk, Anstruther, Fife, KY10 3EX ("the Landlord")

## **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

## **The Tribunal** consisted of:-

Mr Andrew Cowan – Chairperson

Mrs Lorraine Charles, Ordinary (Surveyor) Member

## **Application**

1. By an Application to the Housing and Property Chamber, dated 16 March 2020, the Tenant applied for 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 states that the Tenant considers that the Landlord has failed to comply with the duty to ensure that the Property meets the repairing standard and in particular that the Landlord has failed to ensure that:-
  - (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation (as required by section 13(1)(a) of the Act);
  
  - (b) 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 (as required by section 13(1)(b) of the Act);
  
  - (c) 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 (as required by section 13(1)(c) of the Act);
  
  - (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (as required by section 13 (1)(f) of the Act);
  
  - (e) The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (as required by section 13 (1)(g) of the Act);
  
  - (f) The Property does not meet the tolerable standard (as required by section 13 (1)(h) of the Act).

3. The Tenant noted in her Application that she considers that repairs are required to bring the Property up to the repairing standard.
4. The Tenant had previously notified the Landlord of the requirement for repairs to be carried out to the Property in terms of:

- (a) Letter from the Tenant to the Landlord dated 27 January 2020
- (b) Letter to the Landlord, sent by Fife Council on behalf of the Tenant, dated 12 February 2020

#### **CASE MANAGEMENT DISCUSSIONS, INSPECTION AND HEARING**

5. The Tribunal held a Case Management Discussion (“CMD”) in relation to the application on 14<sup>th</sup> January 2021. The CMD was held by teleconference. The Tenant joined the CMD. The Landlord did not join the CMD and was not represented.
6. At the CMD on 14<sup>th</sup> January 2021 the Tribunal noted the following in relation to each heading of alleged disrepair made by the Tenant:-

A) Electrical Issues – The Local Authority had highlighted the legal duty on the Landlord to provide the Tenant with a current Electrical Installation Condition Report (EICR). No such EICR has been produced to the Tenant. Since the date of the Application, the Landlord had instructed certain works to the Property which included repairing a socket in the kitchen and installing a new circuit box within the Property.

B) Fire Detection - The Tenant explained that following the issue of the letter from Fife Council that Landlord instructed work to install smoke detectors within the Property.

C) Windows within the Property – The Tenant had complained that many of the windows within the Property were not able to operate as designed. In particular some windows of the Property are not capable of being fully opened. Since the date of the Application, the Landlord has taken steps to repair the sash and case windows in the kitchen and one of the bedrooms in the Property. He has, however, not addressed issues of disrepair in relation to the other windows within the Property.

D) Bathroom suite and fittings – The Tenant had complained that the bathroom suite within the Property was not in a reasonable state of repair. The Local Authority identified (in terms of their letter of 12 February 2020) that the bath had a large split in it and it appears that the bath has become brittle and cracking.

7. Following the Case Management Discussion on the 14<sup>th</sup> January 2021 the Tribunal determined to direct the Landlord to produce appropriate certification in relation to the electrical safety within the Property. The Tribunal also determined to direct the Landlord to provide written evidence that the fire detection equipment, which the Landlord has recently installed in the Property, complies with the current Scottish Government statutory guidance.
8. The Tribunal held a further CMD in relation to the Application on 3<sup>rd</sup> March 2021. The Tenant again joined the CMD by conference call. The Landlord did not attend and was not represented on the CMD call. At that CMD the Tribunal noted that the Landlord had, by that date, carried out further works to the Property. The Tribunal noted that the Landlord had installed a new bathroom suite within the Property. The Tenant confirmed to the Tribunal at the CMD that she was satisfied with the work carried out by the Landlord in this respect. The tenant no longer wishes to pursue this part of her application as this matter has been resolved by the Landlord
9. At the end of the Case Managed Discussion on 3<sup>rd</sup> March 2021 the Tribunal again directed the Landlord to produce appropriate certification in relation to the electrical safety within the Property. The Tribunal also determined to direct the Landlord to provide written evidence that the fire detection equipment, which the Landlord had

recently installed in the Property, complies with the current Scottish Government statutory guidance.

10. The Tribunal inspected the Property on 20 July 2021. The Tenant was in attendance at the inspection. The Landlord did not attend, and was not represented at, the inspection of the Property. The Tribunal noted that the Landlord had installed an inter-linked heat detector within the kitchen, along with smoke detectors in the lounge, ground floor and first floor hall of the Property. All of these detection appliances were tested and appeared to be in working order. The Tribunal noted that work had been carried out on certain windows in the Property by the Landlord to ensure that they were in working order. The Tribunal noted, however, that the window in the smaller bedroom on the ground floor of the Property was not capable of being opened by more than 4 or 5cm.
11. The Tribunal noted that the Landlord had installed a new electrical consumer unit within the Property and had repaired a pane of glass fitted to the front door of the Property.
12. Following the inspection of the Property, the Tribunal held a hearing in relation to the Application by telephone conference in relation to the Application on 27 July 2021. The Tenant joined the conference call. The Landlord did not join the conference call.
  - (a) The Tribunal noted that as at the date of the hearing the Landlord had continued to fail to provide adequate detail in support of the Domestic Electrical Installation Condition Report in respect of the Property dated 25 February 2020. The Landlord failed to comply with Directions of the Tribunal dated 14<sup>th</sup> January 2021 and 3<sup>rd</sup> March 2021 in that he has failed to produce evidence to the Tribunal that the Domestic Electrical Installation Condition Report supplied by the Landlord (and dated 25 February 2020) had been carried out by a suitably qualified and registers select, NAPIT or NICEIC electrical contractor. The Electrical Condition Report also fails to clarify that the fire detection equipment which has recently been installed

within the Property complies with the current Scottish Government statutory guidance.

- (b) The Tribunal noted that the only other outstanding matter from the Application related to the Landlord's failure to repair the window in the smaller bedroom on the ground floor of the Property.

### **Findings in fact and in law**

13. The Tribunal made the following findings in fact, and in law:-

- (a) The Tenant of the Property is Ms Amanda Coote in terms of an Assured Tenancy Agreement between the parties dated 18 December 2007;
- (b) The owner of the Property is Murray & Wilson (Joiners) Ltd.
- (c) The tenancy between the parties was continuing as at the date of the hearing in relation to the Tenant's application;
- (d) In terms of letters dated 7 January 2020 from the Tenant and 12 February 2020 from Fife Council was made to the Landlord that work required to be carried out to the Property for the purposes of ensuring that the Landlord comply with the duties imposed by Section 14(1)(b) of the Act.
- (e) Certain works have been carried out to the Property by the Landlord since the date of the Application. In particular the Landlord has installed;
  - a. A new bathroom suite within the Property Carried out repairs to most of the windows within the Property
  - b. Installed fire detection equipment within the Property, and;
  - c. Upgraded the electrics within the Property to include the installation of a new electrical consumer unit.

(f) The Landlord has supplied to the Tribunal a Domestic Electrical Installation Condition Report in respect of the Property dated 25 February 2020. That report appears to have been completed prior to recent electrical works been carried out at the Property and prior to the installation of fire detection equipment within the Property. The Landlord has failed to provide evidence that the contractor who conducted the Domestic Electrical Installation Condition Inspection and Report is suitably qualified as required in terms of Scottish Government Statutory Guidance on electrical installations and appliances in private rented property Annex A). The Landlord has accordingly failed to ensure that installations in the house for the supply of electricity state of repair are in proper working order (as required by section 13(1)(c) of the Act);

(g) The window in the small bedroom of the Property is not in proper working order as it is not capable of being opened and closed correctly. The Landlord has accordingly failed to ensure that this window is in a reasonable state of repair and in proper working order (as required by section 13(1)(b) of the Act);

#### **Decision**

14. The Tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

15. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act. In particular the Tribunal determined to require the Landlord to

(a) carry out such works as are necessary to ensure that the window in the small bedroom of the Property is repaired so that it is in a reasonable state of repair and in proper working order and

(b) to produce a Domestic Electrical Installation Condition Report in respect of the Property with evidence that it was carried out by a suitably qualified and registered select NAPIT or NICEIC electrical contractor, along with written evidence from the contractor who carries out that report (or another suitably qualified contractor) that the fire detection equipment which has now been installed within the Property complies with the current Scottish Government statutory guidance for the satisfactory provision for the detection and warning in the event of a fire and suspected fire and current building regulations.

16. The Tribunal orders that the works specified in the RSEO must be carried out and completed within the period of 28 days from the date of service of this Notice.

17. The decision of the Tribunal is unanimous.

### **Right of Appeal**

18. A Landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

### **Effect of section 63**

19. 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.

# A Cowan

Signed .....

Andrew Cowan, Chairperson

Date 27<sup>th</sup> July 2021



# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

Chamber Ref: FTS/HPC/RP/20/0941

Re: ALL and WHOLE those subjects known as and forming **1 Old Post Office Close, High Street, Anstruther** being a tenement of land bounded by Wightman's Wynd, Anstruther Easter and being the subjects more particularly described in Disposition in favour of Margaret Catherine Davidson Kerr recorded in the Division of the General Register of Sasiness for the County of Fife on Sixth July Nineteen Hundred and Forty Three ("The Property")

### The Parties:-

Ms Amanda Coote residing 1 Old Post Office Close, High Street East, Anstruther, KY10 3DQ ("the Tenant")

Murray & Wilson (Joiners) LTD, residing at White Gables, Ladywalk, Anstruther, Fife, KY10 3EX ("the Landlord")

Whereas in terms of their decision dated 27<sup>th</sup> July 2021, 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:-

- (a) 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 (as required by section 13(1)(b) of the Act) and
- (b) 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 (as required by section 13(1)(c) of the Act)

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:-

- (a) carry out such works as are necessary to ensure that the window in the small bedroom of the Property is repaired so that it is in a reasonable state of repair and in proper working order and
  
- (b) to produce a Domestic Electrical Installation Condition Report in respect of the Property with evidence that it was carried out by a suitably qualified and registered select NAPIT or NICEIC electrical contractor, along with written evidence from the contractor who carries out that report (or another suitably qualified contractor) that the fire detection equipment which has now been installed within the Property complies with the current Scottish Government statutory guidance for the satisfactory provision for the detection and warning in the event of a fire and suspected fire and current building regulations.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 28 days 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 Andrew Cowan, legal member of the Tribunal, at Glasgow on 27<sup>th</sup> July 2021 in the presence of the undernoted witness:-

L Campbell

A Cowan

\_\_\_\_\_ witness

\_\_\_\_\_ Legal Member

LAURA CAMPBELL name in full

7 WEST GEORGE Address

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