

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Certificate of completion of work: Housing (Scotland) Act 2006 Section 60

Chamber Ref: FTS/HPC/RT/18/0300

Title no: DMF 26203

West Roucan Farmhouse, Torthorwald, Dumfries, DG1 3QG ("the property")

The Parties: -

John Cunningham-Jardine, Tinwald House, Tinwald, Dumfries, DG1 3PW; John Cunningham-Jardine, G M Thomson and co, 35 Buccleuch Street, Dumfries, DG1 2AB ("the Landlord")

Dumfries and Galloway Council, Community and Customer Services, Council Offices, Buccleugh Street, Dumfries, DG1 2AD ("the Third Party")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') hereby certifies that the work required by the **Repairing Standard Enforcement Order** relative to the Property dated 28 April 2018 has been completed. Accordingly, the said Repairing Standard Enforcement Order relative to the property has been discharged.

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.

In witness whereof these presents type written are executed by Josephine Bonnar, Solicitor, Legal Member of the Tribunal at Motherwell on 22 February 2019 before this witness:-

G Bonner

Witness

J Bonner

Legal Member

Gerard Bonnar
1 Carlton Place, Glasgow

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Section 25(1) Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RT/18/0300

Title no: DMF 26203

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The Parties: -

**John Cunningham-Jardine, Tinwald House, Tinwald, Dumfries, DG1 3PW;
John Cunningham-Jardine, G M Thomson and co, 35 Buccleuch Street,
Dumfries, DG1 2AB (“the Landlord”)**

**Dumfries and Galloway Council, Community and Customer Services,
Council Offices, Buccleugh Street, Dumfries, DG1 2AD (“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”) relative to the property dated 28 April 2018 determined that the Landlord has complied with the order and that a certificate of completion to that effect should be issued.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Mr Mike Links, Ordinary Member

Background

1. By application received on 8 February 2018 the Third Party applied to the First-tier Tribunal for Scotland (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 stated that the Third Party considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Third Party stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) 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, (iii) 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, (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (v) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically the Third Party stated that there is dampness visible in the utility room, kitchen, bathroom, mid stair hallway and upper east bedroom, the east gable wall rendering is excessively cracked, the PVC window seals are defective, the window in the mid stair hallway is defective, the east gable chimney stack rendering has fallen off, there are no carbon monoxide detectors in the property, no smoke alarm in the living room, existing smoke detectors are not hardwired and interlinked, no heat detector in the kitchen and no EICR has been exhibited.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, Third Party and Tenant on 15 March 2018. The parties were notified that an inspection and hearing would take place on 17 April 2018.
4. The Tribunal inspected the property on the morning of 17 April 2018. Mr Adam Black and Mr Robert Rome attended on behalf of the Third party. Access to the property was provided by Mrs Judith Ward, a relative of the former Tenant. The Tenant was within the property but not present for the inspection. The Landlord did not attend.

5. Following the inspection of the property the Tribunal held a hearing at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries. Mr Adam Black and Mr Robert Rome attended on behalf of the Third Party. Neither the Tenant nor the Landlord attended.
6. Following the hearing the Tribunal issued an RSEO. In terms of the RSEO the Landlord is required (1) To instruct a suitably qualified timber damp specialist and building contractor to prepare a detailed survey of the property, with specific reference to the east gable wall, to identify the cause and full extent of the dampness and any remedial action. The report should include both the internal and external fabric of the building, specifically around the affected areas. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant re-decoration made good, (2) To instruct a suitably qualified window contractor to inspect the windows in the property and carry out such repairs as are necessary to ensure that the windows are wind and watertight, or to replace the windows, (3) To install hard wired interlinked smoke and heat detectors in the living room and kitchen to comply with the statutory guidance, and (4) To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical condition check of the entire electrical installation of the property and exhibit a copy of the EICR to the Tribunal. The work was to be completed within 6 weeks of the RSEO being issued.
7. On 7 June 2018 the Landlord's agent, Allan McMillan of G.M. Thompson & Co sent an email to the Tribunal advising that the smoke/heat detectors had been upgraded and that "Bryson's have now completed the work to replace the seals to the double glazed units". An up to date EICR dated 1 June 2018 and a report from Richardson and Starling dated 25 May 2018 were attached to the email. The latter indicated that the property was inspected on 24 May 2018 and that Richardson and Starling recommended that no further work be carried out while the property is drying out and that this might take several months.
8. The Ordinary Member attended at the property at 10am on 20 June 2018 to carry out a re-inspection. Mr Rome, representing the Third Party, was in attendance. No access to the property was provided. At 10.15 the Landlord attended and explained that he had arranged for the agent to provide him with a key to allow access, but that the agent had failed to do so. The inspection of the property did not therefore proceed.

9. On 26 June 2018 the Landlord's agent notified the Tribunal that all work had been completed. On 29 June 2018 the Third Party notified the Tribunal that a visual inspection of the outside of the property had been carried out by Mr Black on 15 June 2018. It did not appear that any work had been carried out. The property appeared to be unoccupied. On 9 July 2018 the Landlord's agent sent a copy receipted invoice from J Bryson Ltd in relation to window repairs.
10. The Ordinary Member re-inspected the property on 30 July 2018. It was noted that parts 2,3 and 4 of the RSEO appeared to have been completed. Window repairs had been carried out, hard wired smoke and heat detectors installed and a satisfactory EICR provided. However, the Ordinary Member noted that the damp meter readings taken at the original inspection remained unchanged, with no evidence that work has been carried out or that the property has dried out since the first inspection. A re-inspection report was issued to parties following the reinspection.
11. The Tribunal re-inspected the property on 2 November 2018. Mr McMillan provided access on behalf of the Landlord. Neither the Landlord nor the Third Party attended. Thereafter a hearing took place at Lochvale House, Dumfries. Mr Adam Black and Mr Robert Rome attended on behalf of the Third Party. Mr McMillan attended on behalf of the Landlord. Following the hearing the Tribunal proceeded to issue a Variation of the RSEO. In terms of the Variation the time allowed for completion of the work was extended to 30 January 2019.
12. On 10 January 2019 an email was received from the Landlord's agent confirming that the works required by the RSEO had now been completed. A copy of a letter from Richardson and Starling dated 14 December 2018 was attached together with a guarantee from Richardson and Starling in relation to a damp-proof course installed at the property. On 23 January 2019 the Third Party notified the Tribunal that they agreed that the work in the RSEO appeared to have been completed.
13. The Ordinary Member of the Tribunal inspected the property on 7 February 2019. Hannah Fleming of GM Thomson attended on behalf of the Landlord. There was no attendance by the Third Party. The Ordinary Member noted that previously outstanding work, namely that required in terms of Part 1 of the RSEO, has now been completed and the property re-decorated. A re-inspection report, including photographs of the completed work, was prepared and issued to the parties. On 11 February 2019 the Third Party

confirmed that the work required by the RSEO has been completed.

Reason for decision

14. The Tribunal considered the condition of the property at all of the re-inspections and the documents and written representations lodged by both parties.

15. Windows, Smoke and heat detectors, EICR. The Tribunal notes that when the property was re-inspected by the Ordinary Member on 30 July 2018, hard wired interlinked smoke and heat detectors had been installed and that the required repairs had been carried out to the windows. Furthermore, an EICR in satisfactory terms dated 1 June 2018 had been produced to the Tribunal. The Tribunal is therefore satisfied that parts 2, 3 and 4 of the RSEO have been completed.

16. Dampness. The Tribunal noted that the work proposed in a report from Richardson and Starling dated 6 August 2018 addressed part 1 of the RSEO. From the re- inspection and the documents lodged by the Landlord it was established that this work has now been carried out, and the affected areas re-decorated. A guarantee in respect of the damp proof course installed has also been produced.

17. The Tribunal is therefore satisfied that the work required in terms of the RSEO has been completed and that a certificate of completion should be issued.

Decision

18. The Tribunal determined that the Landlord has complied with the RSEO and proceeded to issue a certificate of completion.

19. The decision of the Tribunal is unanimous

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.

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J Bonner

Signed

Josephine Bonnar, Legal Member

..... 22 February 2019