

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier tribunal for Scotland (Housing and Property Chamber)**

**Decision: Housing (Scotland) Act 2006 (Section 26)**

**Chamber Ref: PRHP/RP/14/0050**

**Title no: ABN11475**

**Re : Property at 8 Ugie Road, Peterhead, AB42 1NR (“the Property”)**

**The Parties:-**

**Jillian Munro, formerly residing at 8 Ugie Road, Peterhead, AB42 1NR (“the Tenant”)**

**Mrs Carol Anne Wiseman, 22 Damfield Road, Fraserburgh, AB43 9SJ (“the Landlord”)**

**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 had now complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence obtained during the course of a re-inspection determined that the Landlord had had not yet complied with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. This case was previously dealt with by The Private Rented Housing Committee (“the Committee”) under The Housing (Scotland) Act 2006. From 1 December 2016, cases carried out by the Private Rented Housing Committee under the Act were transferred to The First-tier Tribunal for Scotland (Housing and Property Chamber). The Tribunal accordingly has the necessary jurisdiction.**
- 2. On 11 November 2014, the Committee had issued a determination which decided that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 (“the Act”). On the same date, the Committee had issued a Repairing Standard Enforcement Order (“RSEO”) in respect of the Property. The RSEO made by the Committee required the Landlord:-**

1. To repair or replace the kitchen window at the Property to ensure it is properly wind and water tight and otherwise in proper working order and compliant with the repairing standard.
2. To replace the cracked pane in the hall landing.
3. To carry out such works of repair or replacement to the skylights to ensure that they are properly wind and water tight and comply with the repairing standard.
4. To repair or replace those double glazed units where the unit has failed and condensation/misting is occurring between the panes.
5. To carry out such works or repair or replacement to the front door and surrounding frame as are necessary to render it properly wind and water tight and capable of being opened and closed smoothly. Also to carry out such works or repair or replacement to the lock on the front door as are necessary to ensure it is in proper working order.
6. To carry out such works of repair or replacement to the rear door and surrounding frame as are necessary to render it properly wind and water tight and capable of opening and closing smoothly.
7. To install an extractor fan within the bathroom.
8. To replace the side and end panels of the bath.
9. To replace the wash hand basin.
10. To install a proper shower rail and curtain compliant with the repairing standard.
11. To fix the leak from the kitchen tap.
12. To replace the unit surrounding and underneath the kitchen sink.
13. To produce an electrical installation condition report from a suitably qualified electrical engineer confirming that there are no items marked C1 and C2 on the report and to carry out any works necessary to allow the issue of such a report to the Committee.
14. To repair the leak to the radiator in the kitchen.
15. To install suitable installation within the attic space.

16. To replace the broken floor board outside the eastmost first floor bedroom.
  17. To refit the westmost bedroom door to the frame and to ensure it is in proper working order and compliant with the repairing standard.
  18. To carry out such works as are necessary to identify the cause of the water ingress to the Property and to carry out such works as are necessary to prevent further water ingress. Thereafter to carry out such works as are necessary to eradicate the existing damp within the Property and thereafter such works of redecoration as may be required.
  19. To repair or replace the shed roof sufficient to render it properly wind and water tight.
  20. To cap the external vents to the front of the Property.
3. The works required by the Committee under the RSEO were not carried out within the requisite period and on 30 November 2015, the Committee determined that there had been a failure to comply and a report was made to both the local authority and the police for consideration for prosecution.

In due course the Landlord made contact with the Tribunal to advise that the works required under the RSEO had been carried out. On 20 December 2016, Mr Colin Hepburn (the original Surveyor Member under the Committee and now the Surveyor under the Tribunal) carried out a reinspection of the Property. The Landlord was not present but her partner Mr Kevin Cumming provided access. The Surveyor Member of the Tribunal provided a reinspection report based on the results of his inspection and a copy of this is annexed for information.

The Tribunal was pleased to note that the majority of the works had now been carried out. The kitchen window had been repaired and the cracked pane on the hall landing had been repaired. The skylights had had some basic works carried out and had been sealed with mastic. The majority of the double glazed units had been replaced although the unit in the living room had failed. Repairs had been carried out around the back door albeit to a rudimentary standard. An extractor fan had been installed in the bathroom and, in addition, the side and bath panels had been replaced. The wash hand basin, shower rail and curtain had also all been replaced. Within the kitchen the leak at the kitchen tap had been repaired and the kitchen units around the kitchen sink had been replaced. The radiator leak in the kitchen had been repaired. Insulation had been installed in the attic space below the loft flooring. The floorboard in the first floor bedroom had been repaired and the bedroom door had been repaired and refitted. The shed roof had been repaired and the external vents had been capped.

The property had been in poor condition and the Tribunal viewed it as a positive step that all of these works had been carried out.

However the Tribunal noted that not all works had been carried out. There was no evidence of repairs being carried out around the front door. Whilst an EICR report had been provided, the Surveyor Member noted that at the date of the inspection there was an electrical cable below the sink that was not connected and did not appear to be safe. The double glazed unit in the living room had failed. The Surveyor also reported to the Tribunal that there were still very high damp measurements in the Property in a number of areas both at ground and first floor level.

4. The Tribunal considered matters. In relation to the failed double glazing unit, the Tribunal was conscious that the majority of units had been replaced. In the unit that had failed this was only resulting in some misting occurring between the panes. This was not a particularly significant matter and so the Tribunal was prepared to allow this to pass without further comment. No repairs appeared to have been carried out around the front door but, again, this was one of the more minor issues in the Property and the Tribunal was prepared to accept the condition of the door as matters stood.

In relation to the EICR, whilst the Tribunal noted that it confirmed the Property was compliant, the Tribunal was not satisfied regarding the unconnected wire beneath the kitchen sink. This would require to be attended to notwithstanding the terms of the EICR.

The Tribunal considered the elevated damp levels within the Property. Following upon receipt of the reinspection report, the Landlord had submitted that the remaining damp was simply due to the Property drying out after the external repair works had been carried out. The Tribunal was not satisfied that this was the case. On the Landlord's own admission the damp levels were around 34-44%. This was a very high level of moisture. To be deemed "dry", a normal measurement would be around 17% or below. Given the levels were more than double a dry level, it seemed unlikely that the works the Landlord had carried out had been fully effective in preventing damp penetration. Whilst there may be some element of the Property drying out, the current overall levels of damp were too significant to allow the revocation of the RSEO at this stage.

Accordingly the Tribunal determined that the RSEO should remain in place for the present time. A further reinspection could be carried out when the Landlord was satisfied that the damp levels were at an appropriate level. The Landlord would also require to attend to the wire beneath the kitchen cupboard.

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## **Decision**

5. The decision of the tribunal was unanimous

## Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

In witness whereof these presents type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 4 April 2017 before this witness:-

E Miller

\_ witness

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Chairman

Lindsay Johnston  
Secretary  
Thorntons Law LLP  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ



## **Re-inspection report**

**Date of inspection: 20<sup>th</sup> December 2016**

**Reference Number: PRHP/RP/14/0050**

**Property: 8 Ugie Road Peterhead AB42 1NR**

**Surveyor: Colin F Hepburn**

**Access: Provided by landlords partner Mr Kevin Cumming**

**In attendance: Mr Kevin Cumming**

**Repairing Standard Enforcement Order (RSEO)**

**Whereas in terms of their decision dates 11 November 2014 the Private Rented Housing Committee 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 property is:**

- a. The Property is wind and watertight and in all other respects reasonably fit for human habitation;**
- b. The structure of and exterior of the property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;**
- c. 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;**
- d. Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;**
- e. Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.**

**Works required by the RSEO:**

- 1. To repair or replace the kitchen window at the property to ensure it is properly wind and watertight and**

otherwise in proper working order and compliant with the repairing standard.

2. To replace the cracked pane in the hall landing.
3. To carry out such works of repair or replacement to the skylights to ensure that they are properly wind and water tight and comply with the repairing standard.
4. To repair or replace those double glazed units where the unit has failed and condensation/misting is occurring between the panes.
5. To carry out such works or repair or replacement to the front door and surrounding frame as are necessary to render it properly wind and watertight and capable of being opened and closed smoothly. Also to carry out such works of repair or replacement to the lock on the front door as are necessary to ensure it is in proper working order.
6. To carry out such works of repair or replacement to the rear door and surrounding frame as are necessary to render it properly wind and watertight and capable to opening and closing smoothly.
7. To install an extractor fan within the bathroom.
8. To replace the side and panels of the bath.
9. To replace the wash hand basin.
10. To install a proper shower rail and curtain compliant with the repairing standard.
11. To fix the leak from the kitchen tap.
12. To replace the unit surrounding and underneath the kitchen sink.
13. To produce an electrical installation condition report from a suitably qualified electrical engineer confirming that there are no items marked C1 and C2 on the report and to carry out any works necessary to allow the issue of such a report to the Committee,
14. To repair the leak to the radiator in the kitchen.
15. To install suitable insulation within the attic space.

16. To replace the broken floor board outside the east most first floor bedroom.
17. To refit the west most bedroom door to the frame and to ensure it is in proper working order and compliant with the repairing standard.
18. To carry out such works as are necessary to identify the cause of the water ingress to the property and to carry out such works as are necessary to prevent further water ingress. Thereafter to carry out such works as are necessary to eradicate the existing damp within the property and thereafter such works of redecoration as may be required.
19. To repair or replace the shed roof sufficient to render it property wind and watertight.
20. To cap the external vents to the front of the property.

**Works in the RSEO undertaken:**

1. Kitchen window repaired.
2. Cracked pane replaced.
3. Skylights sealed with mastic.
4. Double glazed units replaced but unit in living room failed.
5. No evidence of repairs being carried out around the front door.
6. Repairs carried out around the back door to a rudimentary standard.
7. Extractor fan installed in bathroom.
8. Side and bath panels replaced.
9. Wash hand basin replaced.
10. Shower rail and curtain replaced.
11. Leak at kitchen tap repaired.
12. Kitchen units around the kitchen sink replaced.
13. No EICR report available. Electrical cable below sink not connected.
14. Radiator leak in kitchen repaired.
15. Insulation installed in attic space below loft flooring.
16. Floorboard at first floor bedroom repaired.
17. Bedroom door repaired and refitted.
18. Agent advises that external repairs carried out to walls and roof to prevent water ingress. Elevated damp levels noted within the property particularly to the gable elevations.
19. Shed roof repaired.
20. External vents capped.



### **Outstanding works:**

**At the time of the re-inspection the property was vacant and unfurnished. A substantial amount of work has been carried out within the property but a number of items are incomplete.**

**In particular no EICR report was available and the electrical socket below the sink had not been adequately completed.**

**Damp ingress continues to be a significant issue within the property with elevated damp levels in a number of areas both at ground and first floor level. This may be in part due to a lack of heating and ventilation combined with rubble build up behind lathe and plaster and plasterboard finishes.**

**Repair works around the front and back doors are rudimentary while a sealed unit to the living room window has failed.**

**Photographs were taken on the day of inspection and are attached.**

Colin F Hepburn MRICS

Date of report: 22<sup>nd</sup> January 2017











