

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RT/22/0450

Re: Eliock Grange, Mennock, Sanquhar DG4 6LD

The Parties:-

Dumfries and Galloway Council –HMO & Landlord Registration, Municipal Chambers, Buccleuch Street, Dumfries DG1 2AD (“the third-party applicant”)

Mr Kevin Greenwood-Jaine (“the tenant”)

The late Mr James Blackwood Greenshields, Goosehill, Sanquhar DG4 6LB (“the landlord”)

Tribunal Members:

Sarah O’Neill (Chairperson) and Donald Wooley (Ordinary (Surveyor) Member)

Decision

The tribunal determined that the landlord has failed to comply with the Repairing Standard Enforcement Order. The tribunal also made a Rent Relief Order.

The tribunal’s decision was unanimous.

Background

1. On 22 June 2022, the tribunal issued a determination that the landlord had failed to comply with his duties under Section 14(1) (b) of the Act. On the same date, the tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the house.

2. The RSEO required the landlord to:

1. a) Obtain a detailed report from a timber and damp specialist surveyor which is registered with the Property Care Association, confirming the cause of the dampness within the property, specifically in the living room, bedroom/store, enclosed chimney flue, under stair cupboard and bathroom. The report should include details of the remedial action necessary to address the dampness and resultant deterioration to internal fabric.

b) Send a copy of the above report to the tribunal for its approval. Once the report has been approved, all of the recommended repairs should be completed in order to ensure that the property is wind and watertight and in all other respects reasonably fit for human habitation.
2. Install a smoke detector at the upper floor landing ensuring that it is interconnected with either the existing ground floor smoke and heat detectors or their replacements, ensuring that they are all fully functional and meet the requirements contained within the Housing (Scotland) Acts 1987 and 2006, as subsequently amended by the Modification of the Repairing Standard Regulations 2019.
3. Obtain a report from a suitably qualified heating engineer on the existing central heating system and forward a copy of the report to the tribunal for approval. Once approved, complete any necessary repairs contained therein to ensure that the system, including all radiators, is in a reasonable state of repair and in proper working order.
4. Relocate the Carbon Monoxide (CO) detector within the kitchen to a position which complies with current Scottish Government statutory guidance for the provision of CO detectors in private rented housing.
5. Redecorate as necessary following completion of all repairs required to comply with this order.

The tribunal ordered that all of the works specified in the RSEO must be carried out and completed within the period of three months from the date of service of the RSEO.

3. On 26 September 2022, a letter was received by email from Messrs Pollock and McLean, the solicitors for the landlord's attorneys, requesting an extension of one month in order to complete the works in the RSEO. The letter stated that a specialist damp report had been instructed but was not yet available.

4. On 5 October 2022, the tribunal agreed in the circumstances to vary the RSEO by extending the deadline for the completion of the works until 8 November 2022. The tribunal noted in its statement of reasons accompanying the notice of variation that it expected that all of the works in the RSEO would have been carried out by that date, and that if the tribunal were to find at its re-inspection that all or any of the works had not been completed, it was likely to issue a decision that the landlord had failed to comply with the RSEO.
5. On 1 November 2022, an email was received from Pollock and McLean advising that the landlord had died on 31 October 2022, and that the power of attorney granted in favour of his attorneys, whom they had previously represented, was therefore no longer valid. The tribunal decided to proceed with the application in terms of rule 31(3) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the tribunal’s rules”), which states that the tribunal may continue to consider and determine the application despite the death, insolvency or legal incapacity of any party.
6. The tribunal therefore proceeded to arrange a re-inspection of the house on 18 November 2022. In a letter received on 11 November 2022, Pollock and McLean advised that the landlord’s funeral was due to take place on the scheduled re-inspection date, and requested a postponement. The tribunal decided to postpone the re-inspection.
7. The tribunal sought to amend the name of the landlord in the application under rule 32 of the tribunal’s rules to that of the executors of the landlord’s estate. Pollock and McLean challenged this in a letter of 25 November 2022, stating that the executors named in the landlord’s will had not yet been confirmed and some or all of them may decline to accept office. The tribunal therefore decided to proceed with the application in the landlord’s name under rule 31 of the tribunal’s rules. Pollock and McLean confirmed in an email that they were acting in the administration of the landlord’s estate and wished to be kept informed of developments with the application in that capacity.
8. On 25 November 2022, an email was received from Pollock and McLean enclosing copy death certificate for the landlord and a copy dampness survey report from Richardson and Starling in respect of the house dated 3 November 2022.
9. The tribunal carried out a re-inspection of the house on 19 December 2022. A copy of the tribunal’s re-inspection report of that date is attached to this decision.
10. A copy of the re-inspection report was sent to the third-party applicant, the tenant and Pollock and McLean on 21 December 2022, together with a letter inviting them to send any written representations in response by 4 January

2023. The report was sent to Pollock and McLean in their capacity as the firm acting in the administration of the landlord's estate.

11. The tribunal wrote to the parties on 22 December 2022, confirming that it approved the dampness report from Richardson and Starling dated 3 November and received from Pollock and McLean on 25 November 2022, in terms of item 1(b) of the RSEO.

Findings in fact

12. Following the re-inspection, the tribunal made the following findings in fact:
 - i. Items 2 and 4 of the RSEO have been satisfactorily completed.
 - ii. A timber/damp report in accordance with item 1 of the RSEO has been provided to the tribunal, although none of the recommendations contained therein have been addressed.
 - iii. No report has been received by the tribunal from a suitably qualified heating engineer, as stipulated in item 3 of the RSEO, and the boiler was not in operation during the re-inspection.
 - iv. Significant redecoration will be necessary following the completion of item 1 and possibly item 3 of the RSEO.

The third party applicant's request for a hearing

13. A response to the tribunal's letter of 21 December 2022 was received from the third-party applicant on 28 December 2022, stating that it wished to request a hearing. The response stated: *"the issues complained of here are considered to be serious and possibly impacting the tenants physical and mental health. The landlord or their representative should be given every opportunity to account for their actions/inactions"*.
14. No response to the letter of 21 December 2022 was received from either Pollock and McLean or the tenant. No application was received from all or any of the executors or any other party seeking to be added as a party to the application.
15. The tribunal considered the representations received from the third-party applicant and considered whether it should hold a hearing about whether the landlord had complied with the RSEO and whether it should make a Rent Relief Order (RRO). As the parties had been advised in its letter of 21 December, the tribunal would only consider convening a hearing if a party could show why: a) the case could not be justly determined on the basis of written representations alone and b) not to hold a hearing would be contrary to the interests of the parties.
16. The tribunal noted that neither Pollock and McLean nor any other party had requested a hearing on behalf of the landlord. Neither had they disputed the

findings of the re-inspection report. While it noted what the third-party applicant had said in relation to the need for a hearing, the tribunal did not consider that in all the circumstances, a hearing was necessary. The tribunal considered that, having regard to such facts as are not disputed by the parties, it was able to make sufficient findings to determine whether the landlord has complied with the RSEO and whether to make an RRO without a hearing and that to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision without a hearing in terms of rule 18 of the tribunal's rules.

Reasons for decision

17. The tribunal's decision was made on the basis of all of the evidence before it, including its re-inspection report of 19 December 2022 and the written representations received from the parties.
18. The tribunal notes that as at the date of the tribunal's re-inspection, the landlord (and his attorneys) had had approximately six months to carry out the repairs. The tribunal was satisfied that items 2 and 4 of the RSEO had been completed, and that item 1 (a) had also been completed. It was clear, however, that items 1(b) and 3 had not been addressed. It was not disputed by the parties that these items of the RSEO had not been addressed. Given this, and in light of the findings from its re-inspection, the tribunal determines that the landlord has failed to comply with items 1(b) and 3 of the RSEO within the timescale allowed. Item 5 has also not been complied with, as this could not be completed until items 1(b) and 3 have been addressed.
19. While the tribunal accepts that the death of the landlord has made it difficult for his executors / his family to carry out the outstanding repairs, the RSEO as varied required the works to be completed by 8 November 2022, eight days after he passed away. The specialist dampness report was dated 3 November 2022, and it was clear that the dampness survey had not been carried out until 10 October 2022. The heating report required by item 3 of the RSEO does not appear to have been instructed at all. Neither the landlord, his attorneys or Pollock and McLean have provided any explanation as to why the outstanding works have not been completed.

Decision

20. The tribunal, having made such enquiries as are necessary for the purposes of determining whether the landlord has complied with the RSEO, therefore determines that the landlord has failed to comply with the RSEO in terms of section 26(1) of the Act, and that a notice of this failure should be served on the local authority in whose area the property is situated.

Rent relief order

21. The tribunal considered whether a Rent Relief Order (RRO) should be made in terms of section 27 of the Act.
22. The tribunal had asked the parties for their views on the level of any rent reduction in its letter of 21 December 2022. In its response, the third-party applicant stated that it considered a reduction of 90% would be appropriate. The reasons given for this were that: *“The issues complained about are serious, seriously impact the tenant’s enjoyment of the accommodation and little progress has been made against the recommendations made in the damp report obtained”*. No response was received from Pollock and McLean or from any other party on behalf of the landlord, or from the tenant.
23. In deciding whether to make an RRO, the tribunal took into account the views of the parties on whether the RSEO has been complied with, the extent to which it has been complied with and the impact of any failure to comply on the tenant and his enjoyment of the property. It determined that given the extent of the landlord’s failure to comply with the RSEO within the time allowed, such an order should be made.
24. The tribunal then considered the amount by which the rent payable under the tenancy should be reduced. The tribunal acknowledged that items 2 and 4 of the RSEO have been addressed. While these both raised health and safety issues, they were relatively straightforward to address. The tribunal noted, however, that the most serious issue, namely the widespread dampness in the house, has not been addressed. The issues with the central heating system in the house, which may be related to the dampness, have also not been addressed.
25. At the time of the tribunal’s re-inspection, following a sustained period of sub-zero temperatures, the house was extremely cold and damp. The significant levels of damp identified during the original inspection remained and had been compounded by a burst water pipe sustained in December 2022. Although the effects of the recent water damage from the burst pipe do not form part of the RSEO, several serious health and safety issues identified in the order remain outstanding and have not been addressed.
26. It is clear that these matters continue to have a very serious impact on the tenant and his wife and on their enjoyment of the house on a daily basis.
27. Having weighed up these considerations, the tribunal determined that an appropriate reduction would be to reduce the rent payable under the tenancy by **80%** until the RSEO has been complied with. The Rent Relief Order will be effective from 28 days after the last date on which a request may be made for

permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

Rights of Appeal

28. 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.

29. 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 will be treated as having effect from the day on which the appeal is abandoned or so determined.

..... **Date...** 3 February 2023.....

Chairperson

This is the re-inspection report referred to in the Wreigoy decision (at paragraph 4) dated 3 February 2023.

31/2/23

Housing and Property Chamber
First-tier Tribunal for Scotland



**First-Tier Tribunal for Scotland
(Housing and Property Chamber)
Re-inspection report**



Property Eliock Grange, Mennock, Sanquhar, DG4 6LD

Ref No: FTS/HPC/RT/22/0450

Surveyor: Donald Wooley MRICS

Previous inspection

The subject property was previously inspected on 04 May 2022 by the First-tier Tribunal for Scotland (Housing Property Chamber). Following a subsequent hearing a Repairing Standard Enforcement Order (RSEO) was issued.

Access:

A re-inspection of the subject property was arranged for Monday 19 December 2022 at 11.00 am. I arrived at the property at 10.45am, accompanied by Sarah O'Neill, the legal member of the Tribunal.

Also present and providing access were Mr Kevin Greenwood-Jaine, the tenant, accompanied by his wife, Mrs Deborah Greenwood-Jaine. The third party applicant was not present nor represented.

Weather conditions at the time of the inspection were dull, wet and overcast following a sustained period of cold sub-zero temperatures. Both Tribunal members left the property at 11. 50 and confirmed their departure by telephone with HPC Administration.

Purpose of re-inspection

The purpose of this re-inspection was to determine if the required works as detailed under the Repairing Standard Enforcement Order had been completed.

Work required under the Repairing Standard Enforcement Order (RSEO):

1. a) Obtain a detailed report from a timber and damp specialist surveyor which is registered with the Property Care Association, confirming the cause of the dampness within the property, specifically in the living room, bedroom/store, enclosed chimney flue, under stair cupboard and bathroom. The report should include details of the remedial action necessary to address the dampness and resultant deterioration to internal fabric.

b) Send a copy of the above report to the tribunal for its approval. Once the report has been approved, all of the recommended repairs should be completed in order to ensure that the property is wind and watertight and in all respects reasonably fit for human habitation.
2. Install a smoke detector at the upper floor landing ensuring that it is interconnected with either the existing ground floor smoke and heat detectors or their replacements, ensuring that they are all fully functional and meet the requirements contained within the Housing (Scotland) Acts 1987 and 2006, as subsequently amended by the Modification of the Repairing Standard Regulations 2019.
3. Obtain a report from a suitably qualified heating engineer on the existing central heating system and forward a copy of the report to the tribunal for approval. Once approved, complete any necessary repairs contained therein to ensure that the system, including all radiators, is in a reasonable state of repair and in proper working order.
4. Relocate the Carbon Monoxide (CO) detector within the kitchen to a position which complies with current Scottish Government statutory guidance for the provision of CO detectors in private rented housing.

5. Redecorate as necessary following completion of all repairs required to comply with this order

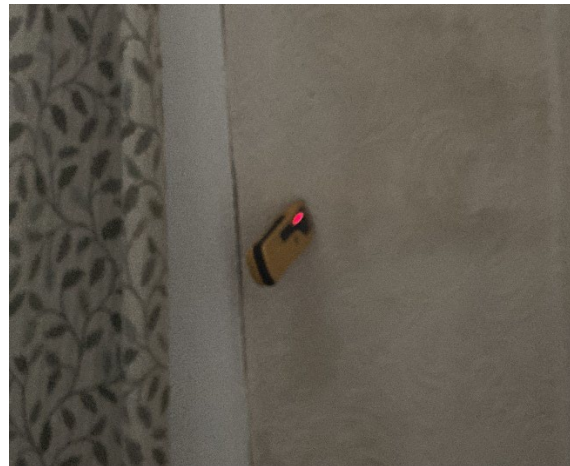
Site Observations:

On entering the property it was apparent that there was no electricity and as a result of a burst pipe caused by the recent sub-zero temperatures, additional water damage had occurred within the property. The inspection was therefore undertaken, in part, by torchlight.

It is understood that the additional damage and damp as a result of the burst pipe was predominantly around the kitchen area and the immediately surrounding accommodation. This did not impact on the pre-existing damp areas as identified during the original inspection nor those in the subsequent report prepared by Richardson and Starling, "Timber and Damp Specialists".



1. 04 May 2022



2. 19 December 2022



3. 04 May 2022



4. 19 December 2022



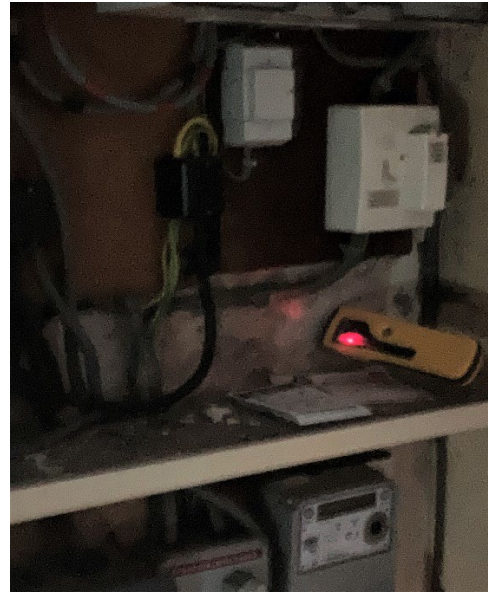
5. 04 May 2022



6. 19 December 2022



7. 04 May 2022



8. 19 December 2022



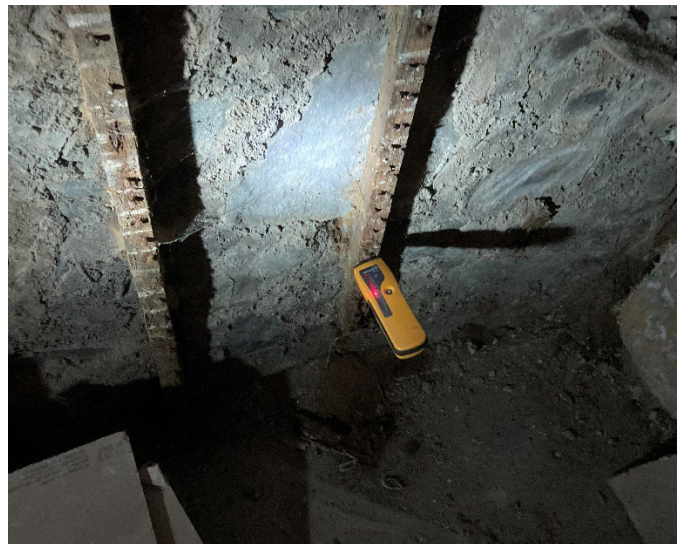
9. 19 December 2022

Photographs 1 – 8 highlight examples of the levels of damp within the property, affecting the ground floor living accommodation noted during the respective dates of inspection. The moisture content has increased significantly and penetrating damp is now directly affecting the electrical switch gear (Photographs 7 & 8). The electricity is currently off although the high levels of damp at the electrical fittings constitute a significant “health and safety” hazard.

Photograph 9 illustrates further evidence of the damp around the entrance and internal hall noted during the re-inspection.



10 04 May 2022

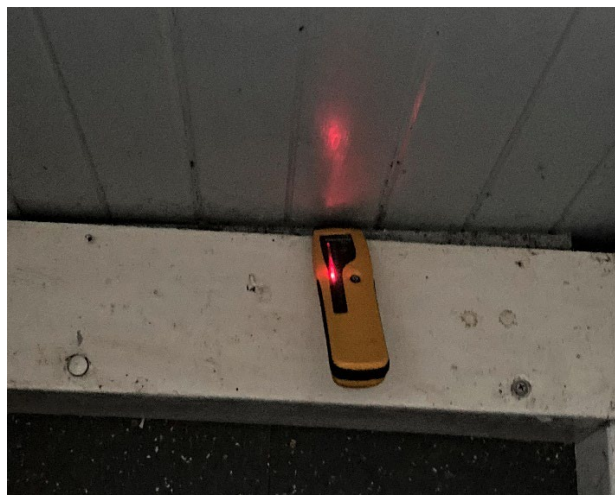


11. 19 December 2022

Photographs 10 & 11 illustrate comparable levels of damp affecting the under stair cupboard and rot in the timber “strapping” at each inspection.



12. 04 May 2022



13. 19 December 2022

Photographs 12 & 13 illustrate comparable levels of damp affecting the timber lining within the bathroom at each inspection.

Since the original inspection and issuing of the RSEO, the Tribunal have been provided with a copy of a report prepared by Richardson and Starling (Northern) Ltd. who are registered with the Property Care Association. It details the extent of the damp, the probable source/cause and estimated cost of remedial action. The estimated cost of the repairs specifically excludes those to the external fabric of the building and the removal/reinstatement of internal fixtures and fittings, electrical points or plumbing items.

As at the date of the re-inspection, none of the recommended items of repair within the Richardson and Starling report had been addressed.



14. 04 May 2022



15. 19 December 2022

At the original inspection the wood burning stove was in operation (Photograph 14) although was providing only limited heat through the radiators. No report has since been received by the Tribunal from a suitably qualified heating engineer, as stipulated in item 3 of the RSEO and the central heating system was not in operation during the re-inspection. (Photograph 15).



16. 04 May 2022



17. 19 December 2022

Since the original inspection an additional inter connected, ceiling mounted, smoke detector has been installed at the upper floor landing in accordance with item 2 of the RSEO. It was tested by the Tribunal and established to be fully functional.



18. 04 May 2022



19. 19 December 2022

Since the original inspection, a ceiling mounted carbon monoxide detector has been installed which complies with current Scottish Government statutory guidance for the provision of CO detectors in private rented housing.

Outstanding Repairs and items in RSEO:

Items 2 and 4 of the RSEO have been satisfactorily completed. A timber/damp report in accordance with item 1 of the RSEO has been provided to the Tribunal although none of the recommendations contained therein have been addressed.

No report has since been received by the Tribunal, from a suitably qualified heating engineer, as stipulated in item 3 of the RSEO and the boiler was not in operation during the re-inspection.

Significant redecoration will be necessary following the completion of item 1 and possibly item 3 of the RSEO.

Comments:

On arriving at the property, the Tribunal were approached by a person who identified herself as Judith Hutchison, the daughter of the landlord, the late James Blackwood Greenshields. She wished to provide the Tribunal with a document contained in an envelope.

The Legal Member informed her that, as far as the Tribunal was aware, she was not a party to the application. The Tribunal was in attendance at the property only to carry out a re-inspection and was unable to enter into discussions with her or accept any documentation from her. She was requested to forward any relevant documentation to the Tribunal by post or email in order that it may be "crossed over" to the other parties and considered by the Tribunal.

The Legal Member also informed Ms Hutchison that, as previously advised to Pollock and McLean solicitors, the tribunal was happy to allow any suitable representative of the late Mr Greenshields to attend the re-inspection. She indicated, however, that she did not wish to do so. The Legal Member also informed Ms Hutchison that the re-inspection report would be sent to Pollock and McLean in their capacity as the solicitors administering the late landlord's estate.

On entering the property, the tenants wished to provide the Tribunal with a copy of a letter which they had received from Pollock and McLean, solicitors, representing the late landlord. The Legal member requested that this should be sent to the Tribunal for consideration either by post or by email.

This report will be passed to the parties for comment before being considered by the First-tier Tribunal for Scotland (Housing Property Chamber) prior to issuing their decision.

Donald Wooley MRICS
Ordinary Member
First-Tier Tribunal for Scotland
19 December 2022