

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Chamber reference number: FTS/HPC/RT/19/2609

Title Number: - PTH32191

52C High Street Dunblane, FK15 0AY (“the property”)

The Parties:

Lisa Clare Thornton (“ the former Tenant”)

**Iain Wilkinson, 10 Baker Street, Stirling FK8 1BJ; Belvoir Stirling, 79 Barnton
Street, Stirling, FK8 1HJ (“the Landlord”)**

Whereas in terms of their decision dated 27 November 2019, 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 house is wind and watertight and in all other respects reasonably fit for human habitation, and
- (b) The house meets the tolerable standard.

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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: -

1. To instruct a suitably qualified roofing contractor to investigate the cause of water ingress and dampness within the property, and

2. To carry out all necessary and recommended remedial work to the roof and gutters to prevent any further water ingress and dampness.

The Tribunal order that the works specified in this Order must be carried out and completed within the period three months 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 Josephine Bonnar, Legal Member of the Tribunal, at Motherwell on 27 November 2019 in the presence of the undernoted witness:-

G Bonnar

J Bonnar

_____ witness

_____ 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: Housing (Scotland) Act 2006 Section 24(1)

Chamber reference number: FTS/HPC/RT/19/2609

52C High Street Dunblane, FK15 0AY (“the property”)

The Parties:

Lisa Clare Thornton (“ the former Tenant”)

**Iain Wilkinson, 10 Baker Street, Stirling FK8 1BJ; Belvoir Stirling, 79
Barnton Street, Stirling, FK8 1HJ (“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 has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised: -

Josephine Bonnar, Legal Member

Nick Allan, Ordinary Member

Background

1. By application received on 21 August 2019 the former Tenant 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 states that the former Tenant considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. Specifically, the application states that the Landlord has failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation and (ii) The house meets the tolerable standard. The former Tenant complains of damage to roof leading to water ingress and mould in the property.
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 parties on 25 September 2019. The parties were notified that an inspection would take place on 8 November 2019 at 10am and that a hearing would take place on 8 November 2019 at 11.30am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.
4. On 5 November 2019 the Landlord's agent lodged a report from Richardson and Starling dated 5 November 2019. No documents or representations were lodged by the former Tenant.
5. The Tribunal inspected the property on 8 November 2019 at 10am. Mr and Mrs Curran of Belvoir Sales and Lettings attended on behalf of the Landlord. On arrival Mr Curran advised the Tribunal that the former Tenant had vacated the property on 18 October 2019 which was now unoccupied. Access was provided by Mr Curran. Thereafter the Tribunal held a hearing at STEP Stirling, Enterprise Park, Stirling. Mr and Mrs Curran attended. There was no attendance by the former Tenant or on her behalf.

The Inspection

6. At the time of the inspection the weather was cold and dry. The Tribunal inspected the property, which is a two-bedroom split-level tenement flat above a shop in the centre of Dunblane. The property was unfurnished and appeared unoccupied. The Tribunal noted the smell of fresh paint in the property. The Tribunal noted the following;
(a) Living Room – mould and high damp meter readings on wall and ceiling on right hand side of the window in the living room
(b) Front

bedroom – serious damp meter readings round the window, (c) Rear bedroom - serious damp meter readings round the window and a completely saturated section of wall in the cupboard, (d) External – poorly fitted and sealed gutters on the front elevation, potential issues with roof slates and flashings around the dormer windows at both the rear and front of the property. A vent/overflow pipe on the roof to the rear of the property is currently pointing diagonally upwards and may be a source of rainwater ingress. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

7. At the hearing the Tribunal firstly considered the matter of the Tenant having vacated the property on 18 October 2019. Neither party had notified the Tribunal that this had occurred. Paragraph 7(1) of Schedule 2 of the Act states “A tenant may withdraw an application under Section 22(1) at any time (and the tenant is to be treated as having withdrawn it if the tenancy concerned is lawfully terminated)”. Paragraph 7(3) states “ Where an application is withdrawn after it has been referred to the First-tier Tribunal , the First-tier Tribunal may (a) abandon its consideration of the application, or (b) despite the withdrawal – (i) continue to determine the application , and (ii) if it does so by deciding that the landlord has failed to comply with the duty imposed by section 14(1) make and enforce a repairing standard enforcement order”. The Tribunal advised Mr and Mrs Curran that they had decided to proceed to consider the application in terms of Paragraph 7(3). Mr Curran advised the Tribunal that he does not have a forwarding address for the Tenant and also advised that the property is due to be marketed for sale, rather than being re-let.
8. The Tribunal proceeded to discuss the repairs issues contained in the application and noted at the inspection. Mr Curran advised that the former tenant had reported repairs issues in relation to the roof on 13 October 2018 on a repairs portal app. Roofing contractor Martin Smith was instructed to carry out an inspection and provided a quote on 17 October 2018. It was a communal repair and usually the Landlord would have waited for the approval of the other owners but decided to instruct it immediately. The work was completed in December 2018. It involved work to the roof on either side of the living room dormer window. The former tenant made further complaints at the end of December 2018, saying that there was still a leak. Martin Smith carried out further work in January 2019. A further complaint was made via the portal in January 2019, but this

was not received by the agents, as it had been a trial of the portal app which they were no longer using at the time of the complaint. The former tenant was notified that the portal was not in use but did not make a separate report of the problem. The next report was not made until July 2019 by phone call. Mr Curran visited the property and noted the mould on the wall in the living room. Thereafter the former tenant advised the agents that she was busy and could not provide access for further investigation of the problem. A Notice to Leave was served on her in August 2019. Access remained an issue until the Tenant handed in the keys and vacated the property on 18 October 2019.

9. The Tribunal proceeded to discuss the report submitted by the Landlord from Richardson and Starling. The Tribunal noted that the report did not clearly identify the areas of the flat which were inspected. Mr Curran confirmed that only the living room was inspected. The report states that several defects were noted including defective stone pointing, defective gutters and flashings, all in relation to the adjacent property. The report also states that the inspection identified dampness in the form of penetrating damp on the left hand wall due to defective external render and down pipes of the adjacent property. Mr Curran produced an invoice from D & S Slaters dated 31 October 2019 which confirmed that a new slate had been fitted and side flashings at the sides of the dormer unblocked. He confirmed that this has been the only work carried out to the roof since the application was lodged with the Tribunal.
10. The Tribunal noted that during their inspection high damp meter readings were also obtained in the bedrooms of the property, not inspected by Richardson and Starling, and that damage to the roof and gutters of the property was also noted during the inspection of the exterior. Mr Curran confirmed that he accepted that these findings required further investigation.

Findings in Fact

10. The property is a two bedroom tenement flat in the centre of Dunblane. It is currently unoccupied.
11. The former tenant vacated the property in October 2019
12. There is mould on the wall and ceiling in the living room of the property.
13. The living room and both bedrooms are affected by damp.

14. The roof slates, flashings and gutters of the property are defective in certain places, and there may be issues with regard to a vent pipe on the rear section of roof.

Reason for decision

21. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
22. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 3 of the 2006 Act “ The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it” The Tribunal is satisfied that the former Tenant made the Landlord aware of the repairs issues at the property.
23. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to mould and dampness within the property, probably caused by damage to the roof and gutters of the property, and possibly the adjacent property. The Tribunal notes that the Landlord recently commissioned a report from Richardson and Starling. No work following that report has been carried out. Some minor roof repair work was carried out at the end of October 2019, but this only involved the replacement of one slate and the unblocking of the flashings at the sides of the dormer window. The investigation by Richardson and Starling was restricted to a section of the living room and attributed the cause of the dampness to defects in the adjacent property. The Tribunal is not satisfied that the investigation and report address all the issues at the property. The Tribunal noted dampness during the inspection in the living room and both bedrooms. Defects to the roof and gutters were also noted, at locations where dampness had been identified internally.
24. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(a) and (h) of the Act.

Decision

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

26. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

27. 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 Bonnar

Signed...

..... 27 November 2019

Josephine Bonnar, Legal Member

Montreal 27 November 2019

This is the schedule of Photographs referred to in the
decision of the same date J Bonnar

**Housing and Property Chamber
First-tier Tribunal for Scotland**



**Photograph Schedule
Flat 52C High Street, Dunblane, FK15 0AY**

Case Reference: FTS/HPC/RP/19/2609

Date of inspection: 08/11/2019

Time of inspection: 10.00 am

Weather conditions: Clear and bright

Present: Mrs Josephine Bonnar – Legal Member
Mr Nick Allan – Ordinary Member
Mr Joseph Curran – Managing Agent
Mrs Diane Curran – Managing Agent



Photo 1 – Front elevation



Photo 2 Dampness around window F/Bed

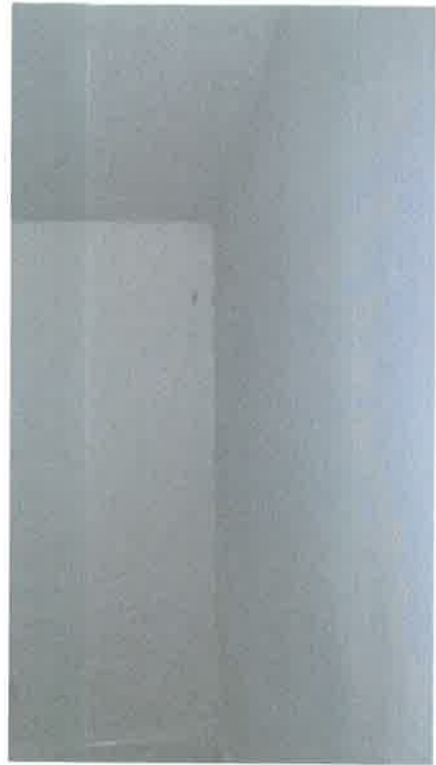


Photo 3 Damp/mould in Living Room



Photo 4 Dampness around window R/Bed



Photo 5 Saturated wall R/Bed cupboard



Photo 6 Gutter detail looking South



Photo 7 Gutter detail looking North



Photo 8 Roof detail on rear elevation



Photo 9 Flashing issue on rear dormer



Photo 10 Adjoining gable detail to the North



Photo 11 Vegetation on chimney cope

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal
Housing and Property Chamber - 14th November 2019