

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 26 and 27

Chamber Ref: FTS/HPC/RT/17/0076

**Property at 26 Thistle Drive, Portlethen, Aberdeen, AB12 4QH
("The Property")**

The Parties:-

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie, AB51 3WA
("the Third Party Applicant")**

**MS TERESA MENNIE, 26 Thistle Drive, Portlethen, Aberdeen, AB12 4QH
("the Tenant")**

**MR ABDUL HAMID and MISS TAHMIDA KALAM, 8 Ramsay Road, Stonehaven, AB39 2HJ
("the Landlords")**

Tribunal Members:

Gillian Buchanan (Legal Member)

Mark Andrew (Ordinary Member)

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 Landlords have complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property determined that (i) the Landlords have failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, (iii) a Rent Relief Order should be made under Section 27 of the said Act and (iv) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. By a determination dated 5 June 2017 the tribunal determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that they had

failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -

(a) Conservatory

- (i) To repair or replace the handle and lock on the external door from the conservatory to the rear garden to ensure that the door opens, closes and locks correctly and is in a reasonable state of repair and in proper working order.
- (ii) To repair or replace the handles of the two windows in the conservatory to ensure that the windows open, close and lock correctly and are in a reasonable state of repair and in proper working order.
- (iii) To replace the lower pane of glass that is cracked and to ensure that the replacement pane is wind and watertight, in a reasonable state of repair and in proper working order.

(b) Windows (excluding conservatory windows)

- (i) Under exception of the window on the upper landing, to repair or replace the handles of the windows of the Property to ensure that they open, close and lock correctly and are in a reasonable state of repair and in proper working order.
- (ii) Within the livingroom, to repair or replace the seals around the windows to ensure that the windows are wind and watertight and in a reasonable state of repair and proper working order.
- (iii) On the upper landing to provide a key to allow the window to be unlocked and opened, and thereafter if required to repair or replace the window handle to ensure that it opens, closes and locks correctly and is in a reasonable state of repair and in proper working order.

(c) External Doors

- (i) To repair or replace the damaged sill to the front exterior door of the Property to ensure that the door is wind and watertight and in a reasonable state of repair and in proper working order.
- (ii) To repair or replace the damaged sill to the rear exterior door of the Property leading from the kitchen to the garden to ensure that the door is wind and watertight, in a reasonable state of repair and in proper working order.

- (iii) To repair or replace the handle of the rear exterior door of the Property leading from the kitchen to the garden to ensure that the door opens, closes and locks correctly and is in a reasonable state of repair and in proper working order.
- (iv) To repair or replace the UPVC frame including the rear exterior door from the kitchen to the garden, adjacent window and panel beneath the window to ensure that the combined structure is in a reasonable state of repair and in proper working order.

(d) Banister

To repair or replace the spindles of the banister on the upper landing to ensure that they are in a reasonable state of repair and at a maximum distance apart of 100mm.

(e) Electrics

- (i) To repair or replace the loose sockets within the kitchen namely to the left of the fridge freezer and to the left of the external door to the rear garden to ensure that they are in a reasonable state of repair and in proper working order.
- (ii) To repair or replace the loose socket in the main bedroom (situated upstairs to the right of the bathroom) to the right of the window to ensure that it is in a reasonable state of repair and in proper working order.
- (iii) In the kitchen to repair or replace the switch to the right of the door from the hall to ensure that it is in a reasonable state of repair and in proper working order.
- (iv) In the livingroom to the right of the window to repair or replace the socket to ensure that it is in a reasonable state of repair and in proper working order.
- (v) In the upper hallway to repair or replace the switch operating the bathroom light to ensure that it is in a reasonable state of repair and in proper working order.
- (vi) To repair or replace the spotlights in the lower hall to ensure that they are in a reasonable state of repair and in proper working order.
- (vii) To install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation.

(f) Central Heating System

To engage a reputable specialist to investigate the cause of the central heating system failing to operate correctly and to carry out any works recommended by that specialist to ensure that the central heating system is in a reasonable state of repair and in proper working order and safe to use, and without prejudice to the foregoing generality, the tribunal requires the Landlords to have the specialist prepare a report on any faults affecting the central heating system and to exhibit this report to the tribunal.

(g) Carbon Monoxide Detection

To install a carbon monoxide detector to comply with the requirements of the relevant legislation.

(h) Additional Reports

- (i) To produce a clear Electrical Installation Condition Report from a suitably qualified electrician confirming that the electrical installations within the property are in proper working order and comply with the relevant regulations with no items marked as Category 1 or Category 2. The Landlords are to exhibit such clear Electrical Installation Condition Report to the tribunal.
- (ii) To produce a current Gas Safety Certificate confirming that the central heating system in is in proper working order, safe to use and complies with the relevant regulations. The Landlords are to exhibit such Gas Safety Certificate to the tribunal.

The RSEO required that the works be completed within 12 weeks.

2. On 4 October 2017 the Ordinary (Surveyor) Member of the Committee, Mr Mark Andrew, re-inspected the Property on behalf of the tribunal. The Tenant was present and gave access to the Property. The Landlord was neither present nor represented.

It was readily apparent to the Ordinary (Surveyor) Member that no works had been carried out since the original inspection and issuing of the RSEO.

The Ordinary (Surveyor) Member's Re-inspection Report dated 4 October 2017 is attached hereto.

3. The tribunal then considered what steps to take. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
4. The tribunal, after discussion, accepted that it was clear that the Landlords had failed to fully comply with the RSEO. In particular the outstanding works are significant and

involve serious risks to the Tenant's safety. Accordingly the tribunal was obliged to service notice of the failure on the local authority and resolved to do so.

5. The tribunal then decided whether or not to make an RRO. The tribunal had no explanation from the Landlords as to why the outstanding works required in terms of the RSEO had not been undertaken. The tribunal determined that the outstanding works are significant and involve the Tenant's safety. The Property is insecure. There are numerous concerns with regard to the electrics. There is no heat detector in the kitchen. There is no hardwired smoke detector in the lower hall or living room. No EICR has been produced. There is no carbon monoxide detector fitted. The Landlords have failed to comply with a previous RSEO issued in respect of the Property and registered on 14 July 2010. The Landlords have continued to collect rent in respect of the Property.

The tribunal was of the view that a 90% RRO was appropriate. The Tenant continues to endure serious health and safety risks. The Landlords have not shown any indication of addressing the outstanding works despite having had considerable opportunity to do so. Accordingly the tribunal was satisfied that a 90% RRO was the appropriate measure to take.

6. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlords have offered no excuse as to their failure to complete the outstanding works nor any indication that they would complete the outstanding works. The Landlords have continued to collect rent but have failed to maintain the Property to the appropriate standard. The outstanding works are significant and put the Tenant at risk. Accordingly, in the circumstances, the tribunal was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

7. The tribunal determined that in terms of the Act the Landlords have failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution. The tribunal was also satisfied that it was appropriate to grant an RRO at 90% in terms of the Act.
8. The decision of the tribunal was unanimous.

Right of Appeal

9. **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

10. 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.

G Buchanan

Signed.

Date 7 November 2017

Legal Member & Chairperson

*This is the Re-inspection Report referred to in
the foregoing decision dated 7 November
2017.*

G Buchanan



7 November 2017.

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

Re-inspection report

Date of inspection: 4th October 2017

Reference Number: FTS/HPC/RT/17/0076

Property: 26 Thistle Drive, Portlethen, Aberdeen, AB12 4QH

Surveyor: M H T Andrew FRICS

Access: by tenant – Ms Teresa Mennie

In attendance: Tenant

Repairing Standard Enforcement Order 5th June 2017

Works required by the RSEO:

(a) Conservatory

- (i) To repair or replace the handle and lock on the external door and to ensure that the door opens, closes and locks correctly.
- (ii) To repair or replace the handles of the two windows to ensure that the windows open, close and lock correctly.
- (iii) To replace the lower pane of glass that is cracked and to ensure that the replacement pane is wind and watertight.

(b) Windows (excluding conservatory)

- (i) Under exception of the window on the upper landing to repair or replace the handles of the windows to ensure that they open, close and lock correctly
- (ii) Within the living room to repair or replace the seals around the window to ensure that the windows are wind and watertight.
- (iii) On the upper landing to provide a key to allow the window to be unlocked and opened and thereafter if required to repair or replace the window handle to ensure that it opens, closes and locks correctly.

(c) External Doors

- (i) To repair or replace the damaged sill to the front door to ensure that the door is wind and watertight.
- (ii) To repair or replace the damaged sill to the rear door leading from the kitchen to the garden to ensure that the door is wind and watertight.

- (iii) To repair or replace the handle to the rear door to ensure that the door opens, closes and locks correctly
- (iv) To repair or replace the UPVC frame including the rear exterior door, adjacent window and panel beneath the window to ensure that the combined structure is in a reasonable state of repair and in proper working order.

(d) Banister

- (i) To repair or replace the spindles of the banister on the upper landing to ensure they are in a reasonable state of repair and at a maximum distance apart of 100mm.

(e) Electrics

- (i) To repair or replace the loose sockets within the kitchen namely to the left of the fridge freezer and to the left of the external door to the rear garden.
- (ii) To repair or replace the loose socket in the main bedroom (situated upstairs to the right of the bathroom) to the right of the window.
- (iii) In the kitchen to repair or replace the switch to the right of the door from the hall.
- (iv) In the living room to the right of the window to repair or replace the socket.
- (v) In the upper hallway to repair or replace the switch operating the bathroom light.
- (vi) To repair or replace the spotlights in the lower hall.
- (vii) To install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation.

(f) Central Heating System

- (i) to engage a reputable specialist to investigate the cause of the central heating system failing to operate correctly and to carry out any work recommended by that specialist to ensure that the central heating system is in a reasonable state of repair and safe to use. The tribunal requires the landlords to have the specialist prepare a report on any faults affecting the central heating system and to exhibit this to the tribunal.

(g) Carbon Monoxide Detection

- (i) To install a carbon monoxide detector to comply with the requirements of the relevant legislation.

(h) Additional Reports

- (i) To produce a clear Electrical Installation Condition Report (EICR) from a suitably qualified electrician confirming that the electrical installations within the property are in proper working order and comply with the relevant regulations with no items marked as Category 1 or Category 2. The landlords are to exhibit such clear EICR to the tribunal.

- (ii) To produce a current Gas Safety Certificate confirming that the central heating system is in proper working order, safe to use and complies with the relevant regulations. The landlords are to exhibit such Gas Safety Certificate to the tribunal.

Works in the RSEO undertaken:

None

Outstanding works: - ALL

(a) Conservatory

- (i) The handle and lock to the door have not been repaired or replaced
- (ii) The window handles have not been repaired or replaced
- (iii) The cracked pane has not been replaced

(b) Windows

- (i) The handles have not been repaired or replaced
- (ii) The seals have not been repaired or replaced
- (iii) The key has not been provided. The window remains locked

(c) External Doors

- (i) The sill has not been repaired or replaced
- (ii) The sill has not been repaired or replaced
- (iii) The handle has not been repaired or replaced
- (iv) The UPVC frame has not been repaired or replaced

(c) Banister

- (i) The spindles have not been repaired.

(e) Electrics

- (i) The loose sockets in the kitchen have not been repaired or replaced.
- (ii) The loose socket in the main bedroom has not been repaired or replaced.
- (iii) The switch in the kitchen has not been repaired or replaced
- (iv) The socket in the living room has not been repaired or replaced.
- (v) The switch operating the bathroom light on the upper hallway has not been repaired or replaced.
- (vi) The spotlights in the lower hall have not been repaired or replaced.
- (vii) There is one working smoke alarm on the 1st floor hallway ceiling but this fails to comply with the requirements of the relevant fire legislation.

(f) Central Heating System.

- (i) No specialist has investigated the cause of the central heating system failing to operate correctly and no work has been carried out to the system. No report has been exhibited to the tribunal.

(g) Carbon Monoxide Detection

- (i) No CO detector has been installed

(h) Additional Reports

- (i) No EICR has been carried out and no report has been exhibited to the tribunal.
- (ii) No Gas Safety Certificate inspection has been carried out and no Gas Safety Certificate has been exhibited to the tribunal.

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

M H T Andrew FRICS

Date of report:

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Conservatory Door latch and lock



Window which fails to shut properly

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Cracked window pane



Sitting room window showing missing seals

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Landing window that will not open



Bedroom window that fails to close properly

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Bedroom window that fails to close properly



Bedroom window that will not close properly

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Bathroom window with broken catch



Front door showing damaged sill

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Rear door showing damaged sill



Rear door handle and lock

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



UPVC frame and inserted panel that requires repair / replacement



Upper hallway showing spindles

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Loose socket to left of fridge/freezer



Loose switch in kitchen

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Loose socket in bedroom



Loose socket in living room

Schedule of photographs of 26 Thistle Drive, Portlethen, AB12 4QH taken on 4th October 2017



Loose spotlights in hall



Central heating boiler pipework

Housing and Property Chamber

First-tier Tribunal for Scotland



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

RENT RELIEF ORDER: Housing (Scotland) Act 2006, Section 27

Chamber Ref: FTS/HPC/RT/17/0076

Land Register Title No: KNC1519

**Property at 26 Thistle Drive, Portlethen, Aberdeen, AB12 4QH
("The Property")**

The Parties:-

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie, AB51 3WA
("the Third Party Applicant")**

**MS TERESA MENNIE, 26 Thistle Drive, Portlethen, Aberdeen, AB12 4QH
("the Tenant")**

**MR ABDUL HAMID and MISS TAHMIDA KALAM, 8 Ramsay Road, Stonehaven, AB39 2HJ
("the Landlords")**

NOTICE TO MR ABDUL HAMID and MISS TAHMIDA KALAM ("the Landlords")

Whereas in terms of its decision dated 7 November 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlords have failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the tribunal.

The tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 90% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

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.

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the tribunal is granted, then the effect of the decision and the Rent Relief Order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

Signed **G Buchanan**.....

Date 7 November 2017

Legal Member & Chairperson