

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(1)

Chamber Ref: FTS/HPC/RP/16/1022

**Top Flat, Portdrishaig House, Tighnabruaich, PA21 2EB
("The Property")**

The Parties:-

**Mr. Edward Pybus, formerly residing at the property
("the Tenant")**

**Mr. Alan Davidson and Ms. Fiona Davidson, Mortgages and Financial Services
for All, 73 High Street, Lochee, Dundee, DD2 3AT (represented by Margaret
Cowley of Rosemount Property, www.rosemountproperty.co.uk)
("the Landlords")**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal')
comprised:-

Patricia Anne Pryce	-	Chair and Legal Member
Mike Links	-	Ordinary Member (Surveyor)

Background

1. On 1 April 2017, the tribunal issued a determination which stated that the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). On the same date, the tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property. The RSEO made by the tribunal required the Landlords:-
 - (a) To repair or replace the roof, including the roof located above the common stairwell of the property, and to repair any source of water ingress and dampness within the property whether emanating from the gable end wall or otherwise, to ensure that the property is wind and watertight and reasonably fit for human habitation.
 - (b) To repair or replace the windows in the property to ensure that the property is wind and watertight and reasonably fit for human habitation.

- (c) To repair or replace the electrical socket located in the kitchen to ensure that that is in a reasonable state of repair and in proper working order.
- (d) To produce an Electrical Installation Condition Report by a suitably qualified and registered electrician, which report is to be completed after the repair of the electrical socket in (c) above is carried out.

The tribunal ordered that the works specified in the RSEO were to be carried out and completed within 12 weeks from the date of service of the RSEO, that is, by 4 July 2017.

- 2. The Landlords requested a variation of the RSEO and that by allowing further time for the Landlords to complete the works in terms of the RSEO. The tribunal granted this request and issued a variation of the RSEO allowing the Landlords until 31 August 2017 to complete the works required by the RSEO.
- 3. A further inspection of the property was undertaken by the Ordinary Member (Surveyor) of the tribunal on 14 September 2017. A copy of her inspection report dated 15 September 2017 is attached. The Landlords did not attend at the inspection nor did they provide access to the property for the purposes of the reinspection. The Ordinary Member did manage to access the communal stairwell and found that the wall there was still wet to the touch. The reinspection report was referred to the tribunal for a decision. The Landlords provided written representations to the tribunal together with copy invoices from various workmen. The tribunal decided to arrange a further inspection of the property together with a further hearing to allow the Landlords to provide access to the tribunal to inspect the property and to allow the Landlords an opportunity to give their views to the tribunal. A further inspection was arranged for 11 am on 11 December 2017 together with a hearing in Portavadie at 12.30 pm. The Landlords were notified of this.
- 4. The tribunal attended at the property on 11 December 2017 at 11 am. In attendance at the property was a Mr David Lunn who provided the tribunal access to the property for the purposes of inspection. Mr Lunn advised that he had been asked to do this by the Landlords but that he was not there to represent the Landlords in any way but that he and his wife were in the process of moving into the property. He advised that he would not be attending the hearing.
- 5. The tribunal noted the following at inspection:-
 - a. The gable end wall in the living room was dry and there was no dampness present.
 - b. The window in the living room could not be properly closed and was not functioning properly.
 - c. The wall in bedroom 3/dining room which adjoins the toilet/shower room was dry and there was no dampness present.
 - d. The seal in the velux window located in the small bedroom (bedroom 2) was blown.

- e. The left hand window in the bathroom/main shower room remained sealed shut with silicone and there was still no handle on this window. The middle upper window could not open.
- f. The window in bedroom 1 opened and closed properly.
- g. The window in the kitchen dropped when opened and could not be re-closed.
- h. The electrical socket in the kitchen had been tightened and secured to the wall.
- i. The Landlords had failed to provide an Electrical Installation Condition Report from a duly registered electrician, having only provided a PIR by a non-registered electrician.
- j. The wall in the common stairwell was damp and there were positive damp meter readings when tested.

Hearing

- 6. The tribunal attended at the hearing. The Landlords did not attend nor were they represented at the hearing. The tribunal considered the requirements of the RSEO and its findings at the inspection as noted above.

Decision

- 7. The tribunal takes the view that the Landlords have had ample time to carry out the works. The tribunal noted that in terms of the application itself, the former Tenant had first complained to the Landlords in November 2016, over a year ago. The tribunal also considered that it had granted an extension of time to the Landlords to carry out the works required by the RSEO. The tribunal had requested an EICR by a registered electrician but the Landlords failed to produce this to the tribunal.
- 8. Accordingly, the tribunal takes the view that the Landlords' failure to implement the RSEO amounted to a breach of the RSEO. In accordance with the relevant provisions of Section 26 of the 2006 Act, the tribunal required to determine whether a Rent Relief Order should be made. As the Tenant had vacated the property, the tribunal could not consider this.
- 9. The tribunal took the view that the remaining works required by the RSEO had been outstanding for over a year. The tribunal took the view that these works could have easily been completed in that period of time.
- 10. The tribunal, having made such enquiries as is fit for the purposes of determining whether the Landlords have complied with the RSEO in relation to the property, determined that the Landlords have failed to comply with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the property is situated.
- 11. The decision of the tribunal is unanimous.

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.

P Pryce

Signed

Date 12 December 2017

Patricia Anne Pryce, Chair and Legal Member

Housing and Property Chamber

First-tier Tribunal for Scotland



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

PHOTOGRAPH SCHEDULE

Property: Top Flat, Portdrishaig House, Tighnabruaich PA21 2EB

HPC Ref: FTS/HPC/RP/16/1022

Date: 11th December 2017



Front elevation



Rear elevation



LR gable wall—dry.



LR window—ill fitting.



Bedroom2---velux seal broken. Bathroom – Handle missing.



Bathroom –silicone sealed shut. Upper hopper –not opening.



Bedroom 1—window ok.



Kitchen---window ill fitting.



Kitchen – rubber strip loose. Kitchen—power socket secured.



Common Landing – stonework damp.



Common Landing – stonework damp.



Re-inspection report



Date of inspection: Thursday 14 September 2017

Reference Number: FTS/HPC/RP/16/1022

Property: Top Flat, Portdrishaig House, Tighnabruaich PA 21 2EB

Surveyor: Carol L Jones MA MRICS

Previous Inspection: The subject property was inspected by the First-tier Tribunal for Scotland on 30 March 2017 and as a result a Repairing Standard Enforcement Order dated 1 April 2017 was served.

Access: There was no-one at the property to provide full internal access. It was therefore only possible to carry out a limited external inspection and internal inspection of the communal staircase.

Weather: Sunny and dry.

In attendance: Neither the landlords nor their agents attended the re-inspection. The tenant has vacated the property.

Repairing Standard Enforcement Order (RSEO)

The following works are required by the RSEO dated 1 April 2017.

The tribunal now requires the landlords to carry out such work as is necessary for the purposes of ensuring that the house concerned 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 landlords:-

- (a) To repair or replace the roof, including the roof located above the common stairwell of the property, and to repair any source of water ingress and dampness within the property whether emanating from the gable end wall or otherwise, to ensure that the property is wind and watertight and reasonably fit for human habitation.
- (b) To repair or replace the windows in the property to ensure that the property is wind and watertight and reasonably fit for human habitation.
- (c) To repair or replace the electrical socket located in the kitchen to ensure that it is in a reasonable state of repair and in proper working order.
- (d) To produce an Electrical Installation Condition Report by a suitably qualified and registered electrician, which report is to be completed after the repair of the electrical socket in (c) above is carried out.

The tribunal ordered that the works specified in this Order must be carried out and completed within the period of 12 weeks from the date of service of this Notice. This order was subsequently varied following a request from the landlord to allow extra time to complete the works with an extended deadline of 31 August 2017.

Works in the RSEO partly undertaken or outstanding

(a) The landlords have produced an estimate from T. Boyle, "General Building" dated 8 January 2017 for works done to the roof earlier this year. These works included replacing damaged slates, cleaning around the Velux window/valley gutters and re-constructing a valley gutter between the dormers. They also produced an email from this builder detailing an inspection on 16 August 2017, this states that in Mr Boyle's opinion the damp patches in the back bedroom and stairwell were from old leaks in the roof which were repaired and a leaking overflow pipe which he says was also fixed. Mr Boyle states he has cut out and removed old plaster and renewed but I was unable to inspect the interior of the flat to ascertain whether any of the works mentioned have eradicated the damp problems in the back bedroom, living room or the ceiling in the internal staircase and I cannot confirm whether all damage has been made good. It was possible to inspect the communal staircase and there is still a large damp patch on the rear wall and the stonework is wet to the touch.

(b) The landlords have produced an invoice from "Window Man" dated 2 August 2017. This details a second visit "to ensure original repairs are still holding out, minor adjustment required. All good now". I was unable to inspect the interior of the flat and therefore cannot confirm whether the windows now meet the repairing standard.

(c) I was unable to ascertain whether any works to secure the electrical socket in the kitchen have been undertaken and no evidence has been provided by the landlord.

(d) The landlords have not produced an Electrical Installation Condition Report by a suitably qualified and registered electrician completed after the repair of the electrical socket in (c) above is carried out. They have produced a limited and incomplete report dated 15 February 2017 by an electrician, Robert Fletcher, this report notes the loose socket in the kitchen and recommends that it is "re-fixed".

All photographs were taken at the re-inspection on 14 September 2017 (see schedule below).

Comments: This report will be submitted to the First-tier tribunal for Scotland (Housing and Property Chamber) for their decision.

**Carol L Jones MA MRICS
Ordinary Member (Surveyor)
First-tier Tribunal for Scotland (Housing and Property Chamber)**

15 September 2017

Schedule of photographs taken during the re- inspection of Top Flat, Portdrishaig House, Tighnabruaich PA 21 2EB by the ordinary member (surveyor) of the First-tier tribunal for Scotland (Housing and Property Chamber) on the 14 September 2017.

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Front elevation showing roof and dormer window



Communal Hall - large damp stain to rear stone wall.