

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

---



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 26 of the Housing (Scotland) Act 2006.**

**First-tier Tribunal for Scotland (Housing and Property Chamber)**  
**Chamber reference: FTS/HPC/RP/17/0172**

### **The Parties:**

Ms. Joy Fielding residing at Flat 4, 2, Craigmores Road, Rothesay, Isle of Bute, PA20 9LB ("the Tenant")

Mrs. Alison Johnston on behalf of Bute Advice Centre, 22/26, Bishop Street, Rothesay, Isle of Bute PA20 9DG ("the Tenant's Representative") and

Mr. Craig Alexander Wilkie residing sometime at Aldersyde, Craigmores Road, Rothesay, Isle of Bute PA20 9LB and now at Flat 0/1, Firlea, Kilchattan Bay Rothesay, Isle of Bute PA20 9NG ("the Landlord")

Re: Property at Flat 4, 2, Craigmores Road, Rothesay, Isle of Bute PA20 9LB being the southmost house on the attic or second floor above the ground floor of the property known as Aldersyde, Craigmores Road, Rothesay being the subjects more particularly described in and disposed by Disposition by Alexander McCorquodale and Rachel Graham McCorquodale in favour of Craig Alexander Wilkie recorded in the Division of the General Register of Sasines applicable to the County of Bute on 4<sup>th</sup> May 1994 ("the Property")

### **Tribunal Members**

Karen Moore (Chairperson)

Donald Wooley (Ordinary Member)

### **Decision**

The Tribunal determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order dated 19 July 2017 in relation to the Property.

This decision should be read in conjunction with:

Statement of Decision and Repairing Standard Enforcement Order dated 19 July 2017 in relation to the Property.

### **Factual Background**

1. By application received on 3 May 2017 ("the Application"), the Tenant's Representative applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) ("the Tribunal") for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (c), 13(1) (d) and 13(1) (e) of the Act.
2. On 19 July 2017, the Tribunal issued a determination that the Landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") and on the same date issued a Repairing Standard Enforcement Order (RSEO) as follows:-

*The Landlord must on or before 14 September 2017:-*

- 1. Repair defective seals in the kitchen window top hungoppers and refurbish or replace all timber windows in the property to ensure that they are wind and watertight, capable of opening where applicable, secure and in proper working order and that all necessary ancillary works including, pointing, making good and decoration are satisfactorily completed;*
- 2. Instruct and have carried out a detailed survey of the property by a suitably qualified and RICS registered Chartered Surveyor to identify the cause of the dampness and damp staining therein and, thereafter, carry out such works as are recommended by the surveyor to remedy the dampness and any associated defects arising therefrom;*
- 3. Remove all polystyrene ceiling tiles from the Property and make good the decoration;*
- 4. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICR to the tribunal;*
- 5. Renew the bathroom wash hand basin;*
- 6. Repair or replace the shower rail to ensure that it is properly and adequately fitted and*

7. *Make good any décor damaged as a result of these works.*"

### **Further Information and Re-Inspection**

3. By letter dated 15 August 2017, the Tenant advised the Tribunal that she had vacated the Property and terminated her tenancy. The Tribunal having regard to having regard to the terms of the RSEO and the serious nature of the works required, took the view that in the interest of health and safety it was appropriate to continue determination of the Application in terms of Regulation 7(3)(b) of Schedule 2 to the Act.
4. The Ordinary Member of the Tribunal attended at the Property to re-inspect it on 3 October 2017 but was unable to gain access. As far as the Ordinary Member could assess from an inspection of the external parts of the Property and the works required to those parts, he found that these works had not been carried out. Further, no EICR had been provided to the Tribunal. The Ordinary Member's Re-inspection Report is annexed as relative hereto and is referred to for its terms in respect of the re-inspection findings.
5. The Re-inspection Report was issued to the parties and no comments or representations were received.

### **Decision of the Tribunal and Reasons for the Decision of the Tribunal**

6. Having been satisfied that works required the RSEO had not been carried out, the Tribunal had regard to its powers in terms of the Act, and, in particular, to Section 26 (1) and (2) of the Act which states: *"It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal and (2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must (a) serve notice of the failure on the local authority, and (b) decide whether to make a rent relief order"*
7. Having decided that works required by the RSEO had not been carried out and as there had been no indication from the Landlord that he proposed to carry out any of the works, the Tribunal had no difficulty in deciding that it should make a finding of failure to comply.
8. The Tribunal then turned its mind to the question of a Rent Relief Order. As there is no current tenant, the Tribunal is unable to make a Rent Relief Order.

9. The decision of the Tribunal is unanimous.

### **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

## **K Moore**

Karen Moore

Chairperson

24 November 2017

24 Nov 2017  
This is the Re-inspection Report  
referred to in the foregoing decision  
of even date

**K Moore**

*Champerlain*

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



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



**Property** Flat 4, 2 Craigmare Road, Rothesay, Isle of Bute PA20 9LB

**Ref No:** FTS/HPC/RP/17/0172

**Surveyor:** Donald Wooley MRICS

**Previous inspection**

The subject property was previously inspected on 5<sup>th</sup> July 2017 by the First-tier Tribunal for Scotland (Housing Property Chamber) and as a result a Repairing Standard Enforcement Order was served on 19<sup>th</sup> July 2017.

**Access:**

A re-inspection of the subject property was arranged for Tuesday 3<sup>rd</sup> October 2017 at 11.00 am. I arrived at the property shortly before the appointed time and confirmed my arrival with the administration section at 1 Atlantic Quay Glasgow by telephone.

The property was found to be unoccupied and there were no other parties in attendance. My observations are therefore based on an external inspection of the



property from ground level and internal observations of the building were restricted to the shared entry stairwell accessed from the rear garden.

Weather conditions at the time of the inspection were dull, overcast and showery.

I left the property at 10.30 am and confirmed my departure with 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:**

**The following works were required to be completed by the landlord in accordance with the Repairing Standard Enforcement Order:**

The Landlord must on or before 14 September 2017:-

1. Repair defective seals in the kitchen window top hung hoppers and refurbish or replace all timber windows in the property to ensure that they are wind and watertight, capable of opening where applicable, secure and in proper working order and that all necessary ancillary works including, pointing, making good and decoration are satisfactorily completed;
2. Instruct and have carried out a detailed survey of the property by a suitably qualified and RICS registered Chartered Surveyor to identify the cause of the dampness and damp staining therein and, thereafter, carry out such works as are recommended by the surveyor to remedy the dampness and any associated defects arising therefrom;
3. Remove all polystyrene ceiling tiles from the Property and make good the decoration;
4. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICR to the tribunal;
5. Renew the bathroom wash hand basin;
6. Repair or replace the shower rail to ensure that it is properly and adequately fitted and
7. Make good any décor damaged as a result of these works.

**Site Observations:**

- (1) From an external inspection at ground level, it was unclear if the misting/defective seals at the kitchen windows had been repaired.



**5 July 2017 (Internal)**



**3 September 2017 (External)**

The bay window on the front elevation remains badly decayed, in poor condition and is in need of substantial repair and or renewal. I was unable to determine if the repairs to the framework and working mechanism of the front bedroom window had been completed



**5 July 2017**



**3 September 2017**



**3 September 2017**

No internal inspection of the gable window was possible although as viewed externally it remains in a poor condition and in need of substantial repair.



**5 July 2017 (Internal)**



**13 September 2017 (External)**

- (2) There is no evidence of any recent remedial action or any form of recent repair having been completed to either the gable wall or the chimney head in relation to penetrating damp identified in the Statement of Decision dated 19 July 2017. As no internal access was gained I was unable to confirm if the penetrating damp identified in the kitchen and living-room areas has been eradicated in terms of the Repairing Standard Enforcement Order.



**13 September 2017**

- (3) As no internal access was obtained, I am unable to confirm if the polystyrene ceiling tiles have been removed.
- (4) No EICR report was available for inspection and I am unable to confirm if a SELECT or NICEIC registered electrician has inspected the installation and apparatus throughout the property.
- (5) I am unable to confirm if the bathroom wash hand basin has been renewed.



(6) I am unable to confirm if the shower rail has been repaired or replaced.

**Outstanding Repairs:**

I am unable to confirm that any of the repairs as detailed in the Repairing Standard Enforcement Order dated 19 July 2017 have been completed.

**Other Issues:**

At the date of the original inspection it was noted that the flat was being advertised for sale through McEwan Fraser Solicitors and Estate Agents. It currently remains for sale advertised through their website at an asking price of offers in excess of £63,750.

The Tribunal was informed by letter received on 15 August 2017 that the previous tenant, Joy Fielding, had vacated the property. The flat was vacant at the date of inspection although I am unable to confirm that it is permanently unoccupied. The partially open top hung hopper at the kitchen window (see photograph) would suggest that it may not be permanently vacant.

**Comments:**

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

Donald Wooley MRICS  
Ordinary Member  
First-Tier Tribunal for Scotland  
03 October 2017