

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**Chamber Ref: FTS/HPC/RP/18/0656**

**Title No: MID40277**

**10/6 Sandport Way, Leith, Edinburgh EH6 6EA  
("The Property")**

**The Parties:-**

**Mr Magnus Davidson, 10/6 Sandport Way, Leith, Edinburgh EH6 6EA  
("the Tenant")**

**Ms Julia Stephenson, Heatherlea Cottage, Rowlet Bank, Castleside, Consett,  
County Durham DH8 9QT  
(represented by their agent D J Alexander, 1 Wemyss Place, Edinburgh EH3  
6DH  
("the Landlord")**

Whereas in terms of their decision dated 31 October 2018 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 the property is:-

(a) wind and watertight and in all other respects reasonably fit for human habitation

the Tribunal now requires the Landlord 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 Landlord:-

(a) To take down the ceiling in the lounge in the property and remove and replace the existing drain and make good and redecorate as necessary.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 50 days from the date of service of this Notice.

**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.**

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 page(s) are executed by Graham Harding, solicitor, 20 York Street Glasgow, chairperson of the tribunal at Perth on 31 October 2018 before this witness:-

R Crollan

G Harding

\_\_\_\_\_ witness

chairperson

S Tanner

RUTH CATRIONA CROLLAN name in full

10 BAROSSA PLACE Address

PERTH

PHI SIX

# 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 Ref: FTS/HPC/RP/18/0656**

**10/6 Sandport Way, Leith, Edinburgh EH6 6EA  
("The Property")**

**The Parties:-**

**Mr Magnus Davidson, 10/6 Sandport Way, Leith, Edinburgh EH6 6EA  
("the Tenant")**

**Ms Julia Stephenson, Heatherlea Cottage, Rowlet Bank, Castleside,  
Consett, County Durham DH8 9QT  
(represented by their agent D J Alexander, 1 Wemyss Place, Edinburgh  
EH3 6DH  
("the Landlord"))**

**Tribunal Members**

**Graham Harding (Legal Member)  
Robert Buchan (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 Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application received by the Tribunal on 20 March 2018 the Tenant applied to the 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation. Specifically the Tenant complained that there was leakage from the ceiling during and after rain.

3. A Convenor with delegated powers under Section 23A of the Housing (Scotland) Act 2006 determined on 28<sup>th</sup> March 2018 that the Application should be referred to a Tribunal and an inspection and hearing was fixed to take place on 1<sup>st</sup> June 2018.
4. Both the Tenant and the Landlord's representatives made written representations to the Tribunal.
5. The Tribunal inspected the property on the morning of 1 June 2018. Neither the Landlord nor the Tenant were present. Access was provided by the Landlords agents D J Alexander. In the absence of the parties the hearing could not proceed and was adjourned and a Notice of Adjournment dated 3 June 2018 was issued to the parties and a new date for a further inspection and hearing was fixed to take place on 16 October 2018
6. The Tribunal inspected the Property on the morning of 16 October 2018. The Tenant and the Landlord were present during the inspection. Also present were representatives from the Landlord's agents DJ Alexander, the Landlord's partner and Mr Roger Woods of Create Builders, Edinburgh. The Ordinary member of the Tribunal took photographs of the property that are attached as a schedule to this decision.
7. Following the inspection of the Property the Tribunal held a hearing at George House, 126 George Street Edinburgh and heard from both the Tenant and the Landlord. The Landlord's representatives from D J Alexander who were in attendance were Mr Gordon Walker and Ms Claire MacRae. The Tenant represented himself.
8. The Tenant explained to the Tribunal that although he frequently worked abroad his partner lived in the property most of the time. During periods of rain when there was anything other than a light shower there was a leak from the ceiling in the lounge. It was a slow leak with a drop of water every 10 seconds or so. The Tenant went on to say that in 2014 the ceiling had been opened up and a repair had been carried out and there had been no further water ingress until June 2017 when the problem recurred. He had complained to the Landlord's agents and following delays in anything being done had complained to the Tribunal.

9. The Landlord explained that she now thought that a solution had been found to the problem. She had arranged to obtain a set of plans to the property and had then obtained the Tenant's permission to take down another part of the ceiling in the lounge. Mr Woods of Create Builders had carried out an inspection of the property and had discovered that there was a drain that ran above the ceiling in the lounge of the property. It was this that was leaking. The Landlord said she was arranging with the contractors to expose the drain so that a new one could be fabricated and installed. According to the Landlord's agents and subject to the time it might take to have the new aluminium drain fabricated the work should only take about one month to complete. Ms MacRae said it was now being treated as a common repair and a claim was being made on the buildings insurance through the property factors Ross and Liddell but that this would not delay the work being done. The Landlord had reached an agreement with the Tenant over a reduction in rent as a result of the leak.

### **Summary of the issues**

10. The issue to be determined is whether the property is wind and watertight and in all other respects reasonably fit for human habitation.

### **Findings of fact**

11. The Tribunal finds the following facts to be established:-
- The tenancy is a short assured tenancy
  - There is a leak from a drain causing water ingress into the lounge of the property during periods of wet weather.
  - The property is not wind and watertight and in all other respects reasonably fit for human habitation.

### **Reasons for the decision**

12. The parties were in agreement that there was a leak from a drain serving the property that ran above the ceiling in the Tenant's lounge. This had been identified following a detailed intrusive inspection by Mr Woods of Create Builders. Mr Woods had proposed to remove the existing drain and replace it with a new one and the Landlord had instructed this work to proceed.
13. Although the Tribunal was pleased to note that after what had been a substantial delay steps were now being taken to remedy the problem it was felt that it was necessary to make a Repairing Standards Enforcement Order as the property at present clearly did not meet the repairing standard.

**Decision**

- 14. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 15. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 16. The decision of the Tribunal was unanimous.

**Right of Appeal**

- 17. **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**

- 18. 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.

Signed **G Harding** Chairperson  
Date .....

Photographs taken during the inspection of  
10/6 Sandport Way, Leith, Edinburgh, EH6 6EA



The Block



Hatch cut in ceiling

Photographs taken during the inspection of  
10/6 Sandport Way, Leith, Edinburgh, EH6 6EA



Other areas of ceiling cut for inspection



Detail showing the faulty joint in the drain (with white temporary seal)