

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO) under section 24(2) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/19/0392

Subjects being the house 1 Baron Street, Buckie as more particularly described in Disposition by Ian Ronald Taylor and Jane Elizabeth Taylor, spouses, to said Ian Ronald Taylor and Jane Elizabeth Taylor, equally and survivor recorded in in the General Register of Sasine on 7 May 1991 under Deed Reference 01151 ("The House")

The Parties:-

Miss Lidia Rimba formerly residing at 1 Baron Street, Buckie, Moray, AB56 1XD ("the former Tenant")

Mr Andrew Mackie, Moray Council, High Street, Elgin, Moray, IV30 1BX ("the former Tenant's Representative")

Mr Ian Taylor, residing at Tzaneen, Burnside Road, Lhanbryde, Moray, IV30 8LF ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Mark Andrew - Ordinary Member

Whereas in terms of their decision dated 24 April 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 respects reasonably fit for human habitation; and
- (b) The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.

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 to:-

- (a) Repair or replace the electric oven;
- (b) Repair or replace the windows to the front of the property to ensure that they are wind and watertight and in proper working order;
- (c) Repair or replace the flat roof to ensure it is wind and watertight;
- (d) Produce the complete Electrical Installation Condition Report under reference EIC348516; and
- (e) Carry out any redecoration required following the above works.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of **six weeks** 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.

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 Ruth O'Hare, Chairperson, chairperson of the Tribunal at Aberdeen on 24th April 2019 before this witness:- R O'Hare

_____ witness

_____ chairperson

Robert Johnston, 2 Mill O'Forest Grove
Stonehaven, AB39 2GH



Housing and Property Chamber First-tier Tribunal for Scotland



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Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/19/0392

**Property at 1 Baron Street, Buckie, Moray, AB56 1XD
("The House")**

The Parties:-

Miss Lidia Rimba formerly residing at 1 Baron Street, Buckie, Moray, AB56 1XD ("the former Tenant")

Mr Andrew Mackie, Moray Council, High Street, Elgin, Moray, IV30 1BX ("the former Tenant's Representative")

Mr Ian Taylor, residing at Tzaneen, Burnside Road, Lhanbryde, Moray, IV30 8LF ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Mark Andrew - Ordinary Member

Whereas in terms of their decision dated 24 April 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 respects reasonably fit for human habitation; and
- (b) The fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.

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 to:-

- (a) The house is wind and watertight and in all respects reasonably fit for human habitation;
 - (b) The structure and exterior of the house (including drains, gutters and external pipes are in a reasonable state of repair and in proper working order);
 - (c) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
 - (d) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
3. In summary, the former Tenant submitted that the roof required inspection and repair due to water ingress, a drain required inspection and repair due to leakage and odour, the windows required maintenance in order to be wind and watertight, some electrical sockets were loose from the wall, the hot tap pertaining to the kitchen sink was loose and leaking, the electric oven did not work, the hob did not function properly and the shower room extractor fan was not working.
4. By Minute dated 11 February 2019 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 23A of the Housing (Scotland) Act 2006, intimated his decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the former Tenant.
5. Following service of the Notices of Referral the Tribunal received no written representations from any of the parties.
6. The Tribunal attended the house on the morning of 10th April 2019. The weather was sunny and cold. Upon attendance the Tribunal noted that the house appeared unoccupied. Notices advertising the house for rent had been placed on the windows. The Landlord was present. He stated that he did not have direct contact with the former Tenant. He had an agent that acted on his behalf in all matters related to the tenancy. However it was apparent to him that the former Tenant had left.
7. Having regard to the evidence before it, the Tribunal determined that it could be reasonably assumed that the former Tenant was no longer in occupation and could therefore be treated as having withdrawn the application under Section 22(1) of the Housing (Scotland) Act 2006. The Tribunal therefore had to consider whether to continue with the application under paragraph 7(3) of Schedule 2 under the said Act. Having regard to the nature of the disrepair alleged by the former Tenant, the Tribunal considered that it was sufficiently serious to warrant continuing with the application, in that it related to fundamental aspects of the Repairing Standard.

8. The Tribunal proceeded to inspect the property.

The Inspection

9. During the inspection the Tribunal examined the issues of disrepair highlighted in the application by the former Tenant.
10. The Tribunal inspected the kitchen. The hot water tap had been repaired and was in proper working order. The Landlord confirmed that a repair had been carried out by his contractor. The electric hob appeared to function adequately. However the electric oven was tested and did not appear to be in proper working order. In particular the fan operation was defective. The Tribunal proceeded to inspect the window in the kitchen together with the window in the connected living area. The Landlord advised that the window in the kitchen was due to be replaced.
11. In the upstairs hall the Tribunal noted evidence of water ingress on the ceiling pertaining to the flat roof above in the form of damp staining. The Landlord advised that his contractor was due to carry out repairs to the roof however this required a period of good weather. Although not part of the application by the former Tenant, the Tribunal observed laminate flooring in the upstairs hall which had become loose.
12. The Tribunal proceeded upstairs and inspected the bathroom. An extractor fan had been fitted and appeared to be in proper working order. The Tribunal proceeded to the bedroom to the front right of the property. The Landlord confirmed that the window was due to be replaced. The Tribunal then proceeded to the bedroom to the front left of the property. The window required a latch.
13. Throughout the property the electric sockets appeared to be in reasonable repair. The Landlord confirmed that repairs had been undertaken and he was in receipt of an up to date Electrical Inspection Condition Report. He provided a copy of the first page of this document.
14. In the rear porch the Tribunal noted repairs had been carried out to the ceiling. Further there was a drain to the rear of the property. The former Tenant had set up a washing machine on blocks above the external drain close to the back door and had broken into the drain in order to operate the machine. The Landlord agreed that he would be removing the appliance and re-sealing the drain. In addition the Landlord advised that he had contacted Scottish Water regarding the main drain which runs in front but close to the property. During periods of heavy rainfall there were issues with odour due to the sewage pipes running at full capacity. There was nothing Scottish Water could do about this.
15. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
16. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

17. The hearing took place in Banff Sheriff Court. Mr Mackie from Moray Council attended, however as the former Tenant was no longer a party to the action the Tribunal were unable to hear submissions from him on the former Tenant's behalf. The Tribunal noted that the Council were not a third party applicant but had assisted the former Tenant in submitting the application. Mr Mackie had no instructions to attend on the former Tenant's behalf at the hearing and had not had any recent contact with her.

Findings in fact

18. Having considered all the evidence the Tribunal found the following facts to be established:-
- a. The tenancy between the Landlord and Tenant is an assured tenancy which commenced on 8th July 2017.
 - b. The windows to the front of the property are not in a reasonable state of repair.
 - c. The flat roof to the rear of the property is not watertight.
 - d. The electric oven is not in proper working order.
 - e. In the absence of the complete electrical installation condition report (reference EIC348516) the electrics within the property cannot presently be confirmed as being in safe condition and in a reasonable state of repair.

Reasons for the decision

19. The Tribunal determined the application having regard to the terms of the application and the findings of their inspection.
20. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
21. It was generally accepted by the Landlord during the inspection that the works identified by the Tribunal during the inspection were required. The Landlord had indicated that he was in the process of arranging contractors to carry out the works, in particular to the windows at the front of the property and to the flat roof. It was also clear from the Tribunal's inspection that the electric oven was not in proper working order. The Tribunal was satisfied therefore that these items did not comply with the Repairing Standard.
22. The Tribunal further noted the Landlord had produced an incomplete Electrical Installation Condition Report. The Tribunal would require sight of the entire report in order to be satisfied that the electrics are in a reasonable state of repair.
23. The Tribunal therefore concluded that the Landlord had failed to comply with his duties under the Repairing Standard for the above reasons.

24. The Act states that where a Tribunal decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
25. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act. The Tribunal considered it would be reasonable to allow a period of six weeks for the works to be carried out, having regard to the fact that the Landlord was already in the process of instructing contractors.
26. In addition to the works required by the Repairing Standard Enforcement Order, the Tribunal would wish to highlight the laminate flooring in the upstairs hall which was loose and posed a trip hazard. The Tribunal would suggest that the Landlord takes steps to ensure this is repaired to mitigate any risk to the occupants.

Decision

27. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house is not wind and watertight and in all other respects reasonably fit for human habitation.
28. In respect of section 13(1)(d) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as any appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.
29. The decision of the Tribunal was unanimous.

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R O'Hare

Signed

Ruth O'Hare
Chairperson

24th April 2019

CHAMBER REF - FTS / HPC / RP / 18 / 0603
THIS IS THE SCHEDULE OF PHOTOGRAPHS REFERRED TO IN THE
DECISION OF THE TRIBUNAL
DATED 24TH APRIL 2019
R O'Hare
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Schedule of photographs of 1 Baron St., Buckie, AB56 1XD



Front elevation



Rear elevation (1 & 2 share a flat roof) 1 is to the right.

Photographs taken by M H T Andrew FRICS FAAV FARLA on 10th April 2019

Schedule of photographs of 1 Baron St., Buckie, AB56 1XD



Ground floor left hand window – broken catch



Ground floor right hand window – broken catch

Photographs taken by M H T Andrew FRICS FAAV FARLA on 10th April 2019

Schedule of photographs of 1 Baron St., Buckie, AB56 1XD



1st floor bedroom left – catch in working condition (other catch also in working condition)



1st floor bedroom right – both catches in working condition

Schedule of photographs of 1 Baron St., Buckie, AB56 1XD



Cooker and hob. Hob is working. Although the cooker light comes on the cooker does not.



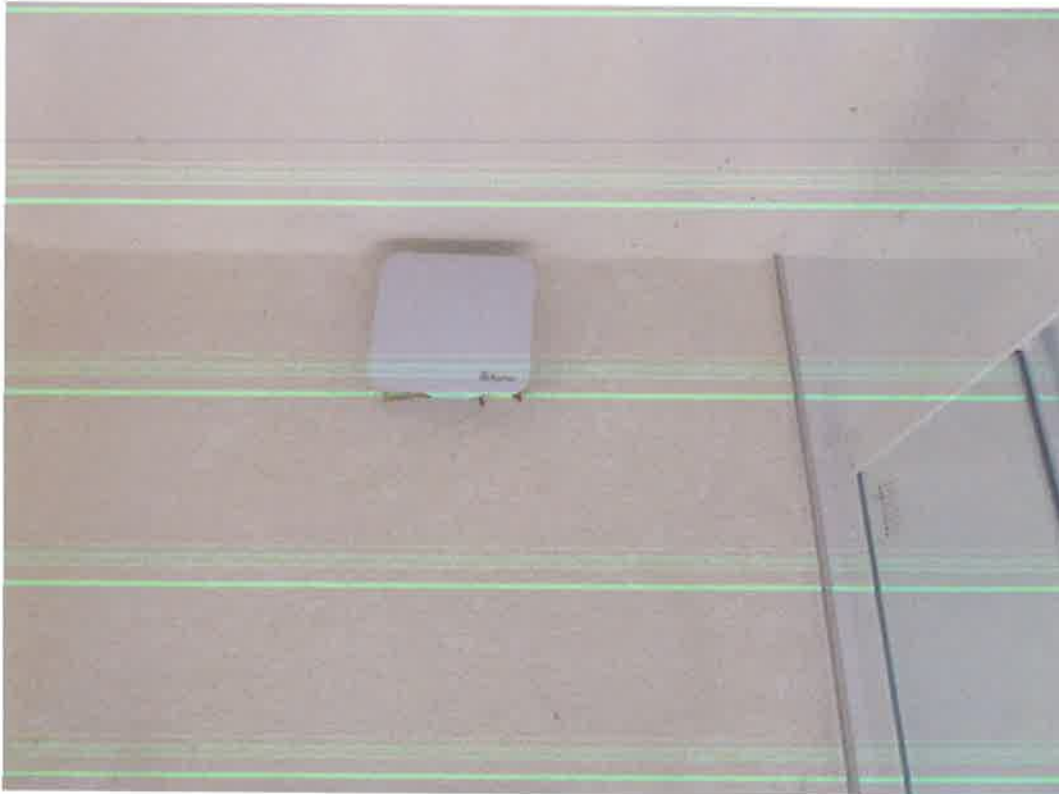
Kitchen sink. Dripping / loose hot tap has been repaired.

Photographs taken by M H T Andrew FRICS FAAV FARLA on 10th April 2019

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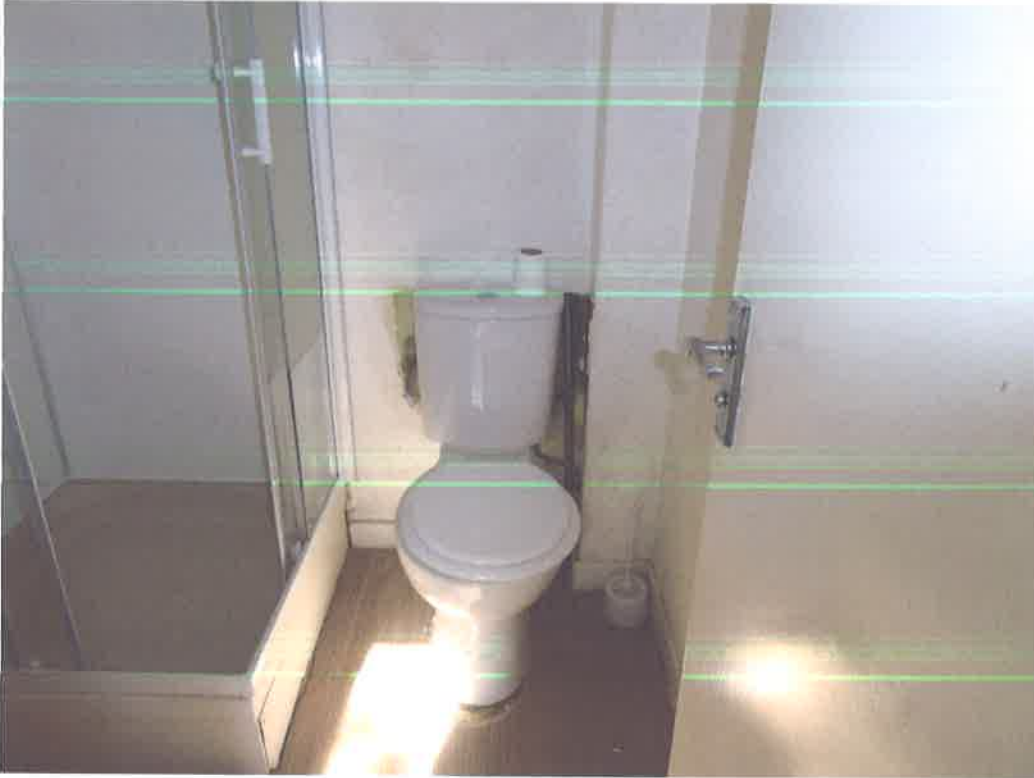


Ceiling on 1st floor landing showing leak from flat roof above



Shower room expelair fan replacement. Slow to come on but does work.

Schedule of photographs of 1 Baron St., Buckie, AB56 1XD



Shower room WC and enclosure – replacement doors fitted. – note poor decoration



Method of drainage employed by former tenants for washing machine (outside) – to be removed and drain sealed to prevent smells and potential leakage of foul water.

Schedule of photographs of 1 Baron St., Buckie, AB56 1XD