

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24(1)**

Chamber Ref: FTS/HPC/RT/18/0300

Title no: DMF 26203

West Roucan Farmhouse, Torthorwald, Dumfries, DG1 3QG ("the property")

The Parties: -

John Cunningham-Jardine, Tinwald House, Tinwald, Dumfries, DG1 3PW; John Cunningham-Jardine, G M Thomson and co, 35 Buccleuch Street, Dumfries, DG1 ("the Landlord")

Dumfries and Galloway Council, Community and Customer Services, Council Offices, Buccleugh Street, Dumfries, DG1 2AD ("the Third Party")

Mark Smith, West Roucan Farmhouse, Torthorwald, Dumfries, DG1 3QG ("the Tenant")

Whereas in terms of their decision dated 28 April 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and that the Landlord had failed to ensure that the property meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended: -

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) 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, and
- (c) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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: -

- (1) To instruct a suitably qualified timber damp specialist and building contractor to prepare a detailed survey of the property, with specific reference to the east gable wall, to identify the cause and full extent of the dampness and any remedial action. The report should include both the internal and external fabric of the building, specifically around the affected areas. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant decoration made good.
- (2) To instruct a suitably qualified window contractor to inspect the windows in the property and carry out such repairs as are necessary to ensure that the windows are wind and watertight, or to replace the windows.
- (3) To install hard wired interlinked smoke and heat detectors in the living room and kitchen to comply with the statutory guidance.
- (4) To instruct a suitably qualified SELECT, NAPIT OR NICEIC registered electrician to carry out a certified electrical condition check of the entire electrical installation of the property and exhibit a copy of the electrical installation condition report (EICR) to the Tribunal.

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.

In terms of Section 63 of the Act, 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 typewritten on this and the two preceding pages are executed by Josephine Bonnar, Solicitor, Legal Member and Chair of the Tribunal at Motherwell on 28 April 2018 before this witness: -

G Bonnar

J Bonnar

Witness

Gerard Bonnar _____ Name in full

1 Carlton Place

Glasgow

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/RT/18/0300

Title no: DMF 26203

West Roucan Farmhouse, Torthorwald, Dumfries, DG1 3QG ("the property")

The Parties: -

**John Cunningham-Jardine, Tinwald House, Tinwald, Dumfries, DG1 3PW;
John Cunningham-Jardine, G M Thomson and co, 35 Buccleuch Street,
Dumfries, DG1 2AB ("the Landlord")**

**Dumfries and Galloway Council, Community and Customer Services,
Council Offices, Buccleugh Street, Dumfries, DG1 2AD ("the Third Party")**

**Mark Smith, West Roucan Farmhouse, Torthorwald, Dumfries, DG1 3QG
("the Tenant")**

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Mr Mike Links, Ordinary Member

Background

1. By application received on 8 February 2018 the Third Party applied to the First-tier Tribunal for Scotland (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 stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) 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, (iii) 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, (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (v) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically the Third Party stated that there is dampness visible in the utility room, kitchen, bathroom, mid stair hallway and upper east bedroom, the east gable wall rendering is excessively cracked, the PVC window seals are defective, the window in the mid stair hallway is defective, the east gable chimney stack rendering has fallen off, there are no carbon monoxide detectors in the property, no smoke alarm in the living room, existing smoke detectors are not hardwired and interlinked, no heat detector in the kitchen and no EICR has been exhibited.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, Third Party and Tenant on 15 March 2018. The parties were notified that an inspection and hearing would take place on 17 April 2018.
4. Following service of the Notice of Referral the Third Party lodged written representations. The Landlord's agent also lodged written representations and a bundle of documents and stated that the Landlord would not attend the hearing and inspection.
5. The Tribunal inspected the property on the morning of 17 April 2018. Mr Adam Black and Mr Robert Rome attended on behalf of the Third party. Access to the property was provided by Mrs Judith Ward, a

relative of the Tenant. The Tenant was within the property but not present for the inspection. The Landlord did not attend.

6. Following the inspection of the property the Tribunal held a hearing at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries. Mr Adam Black and Mr Robert Rome attended on behalf of the Third Party. Neither the Tenant nor the Landlord attended.

The Inspection

7. At the time of the inspection it was wet and windy. The Tribunal inspected the property which is a detached farmhouse, located within Torthorwald, Dumfries. The accommodation comprises utility room, kitchen, laundry room, living room, dining room, toilet and hall on the ground floor with five bedrooms and two bathrooms on the upper floor. The Tribunal noted that the property is served by oil fired central heating and that the boiler is located outwith the property. A schedule of photographs taken at the inspection is attached to this decision.
8. **East Gable.** The Tribunal noted that there are no cracks in the roughcast on the east gable wall. Mr Black advised that the wall has been re-rendered since his first inspection of the property, prior to submission of the application. He also advised that the damaged chimney stack previously located at the top of this wall has been removed. The Tribunal noted the absence of a chimney stack on the roof above the east gable wall.
9. **Dampness.** On entering the utility room Mr Black directed the Tribunal to an area of wall next to the door. He advised that when previously inspected, this had been covered by black mould, but since then the wall appears to have been framed/strapped and plastered over. The Tribunal noted that part of the wall looks as though it has been recently plastered. Meter readings taken indicated the absence of damp. The Tribunal noted an extractor fan in the room and were advised that this is a new fan, recently installed. In the kitchen the Tribunal inspected the inside of the east gable wall. Meter readings were taken at various locations which confirmed the presence of damp. Some evidence of re-plastering was evident. An extractor fan was noted. On the half landing the Tribunal noted an area of wall which showed signs of damp. Meter readings however indicated that the wall is dry. No dampness was detected in the bathroom, although condensation stains were noted on the ceiling. In the east bedroom on the upper floor, located

above the kitchen, the Tribunal noted marks on the gable wall and meter readings taken indicated high levels of damp.

10. **Smoke and carbon monoxide detectors.** The Tribunal noted the absence of a heat detector in the kitchen. The Tribunal inspected the living room and dining room, both of which have open fires. Carbon monoxide detectors were noted in both rooms. There are no smoke detectors in either room. In the hall and landing the Tribunal noted the presence of hard wired smoke detectors.
11. **Windows.** The Tribunal inspected the window in the half landing. This was capable of being opened and closed and otherwise appeared to be in working order. The Tribunal inspected windows in the main bathroom and two of the bedrooms. They noted that tape has been applied to the frames, covering the space between the frames and the windows. Mr Black advised that this tape has been applied by the Tenants in an effort to exclude draughts. On inspection the Tribunal noted that draughts can be detected from the windows, despite the presence of the tape.

The Hearing

12. The Landlord did not attend the hearing and was not represented. Written representations lodged in advance of the hearing by the Landlords agent state that they "have been aware of the issues". They further advise that Richardson and Starling inspected the property in September 2016 and found dampness to be "mainly within the first-floor bathroom, kitchen and rear utility room". Richardson and Starling provided quotations for, and subsequently carried out, an upgrade of, the existing extractor fans in the bathroom and kitchen. J Bryson Ltd dealt with the dampness in the utility room and kitchen and the issues in relation to chimney heads, rendering, removal of plaster, installation of damp proof works and re-plastering. They removed the additional redundant chimney head. Wilson Electrical were instructed on 20 November to undertake the EICR. This concluded that the wiring system is satisfactory. They also installed detectors "to comply with regulations" The written representations further state that as agents for the Landlord, they have kept the tenants up to date through phone calls and a letter on 8 December. They also advised the Third Party Applicant that work was scheduled for 9 January 2018. They further state that on 15 January 2018 the Applicant was notified that the work would start that week or the following week, the delay being the result of the Christmas holidays and illness among the

employees of J Bryson. The work however was delayed further, partly as a result of poor weather, and the agents state that “ they have asked Brysons to confirm as soon as this work is complete”. The representations conclude by stating that J Bryson have still to replace the window seals and that, as they installed the windows, the agents do not intend to instruct another contractor to deal with this matter. Lodged with the written representations were a copy of a Richardson and Starling report dated September 2016 and a copy of an acceptance of quotation from Richardson and Starling dated 5 September 2016 for upgrading fans in the first floor bathroom and kitchen. Also produced was a copy letter from J Bryson Limited dated 21 March 2018 which states that they were instructed to “carry out repair works” at the property in November but did not do so until February due to weather conditions and a depleted workforce due to flu. Lastly, a copy letter from J Bryson Limited dated 25 March 2018 which states that they are “Still trying to source replacement window seals for front windows” and that these would be fitted as soon as they are obtained.

13. The Tribunal heard evidence from both Mr Black and Mr Rome. They confirmed that they visited the property in early November 2017, after being contacted by the Tenant regarding the repairs issues. Mr Black stated that the Tenant had complained that the repairs issues had been outstanding for some time and that he had eventually contacted the Third party as a last resort. Mr Black referred to his letter to the Landlord dated 13 November 2017. Attached to the letter was a document entitled “repairing standard checklist” in which he had detailed the repairing standard issues noted at his inspection. Both the letter and the checklist were lodged with the Tribunal as part of the application. Mr Black advised the Tribunal that although he had notified the Landlord on 13 November 2017 he believes that no work was carried out until fairly recently, with bad weather, Christmas and illness being offered as the reason for this. Mr Black referred the Tribunal to the Landlord’s report from Richardson and Starling dated September 2016 which, he said, demonstrates that the Landlord has known about the dampness for 18 months. Mr Black advised the Tribunal that some work has been done since his inspection, but he doesn’t know when. He thinks that it must have been sometime between end of January 2018 and 11 April 2018, when he visited the property again.
14. **East Gable wall and dampness.** Mr Black advised the Tribunal that the east gable wall has been completely re-rendered since his first inspection in November 2017 and the damaged chimney head has been removed. In November the wall had been badly cracked from ground to chimney and he and Mr Rome thought that this was likely to be the cause of dampness within the property on the same

wall. He advised that he has not seen a report on the actual work carried out, but on visual inspection, he is satisfied that his complaints about the wall and chimney have now been addressed. He confirmed that it also appears that the wall in the utility room seems now to be free of dampness although he has concerns that the contractor may only have strapped and plastered over the affected area, rather than dealing with it properly. He advised that the wall in the kitchen is still of concern, as the meter readings indicate the continued presence of dampness, and he is not satisfied that whatever work has been carried out has successfully rectified the problem. He confirmed that he is happy that the area of wall on the half landing which appears damp, did not register as such on the dampness meter, and that this appears to have been rectified. Although it had been noted that a new extractor fan has been installed in the utility room, Mr Rome advised the Tribunal that he would have expected Richardson and Starling to fit a "humidistat" extractor which they did not do. Neither Mr Black nor Mr Rome were able to comment on the Landlord's claim that the extractors in bathroom and kitchen have been upgraded as both appeared unchanged from the first inspection.

15. Smoke and heat detectors. Mr Black advised the Tribunal that the lack of a smoke detector in the living room and heat detector in the kitchen have not been addressed by the landlord. A smoke detector is not needed in the dining room in terms of current guidelines.

16. Windows. Mr Black advised the Tribunal that when he first inspected the property, the window in the half landing could not be opened. He is satisfied that it now appears to be in proper working order. With regards the bathroom and bedroom windows, which have tape round them, Mr Black advised that the Tenants were very vocal in their complaints about the windows, saying that they are cheap and badly fitted. He was advised that the Tenant's wife fell off a stool when she was putting the tape round the windows, injuring herself. Mr Black stated that he understood this to be the last straw for the tenants, who gave notice to the landlord after this incident and are due to move out on 4 May 2018. Mr Black further advised the Tribunal that the main complaint about the windows is the draughts and that he understands the Tenants were promised new seals for these some time ago.

17. EICR. Lastly, Mr Black gave evidence about the EICR. This is dated 14 December 2017, about a month after his inspection of the property. He confirmed that the report seems to confirm that the wiring and electrics are in order but notes that there is no evidence

that the electrician is registered with one of the accredited professional bodies which is of concern.

Findings in Fact

- 18. The property is a five bedroom detached dwellinghouse in Torthorwald, Dumfries.
- 19. The interior of the east gable wall in the kitchen and the east bedroom on the upper floor is affected by damp.
- 20. Windows within the property do not exclude draughts.
- 21. There is no heat detector in the kitchen or smoke detector in the living room.

Reason for decision

- 22. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection.
- 23. **Exterior of east gable wall.** The Tribunal is satisfied from its inspection of the property and the evidence presented to it by the Third Party that defects affecting the exterior of the wall have been rectified and that no breach of the repairing standard exists in relation to same. It also notes that the damaged chimney head referred to in the application has been removed.
- 24. **Dampness.** In its application the Third party complains of dampness in various rooms within the property – utility room, kitchen, bathroom, mid stair and upper east bedroom. At the hearing Mr Black, on behalf of the Third party, confirmed that work appears to have been carried out within the property and no dampness is now evident in the utility room, bathroom and mid stair. This is supported by the meter readings taken at the property during the Tribunal's inspection of same. However, the Third party maintains that the interior of the east gable wall in the kitchen and east bedroom are still affected by dampness and that any work carried out has not rectified this. The Tribunal notes that meter readings taken in both rooms show moderate to high levels of damp. The Tribunal also notes that the Landlord's written representations indicate only that the work carried out involved the removal of

plaster, installation of a damp proof course and re-plastering. During its inspection the Tribunal noted that some recent re-plastering has been carried out in the kitchen, although not in the east bedroom. No report from the contractor was provided with the written representations to establish the precise nature of the work carried out. Furthermore, no detailed information about the alleged upgrade of extractor fans has been provided. The Tribunal therefore concluded that while some work has certainly been carried out at the property, it has not fully eradicated the dampness and a breach of the repairing standard has been established in relation to same. The Tribunal notes that the report from Richardson and Starling is dated September 2016 which establishes that the Landlord has had some knowledge of the dampness for approximately 18 months, although only the utility room, kitchen and bathroom appear to have been inspected at that time. Some works recommended in this report now appear to have been completed, but not until 18 months after the report was issued. No updated inspection report by Richardson and Starling has been produced.

25. Smoke, heat and carbon monoxide detectors. The Tribunal is satisfied from its inspection and the evidence presented at the hearing that functioning carbon monoxide detectors have been installed at the property. Hard wired smoke detectors were also noted in the hall and upper landing. However, there is no heat detector in the kitchen or smoke detector in the living room. The Landlord has therefore failed to comply with the repairing standard in relation to same

26. Windows. The Tribunal considered the condition of the windows at the inspection and the evidence of Third Party at the hearing. The Tribunal notes that the Tenant has attempted to deal with the draughty windows by applying tape over the areas most affected. The Tribunal further notes that, despite the presence of this tape, draughts can still be detected. The Landlord does not appear to dispute the claim that the windows are defective. In the agents written representations the Landlord advises that new window seals are being sourced and will be fitted in due course. However, the Tribunal is satisfied that this matter was brought to the attention of the Landlord on 13 November 2018, and perhaps even before then by the Tenant. The windows are not currently wind and watertight and therefore a breach of the repairing standard has been established in relation to same. The defective window in the mid stair has, however, been repaired, and now appears to be in working order.

27. **EICR.** The Tribunal notes that an EICR has been produced by the Landlord dated 14 December 2017. The report indicates that the electrics within the property appear to be satisfactory. However, the Tribunal is concerned that no information or evidence has been produced that the company who carried out the inspection are registered with one of the recognised professional bodies, and therefore considers that for this report to be accepted the Landlord should either produce such evidence or arrange for an alternative registered electrician to inspect and report.

28. The Tribunal accordingly took the view that the property fails to meet the repairing standard in relation to subsection 13(1)(a), (c), and (f). The Tribunal concluded that it will require to make a Repairing Standard Enforcement Order in relation to the dampness, the windows, the EICR and the smoke and heat detectors.

Decision

29. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

30. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

31. The decision of the Tribunal is unanimous

Right of Appeal.

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.

J Bonnar

Signed...

Josephine Bonnar, Legal Member

..... 28 April 2018

*This is the schedule of photographs
referred to in the Decision of 28/4/18*

J Bonnar

Housing and Property Chamber
First-tier Tribunal for Scotland



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

PHOTOGRAPH SCHEDULE

PROPERTY: WEST ROUCAN FARMHOUSE, TORTHORWALD, DUMFRIES, DG1 3QC

HPC REFERENCE: FTS/HPC/RT/18/0300

DATE: 17TH APRIL 2018

PHOTOGRAPHS: ALL PHOTOGRAPHS TAKEN ON THE DAY OF INSPECTION.



FRONT ELEVATION



GABLE WALL – NEW RENDER



UTILITY ROOM – “DRY” READING

Housing and Property Chamber

First-tier Tribunal for Scotland



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

PHOTOGRAPH SCHEDULE

PROPERTY: WEST ROUCAN FARMHOUSE, TORTHORWALD, DUMFRIES,DG1 3QC

HPC REFERENCE: FTS/HPC/RT/18/0300

DATE: 17TH APRIL 2018

PHOTOGRAPHS: ALL PHOTOGRAPHS TAKEN ON THE DAY OF INSPECTION.



FRONT ELEVATION



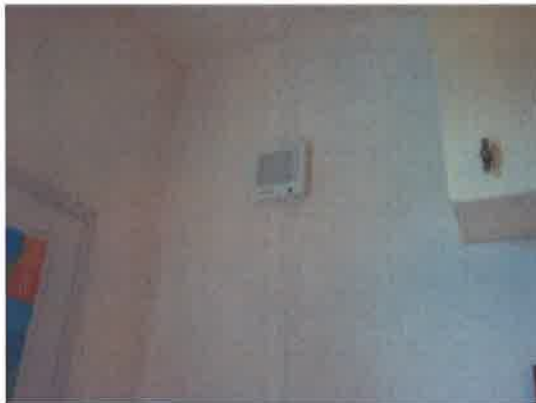
GABLE WALL – NEW RENDER



UTILITY ROOM – “DRY” READING



UTILITY ROOM - "DRY" READINGS



UTILITY ROOM - VENT



KITCHEN - "DAMP" READING



KITCHEN - "DAMP" READINGS



KITCHEN - "DAMP" READINGS



KITCHEN "DAMP" READING



KITCHEN CEILING-NO HEAT DETECTOR



LIVING ROOM – OPEN FIREPLACE



LIVING ROOM – CO MONITOR



LIVING ROOM – NO SMOKE DETECTOR



DINING ROOM – OPEN FIREPLACE



DINING ROOM – CO MONITOR



HALF LANDING-"DRY" READING AT STAIN



MAIN BATHROOM-WINDOW SEALED AND CONDENSATION STAINS ON CEIL.



BATHROOM – VENT



FRONT BED – WINDOW SEALED



FRONT BED – WINDOW SEALED



REAR BED – WINDOW SEALED



REAR BED AND HALF LANDING WINDOW. BED OFF HALF LANDING-“DAMP”