

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

Chamber Ref: FTS/HPC/RT/18/0426

Title no/Sasines Description: All and whole the subjects known as and forming 2 Corberry Place (otherwise known as 2C Corberry Place), lying in the former Burgh and County of Dumfries and now in the area administered by Dumfries and Galloway Council and for the purposes of registration of writs in the County of Dumfries being those described in the Disposition by Charles Roberts in favour of George Murdoch dated the Eleventh and recorded in the New Particular Register of Sasines, Reversions et cetera kept for the Royal Burgh of Dumfries on the Fifteenth, both days of May, Nineteen Hundred and Seven

The Cottage, 2c Corberry Place, Troqueer Road, Dumfries, DG2 7ST
("the House")

The Parties:-

Mr Robert Rome, Strategic Housing Services, Dumfries and Galloway Council,
Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD
("the Third-Party Applicant")

Mrs Caroline Cochrane, The Cottage, 2c Corberry Place, Troqueer Road, Dumfries,
DG2 7ST
("the former Tenant")

Mrs Betty Alder, Hanwell House, Ruthwell, Dumfries DG1 4NU;
Mr Johannes Maxwell Gerhard Alder, 84 Glasgow Road, Paisley PA1 3PN;
Maxwell William Edward Alder, 86A Queensberry Street, Dumfries DG1 1BG;
Mr Mark David Alder, Hanwell House, Ruthwell, Dumfries DG1 4NU
("the Landlord")

Whereas in terms of their decision dated 16 June 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 2006 Act") and in particular that the Landlord has failed to ensure that the House is: -

- (a) wind and watertight and in all other respects reasonably fit for human habitation, being section 13(1) (a) of the 2006 Act, as amended;

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 repair or replace the front door of the House to ensure that the House is wind and watertight and in all other respects reasonably fit for human habitation; all work to be done in such a manner which is consistent and compliant with all necessary Local Authority permissions and conditions attached,
- b) To repair or replace all windows of the House to ensure the House is wind and watertight and in all other respects reasonably fit for human habitation;
- c) To monitor, inspect and carry out any remedial works required to eradicate the damp on the external gable wall in the fitted cupboard in the second bedroom of the House, to ensure the House is wind and watertight and in all other respects reasonably fit for human habitation.

The Tribunal order that the works specified in this Order must be carried out and completed within the period six months 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 type written on this and the preceding page are executed by Susan Christie, legal member of the Tribunal, at Glasgow on 16 June in the presence of the undernoted witness: -

G Christie

__ witness

S Christie

Susan Christie Legal Member

George Harvey Christie name in full
5 Albert Drive, Burnside, Glasgow G733RT Address

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(1A)

Chamber Ref: FTS/HPC/RT/18/0426

Title no/Sasines Description: All and whole the subjects known as and forming 2 Corberry Place (otherwise known as 2C Corberry Place), lying in the former Burgh and County of Dumfries and now in the area administered by Dumfries and Galloway Council and for the purposes of registration of writs in the County of Dumfries being those described in the Disposition by Charles Roberts in favour of George Murdoch dated the Eleventh and recorded in the New Particular Register of Sasines, Reversions et cetera kept for the Royal Burgh of Dumfries on the Fifteenth, both days of May, Nineteen Hundred and Seven.

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Mr Robert Rome, Strategic Housing Services, Dumfries and Galloway Council,
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Mr Mark David Alder, Hanwell House, Ruthwell, Dumfries DG1 4NU
("the Landlord")

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

Susan Christie	- Legal/Chairing Member
Mike Links	- 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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the House and taking account of all of the available evidence, determines that

the Landlord has failed to comply with the duty imposed on him by Section 14(1)(b) of the Act. The Tribunal therefore issues a Repairing Standard Enforcement Order. The Tribunal's decision is unanimous.

Background

1. By application received on 27 February 2018 the Third-Party Applicant applied to the Housing and Property Chamber under section 22(1A) of the Housing (Scotland) Act 2006 for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
2. The application specifically stated that the Third-Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard and that the Landlord had failed to ensure that: - the House is wind and watertight and in all other respects reasonably fit for human habitation; 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; 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.
3. The detail of the complaint being:
 - (a) Front door not watertight
 - (b) EICR identifies C3 as RCD
 - (c) Wet rot on the external window sill
 - (d) Damp area in cupboard
 - (e) Large vertical crack in the render to the side of the House
 - (f) Covered alleyway access has plaster falling from the ceiling
 - (g) Gutter to the front of the House leaks water where it dips
 - (h) Kitchen ceiling is showing significant areas of sagging
 - (i) Window sashes at the rear of the House don't fit at the sill
 - (j) Bedroom windows are difficult to open to prevent condensation.
4. The Third-Party Applicant stated that the following work required to be carried out at the House:
 - a) Refit front door draught seals
 - b) Window draught seals to be adjusted to allow sash opening
 - c) Gutters to be repaired to ensure there are no leaks or overflow
 - d) Ceiling on access alley to be repaired
 - e) Fix kitchen ceiling
 - f) All timber sash and case windows to be repaired as necessary.
5. By Notices of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act, all dated 11 April 2018 the Parties were notified that the President of the Housing and Property Chamber had decided to refer the application to a Tribunal for determination.
6. Following upon the Notice of Referral, Inspection and Hearing being intimated by the Tribunal on the Landlord, no written response was made by him.
7. An Inspection and Hearing was assigned for 16 May 2018.
8. On 3 May 2018, the Third-Party Applicant made an application to postpone the Hearing and Inspection as they had no staff available to attend. The Tribunal adjourned the Inspection and Hearing, after giving the other Parties an opportunity to give their views, on cause having been shown. The former Tenant told the Tribunal that she and her husband would be imminently

moving out and wished no part in the process and did not wish to be contacted further after she left the House.

9. A new date was arranged for the Inspection and Hearing for 30 May 2018 and the date and time was intimated by the Tribunal on the Parties.

The Inspection

10. On the morning of 30 May 2018, the Tribunal attended at the House when access was given by Mrs Betty Alder and her son Mr Johannes Maxwell Gerhard Alder. The Tribunal inspected the House in their presence. The weather conditions at the time of the Inspection were dry and sunny. Photographs were taken during the Inspection and these are attached as a Schedule to this decision.
11. The House is a detached cottage in stone with external render and has two bedrooms, a living room, kitchen and bathroom. The windows are timber sash and case and the front door is made of wood. Within the second bedroom there is a fitted shelved cupboard situated on an external wall on the gable elevation of the House.
12. The House is situated in a courtyard and is surrounded by other buildings to the front and side.
13. Access to the House was taken on arrival by the Tribunal through a pend close in another building from Corberry Place. It was later established that the access to the House designated in the title deeds is by way of a path to the side and rear of the House from Rotchell Road.

The Hearing

14. Following upon the Inspection of the House, the Tribunal held a Hearing at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries DG1 4 DF.
15. The Third-Party Applicant Mr Robert Rome accompanied by Mr Adam Black, both Licensing Section of Dumfries and Galloway Council were present. Mrs Betty Alder and one of her sons Mr Johannes Maxwell Gerhard Alder were present and represented all family members as the Landlord.
16. The former Tenant was not present and was not represented. The Tribunal was satisfied that the requirements of Rule 24(1) of the First- tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 had been complied with as the former Tenant had received proper notice of the Hearing. The Tribunal proceeded to deal with the application in her absence on the information gathered at the Inspection and all the material before it.

The evidence

The evidence before the Tribunal consisted of:

17. Written evidence in the form of the application form with the accompanying documents including written exchanges between the Third-party Applicant, former Tenant and the Landlord; a copy of the Sasine Register electronic search for the House; a copy of the AT5 form and copy lease between the Landlord and Tenant dated 13 March 2015; and all communication exchanges with the Tribunal.

18. The findings of the Inspection of the House that informed the Tribunal are as follows:
- (a) The front door was not wind and watertight. The wood was warped, and daylight could be seen through a gap at the door frame;
 - (b) EICR -a new consumer unit had been fitted in the kitchen;
 - (c) Wet rot was evident in the external windowsill and the wooden frame was soft to the touch;
 - (d) High damp readings were taken in the lower level of the fitted cupboard in the bedroom;
 - (e) A fine vertical crack on the external render had been filled with clear silicone;
 - (f) The ceiling in the pend close from Corberry Place was defective in that the plaster had come away exposing the timbers below;
 - (g) The gutter to the front of the House had been recently replaced and was in a reasonable state of repair and in proper working order;
 - (h) The kitchen ceiling was bowed having suffered historical water damage but was dry and secure to the touch and the historical cracks had been sealed;
 - (i) The windows in the House were in varying states of repair and wet rot was evident on the window sill of the main bedroom at the gable elevation.
19. The Parties present were taken through the list of issues raised in the Application in the Order they were presented.
20. At the outset they agreed the issue headed "EICR C3 RCD" was no longer insisted on by the Third-Party Applicant. The Third-Party Applicant had not been out to reinspect the House since around February 2018 and was unaware that the front gutter had recently been fully renewed and replaced. The Third-Party Applicant sought the opinion of the Tribunal on the outstanding issues in the Application.
21. The Landlord accepted that the front door was warped, and accepted daylight could be seen at the door frame on inspection. A joiner had carried out draughtproofing work, but this had not fully rectified the issue. It was accepted that the front door would need to be eventually replaced.
22. The windows were of timber and sash construction. The former Tenant had suggested they be replaced with double glazed units and whilst the Landlord had considered this at one stage, Mrs Alder had misgivings due to the character and look of the sash windows and the fact that the House was in a conservation area. A Pre-Application Enquiry form for Householder Development had been submitted by Mrs Alder on 19 April 2017 to Dumfries and Galloway Council in which the proposed works for consideration were sated to be "Replace existing windows and door with UPVC double glazing". A response was received on 6 June 2017 which concluded that there may be potential for the proposed development being considered favourably subject to an assessment procedure being followed and key issues and information being addressed. She intended applying for replacement of the windows and front door of the House to the Planning Department and was hopeful of it being approved. She was undecided as to whether to proceed with UPVC or a repair of the windows but accepted the front door would need replaced eventually. It was accepted that there was wet rot on a window frame and that the windows needed general attention.
23. It was accepted that high damp readings were taken from the lower section of the fitted cupboard in the second bedroom. Remedial work had been undertaken at the gable wall behind the cupboard which had caused rubble

- and debris to be removed to allow free passage of air to circulate. It was therefore speculated that the wall may still be drying out. The Landlord was happy to monitor the damp area over time.
24. It was accepted that a hairline crack in the render of an external gable wall near the window had been filled in with silicone. No damp was noted on that wall.
25. The issue of the defective ceiling on the pend close from Corberry Place was more problematic. Neither of the Parties present had provided the Tribunal with copies of the title deeds to examine to establish whether the Landlord had any obligation to maintain it. It was jointly agreed that those documents would be submitted to the Tribunal forthwith to be examined. Mrs Alder contended that her solicitor and her surveyor had told her she had no right to repair the close ceiling nor did she have any obligation to do so. The close ceiling formed part of another building which she had no control over and which may have issues above. There was mention of repair notices having been served on two other individuals. In any event the proper access to the House under the title deeds was from Rotchell Road, albeit access could be taken through the close as it was a shorter route.
26. The kitchen ceiling had been inspected by her surveyor who had gone up into the attic space and found no dampness.
27. Mr Alder provided a brief summing up in support of his mother, Mrs Alder. His view was generally that he was disappointed that matters had gone this far as he felt his mother had made her best efforts to attend to the issues raised and there had been unpleasant exchanges by the former tenants. He accepted that the windows and doors merited some attention.
28. The Tribunal then considered the copy title deeds submitted. There was no requirement that the Landlord in this Application had any obligation to repair the close ceiling in the separate building from Corberry Place.

Summary of the issues

29. The issue to be determined was whether the House meets the repairing standard as set out in section 13 of the Act, and whether the Landlord had complied with the duty imposed on him by section 14(1) (b) of the Act.

Findings in fact

The Tribunal finds the following facts to be established:

- I. The Landlord is the registered owner of the House and the Landlord.
- II. The tenancy between the Landlord and the former Tenant is a Short- Assured Tenancy and is a tenancy to which the repairing standard applies.
- III. The former Tenant took entry to the House on 20 March 2015 for an initial term of six months. The former Tenant moved out on 19 May 2018.
- IV. The Third-Party Applicant raised the complaints referred to in the Application with the Landlord in writing between October 2016 and December 2017, that is prior to the current application being made.
- V. The Tribunal carefully inspected the House and found that:
 - (a) The front door was not wind and watertight. The wood was warped, and daylight could be seen through a gap at the door frame;

- (b) The windows in the House were in varying states of repair and wet rot was evident on the window sill of the main bedroom at the gable elevation.
- (c) High damp readings were found in the lower level of the fitted cupboard in the bedroom;
- VI. The House does not meet the repairing standard required under section 13 (1) (a) of the Act.

Reasons for decision

30. The Tribunal had regard to all of the available evidence and decided that a Repairing Standard Enforcement Order was required in respect of the front door, the windows and the damp area in the fitted cupboard in the second bedroom. Accordingly, the repairing standard has not been met (section 13 (1) (a) of the Act).

Summary of Decision

31. The Landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act and has failed to ensure that the House meets the repairing standard under section 13(1) (a) of the Act. The Tribunal accordingly proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Observations

32. The Tribunal made the following additional observations during the Inspection of the House: a section of the skirting in the kitchen was decayed due to historical water damage and needed replaced. Whilst this matter did not form part of the application and was not an issue to be determined by the Tribunal as it was not included in the application, the Landlord may wish to consider taking the minor remedial action.

Right of 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.

S Christie

Signed _____

Date 16 June 2018

Susan Christie, Legal Member

Housing and Property Chamber

First-tier Tribunal for Scotland



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

SCHEDULE OF PHOTOGRAPHS

PROPERTY: THE COTTAGE, 2C CORBERRY PLACE, TROQUEER ROAD,
DUMFRIES DG2 7ST

REFERENCE: FTS/HPC/RT/18/0426

DATE: 30TH MAY 2018

PHOTOGRAPHS: ALL TAKEN ON DAY OF INSPECTION



1. FRONT ELEVATION



2. BUILDING ON CORBERRY PL.



3. BUILDING ON CORBERRY PL.

Glasgow, 16 June 2018
This is the Schedule of Photographs referred to in the Statement of Decision
of even date hered under Chamber Reference FTS/HPC/RT/18/0426
S Christie
Legal Member



4. CLOSE LEADING TO COTTAGE.



5. DEFECTIVE CEILING IN CLOSE



6. REAR ELEVATION



7. GABLE ELEVATION



8. DECAYED SILL – BEDROOM



9. SILICONE SEAL AT RENDER CRACK.



10. SILICONE SEAL AT RENDER CRACK



11. DRAUGHTPROOFING – DOOR



12. FRONT DOOR



13..GAP – FRONT DOOR.



14 DAMP READING -BED CPD



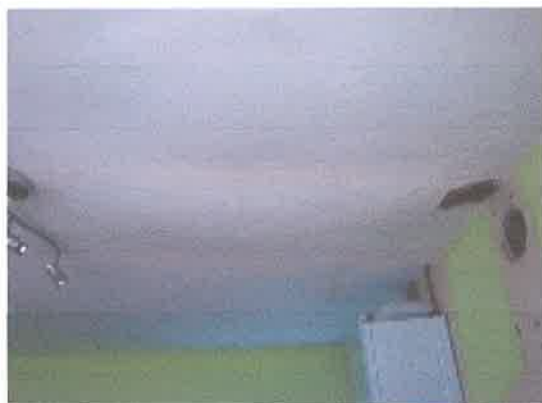
15 DAMP READING- BED CUPBOARD.



16. "DRY" READING -BED CPD



17. NEW CONSUMER UNIT - KITCHEN



18. SAG IN KIT CEILING



19. DECAYED SKIRTING- KITCHEN



20. "DRY" READING IN KITCHEN.



21. WINDOW-BEDROOM



22 WINDOW-BEDROOM



23. CLEARED AREA -GABLE WALL.