

# **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/RT/18/1423**

**Sasine Description: ALL and WHOLE that property known as 16 Gruinard Terrace, Dundee being the subjects more particularly described in and disposed by Disposition by The City of Dundee District Council to Harry Finnegan and Isobel Finnegan recorded in the Division of the General Register of Sasines for the County of Angus on 7 September 1995**

**16 Gruinard Terrace, Dundee, DD4 9SW ("The Property")**

**The Parties:-**

**MRS ELIZABETH CALMAN residing at 178 Perth Road, Dundee, DD1 4JS ("the Tenant")**

**DUNDEE CITY COUNCIL, City Chambers, represented by Mr Stewart Cuthill ("the Applicants")**

**MR BRIAN FINNEGAN and MRS MARILYN FINNEGAN, spouses residing together at 36 Mansion Drive, Dalclaverhouse, Dundee ("the Landlords")**

Whereas in terms of their decision dated 12 September 2018, The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlords have 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 Landlords have failed to ensure that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) The installations in the Property 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;

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 provide a current gas safety certificate by a registered engineer disclosing all appropriate tests have been carried out and confirming that all gas appliances at the property are in safe working order
- (b) To carry out such works of repair or replacement to the front door as to render it properly wind and watertight and fit for purpose

The tribunal order that the works specified in this Order must be carried out and completed within the period of 6 weeks 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 Ewan K Miller, Chairman, Solicitor, Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Tribunal at Dundee on 4 September 2018 before this witness:-

E Miller

Chairperson

—  
L Johnston

\_\_\_\_\_  
(witness)

L  
Lindsay Johnston  
Whitehall House  
33 Yeaman Shore  
Dundee DD1 4BJ

# 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/18/1423**

**16 Gruinard Terrace, Dundee, DD4 9SW ("the Property")**

**The Parties:-**

**MRS ELIZABETH CALMAN residing at 178 Perth Road, Dundee, DD1 4JS ("the Tenant")**

**DUNDEE CITY COUNCIL, City Chambers, Dundee, represented by Mr Stuart Cuthill ("the Applicants")**

**MR BRIAN FINNEGAN and MRS MARILYN FINNEGAN, spouses residing together at 36 Mansion Drive, Dalclaverhouse, Dundee ("the Landlords")**

### **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 Landlords had complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence obtained by the Tribunal at the inspection of the Property, determined that the Landlords 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 18 June 2018, the Applicants had applied to the Housing & Property Chamber on behalf of the Tenant for a determination of whether the Landlords 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 Applicant stated that they and the Tenant considered that the Landlords had failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that:-
  - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;

- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
  - (c) The installations in the Property 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. By letter dated 23 July 2018, the President intimated by way of letter incorporating Notice of Referral that the matter was to be referred to a Tribunal for determination.
  4. Following service of the Notice of Referral none of the parties made any further representations to the Tribunal.
  5. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Ms G Wooley, Ordinary Member) inspected the Property on the morning of 30 August 2018. The Tenant was present along with Mr Cuthill for the Applicants. The Landlords were neither present nor represented.
  6. Following an inspection of the Property the Tribunal held a Hearing at Caledonian House, Greenmarket, Dundee. Neither party was present or represented.
  7. The Tenant and the Applicant advised at the inspection that the majority of the work had been done. The principal concern of the Tenant was in relation to the front door at the Property which she alleged was not properly wind and watertight, was rotted around the letterbox and generally in poor condition. There were no representations for the Tribunal to consider from the Landlords either at the inspection or the Hearing.

### **Summary of the issues**

8. The Tribunal noted that there were 5 areas of complaint notified by the Applicant to the Landlords. These 5 issues required to be determined by the Tribunal and were:-
  - (1) Whether the front door was properly wind and watertight and met the repairing standard.
  - (2) Whether the rear kitchen door was properly wind and watertight and met the repairing standard.
  - (3) Whether the gas boiler was compliant with the relevant regulations.
  - (4) Whether there was appropriate smoke and heat detection systems compliant with the relevant standards.
  - (5) Whether the Property had a safe electrical installation.

### **Findings of fact**

9. The Tribunal found the following facts to be established:-

- The front door was not properly wind and watertight and did not meet the repairing standard.
- The rear kitchen door was properly wind and watertight and met the repairing standard.
- The Tribunal was not satisfied that there was sufficient evidence that the gas boiler met the repairing standard.
- There was a compliant smoke and heat detection system installed in the Property.
- The electrical installation within the Property met the repairing standard.

### **Reasons for the decision**

10. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection of the Property. The Tenant and the Applicant submitted that the Landlords had carried out a number of the works that had initially been complained of.

The Applicant's representative Mr Stuart Cuthill provided a copy of an electrical installation condition report that had been carried out at the Property. This indicated that the system was compliant and there were no items marked C1 or C2 on the report. Accordingly the Tribunal were satisfied that the electrical system within the Property was now safe and met the repairing standard.

The Tribunal noted that there was a hardwired interlinked smoke and heat detection system within the Property compliant with the relevant regulations.

The Tribunal noted that the rear kitchen door had recently been replaced with another door that had become surplus to requirements at an adjacent property. Whilst the door was dated, nonetheless it was functioning and met the repairing standard. Accordingly nothing further was required in this regard.

A gas safety certificate was supplied. The Tribunal was not satisfied with the gas safety certificate. The report was dated December 2016 yet the inspection appeared to have been carried out in December 2017. Upon checking the GasSafe Register online, the registered business number was stated as being Grant McKenzie whereas the certificate gave a limited company as holding that number. In addition the gas engineers personal licence number did not appear to still be valid upon a check of the register. Further, the appliance details list comprising part of the certificate only covered the boiler yet stated that it had not been inspected. In the view of the Tribunal this rendered the certificate more or less worthless. No tests other than a visual inspection appeared to have been done. The Tribunal required a fresh gas safety certificate, in date and certified by

an engineer with the appropriate licence and having properly tested the appliances.

The Tribunal considered the position in relation to the front door. The door was dated and daylight could be seen in places between the door frame and the door itself. The area around the letterbox was also rotten and generally the door was in poor condition. On balance the Tribunal was satisfied that it would be appropriate for the Landlords to carry out works of repair or replacement to render the door properly wind and watertight.

The Tribunal was of the view that the door was at the end of its useful life and it would be more appropriate to replace it rather than repair it. However this remained a matter for the Landlords to best decide how to meet the repairing standard..

The Tribunal considered how long the Landlords would require to carry out the appropriate works and determined that 6 weeks was an appropriate period.

Photographs taken during the course of the inspection are annexed to this Decision for information.

### **Decision**

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

### **Right of Appeal**

14. 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.

**Effect of section 63**

15. 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.

E Miller

Signed

.....

..... Chairperson

Date

..... 12/9/12 .....

These are the photos taken at the inspection on 30 August 2018 referred to in the foregoing Decision.



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

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# 16 Gruinard Terrace Dundee DD4 9SW

Inspection and Hearing 30 August 2018

Appendix - photos



## Photo sheet 1: front door



Letter box is poorly fitted with no draught-proofing

External



Internal



Front door is in poor condition with no draught-proofing.  
Daylight can be seen internally approx. 500mm from the floor

## Photo sheet 2: back door

External



Internal



Replacement aluminium  
framed door recently fitted.  
Door handle and lock in an  
acceptable condition

### Photo sheet 3 : alarm systems



Smoke alarms in entry hall and sitting room



Heat alarm  
in kitchen



Carbon monoxide  
alarm in boiler room