

# 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/18/2232**

**Title no: STG 3010**

**2 Firs Crescent, Bannockburn, Stirling, FK7 0AQ ("The Property")**

**The Parties: -**

**Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG  
("the Third Party")**

**Tracy Laird, 2 Firs Crescent, Bannockburn, FK7 0AQ ("the Tenant")**

**Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry,  
Northern Ireland BT55 7FG ("the Landlord")**

Whereas in terms of their decision dated 6 December 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:-

- (a) The house is wind and watertight and in all other 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.

- (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
- (f) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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 contractor to investigate the cause of the collapsed ceiling in the living room, repair the damage, re-plaster and re-decorate the ceiling.
2. To replace the defective light fittings in the living room and bathroom.
3. To replace the defective and damaged doors in the living room and front bedroom.
4. To replace the living room carpet.
5. To replace the lock and handle on the front door.
6. To re-plaster all damaged plasterwork in the hall and re-decorate.
7. To replace the defective extractor fans in the bathroom and kitchen.
8. To instruct a suitably qualified damp proofing specialist to investigate the cause of dampness and condensation in the bathroom and bedrooms, provide a report to the Tribunal and carry out all recommendations in the report and necessary works to eradicate the dampness and condensation.
9. To repair or replace the defective window in the front bedroom.
10. To replace the gas cooker with a new cooker.
11. To instruct a suitably qualified contractor to repair the damaged downpipe to the front of the property.
12. To instruct a suitably qualified contractor to repair the crack to the render above the front door.
13. To install hard wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance.
14. To instruct a suitably qualified Gas Safe engineer to inspect the entire heating system, service and repair the boiler or if recommended replace the boiler and central heating system and thereafter carry out an inspection of the gas

appliances and CO detector at the property and provide the Tribunal with a satisfactory gas safety record, and

15. To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation of the property, after the installation of new smoke and heat detectors, and exhibit a satisfactory EICR to the Tribunal.

The Tribunal order that the works specified in this Order must be carried out and completed within the period 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 type written on this and the preceding pages are executed by Josephine Bonnar, legal member of the Tribunal, at Motherwell on 6 December 2018 in the presence of the undernoted witness:-

Mr Gerard Bonnar

Ms Joesphine Bonnar

\_\_\_\_\_ witness

\_\_\_\_\_ Legal Member

Gerard Bonnar  
1 Carlton Place, Glasgow

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Ref: FTS/HPC/RT/18/2232**

**Title Number: STG 3010**

**2 Firs Crescent, Bannockburn, Stirling, FK7 0AQ (“The Property”)**

**The Parties: -**

**Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG (“the Third Party”)**

**Tracy Laird, 2 Firs Crescent, Bannockburn, FK7 0AQ (“the Tenant”)**

**Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG (“the Landlord”)**

**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**

**Ms Carol Jones, Ordinary Member**

## Background

1. By application dated 31 August 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 states that the Third Party considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. The Third Party states that the Landlord has failed to ensure that (i) 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, (ii) 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, (iii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (iv) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (vi) 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 complains of;- (1) Living room – bulging ceiling, damaged door, carpet needs to be replaced, (2) Front door/Hallway – Front door is insecure and does not lock from inside, multiple areas of damaged plaster, (3) Bathroom – expelair fan is broken, light fitting damaged, possible rising damp and/or condensation, (4) Heating – boiler has not worked for 4 years, no gas safety certificate (5) Bedrooms – all affected by dampness and/or condensation, door handles missing, front bedroom window does not open, (6) Kitchen – cooker does not work, expelair fan is broken (6) External – Waste pipe at front of property leaking and plugged by tape, render above front door bossed, (7) No carbon monoxide detector , inadequate smoke/heat detectors. The application also states that no EICR, gas safety certificate or energy performance certificate has been provided to the Tenant. The application further states that the Tenant wishes to be treated as a party to the application.
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 parties on 3 October 2018. The parties were notified that an inspection

would take place on 5 November 2018 at 1.30pm and that a hearing would take place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.

4. The Tribunal inspected the property on the afternoon of 5 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant Tracy Laird was present. The Landlord did not attend. Thereafter the Tribunal held a hearing on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. Five other applications involving the Third party and the Landlord were also dealt with at the hearing under Chamber references FTS/HPC/RT/18/2230, 2226, 2229, 2235 and 2227. Mr Paterson attended on behalf of the Third Party. Also present were Blair McKie, Emma Jane McLaughlin, Shirley Kane and Mandy Rushforth, tenants in three of the other applications before the Tribunal. The Tenant did not attend, having notified Mr Paterson that she was unable to do so. The Landlord did not attend and was not represented. Written representations were submitted by the Landlord but not received until after the hearing. In terms of same the Landlord states that he does not wish to attend the hearing. He also states that he is in the process of "sorting this all out" and has engaged a new letting agent O'Malley Property, who is in the process of doing all the repairs required to bring the properties up to an acceptable standard. He further states that they have had some difficulty in accessing some of the properties. In advance of the hearing Mr Paterson lodged with the Tribunal a copy of a letter from O'Malley Property addressed to the Tenant, dated 1 November 2018. It states that they have been appointed as managing agent by the Landlord and are looking to review the property and "all maintenance required". The letter further states that the company aim to put "all properties in a habitable condition" quickly and firstly plan to get gas safety checks carried out by Wednesday 7<sup>th</sup> November. The letter then asks the tenant to provide the company with a list of maintenance issues.

### **The Inspection**

5. At the time of the inspection the weather was dry. The Tribunal inspected the property which is a three bedroom end terraced former local authority dwellinghouse located in Bannockburn, Stirling. The Tribunal noted the following; - (a) Living Room – large section of ceiling collapsed, plaster missing and lath exposed, ceiling mounted light fitting hanging loose next to collapsed ceiling, door damaged/ no handle, carpet worn and extensively stained, (b)

Hall – front door handle defective, key does not turn in lock and external handle very loose, several holes in plaster to left of living room door and base of party wall to kitchen, crack in plaster on ceiling above front door, (c) Bathroom – extractor fan damaged and not working, pull cord damaged, ceiling mounted light fitting defective, extensive damp and condensation throughout bathroom with very high (red) damp meter readings found to all walls and severe black spot mould particularly on external walls, (d) Kitchen – boiler located on rear external wall with CO detector above, broken gas cooker and defective extractor fan, (e) Bedroom 1 (front) - window does not open, covered by board, black spot mould in corners of ceiling at dormer window, door damaged and handle missing, (f) Bedroom 2 (rear) - black spot mould around window frame and sill, water staining to ceiling and wall, high damp meter reading at top of party wall to bedroom 3, (g) External – hole in cast iron downpipe on front elevation covered with tape, large crack to roughcast at eaves above front door, patches of roughcast spalling on gable wall, (h) No smoke or heat detectors in property. During the inspection Mrs Laird advised that the ceiling had been bulging at the time of Mr Paterson's inspection and for about a year before that. However, it has recently collapsed. She also advised that she has attempted to clean the living room carpet with carpet shampoo but it is beyond cleaning and needs to be replaced. Most of the other defects in the property have been in that condition for several years. The boiler hasn't worked for 5 years so they have no proper heating or hot water, except from the electric shower. The gas cooker does not work and Mrs Laird said she has to use a camping stove. She also advised that the mould in the bathroom has got worse over time, possibly because there is no heating. She advised the Tribunal that the damp is so bad in the third bedroom (which the Tribunal were not able to access) that she sleeps in the living room on a mattress. A schedule of photographs taken at the inspection is attached to this decision.

## **The Hearing**

6. Mr Paterson advised the Tribunal that the Tenant had phoned him to advise that her daughter was ill and she was therefore unable to attend the hearing. Accordingly, the Tribunal only heard evidence from Mr Paterson.
7. Mr Paterson advised the Tribunal that at the end of March 2018, while dealing with an unrelated complaint involving the Landlord, he became aware of repairs issues at a number of properties owned

by the Landlord, including the property which is the subject of the application. He contacted the Landlord and advised that these repair issues required to be addressed. He received a response from the Landlord confirming that action would be taken. However, further enquiries established that the work was not carried out. Between 13 July and 4 August 2018, Mr Paterson carried out full inspections of the 6 properties. Thereafter, he contacted the Landlord by post and email detailing the work which was required and asking the Landlord to provide action plans with timescales. He failed to do so, and no repairs were carried out. In July 2018 Mr Paterson also had contact from O'Malley Property. They indicated that they might be taking over the management of the properties, and also advised that the properties might be sold. Their appointment was not confirmed until last week, when Mr Paterson received an email from the Landlord saying that he has instructed new agents who would be getting the properties back up to standard. Mr Paterson has also become aware that some of the tenants, including the tenant of this property, have now received letters from O'Malley Property.

8. Mr Paterson confirmed that the defects detailed in the photograph schedule accurately reflect the repairing standard issues at the property. He confirmed that the property is in the same condition now as when he first inspected, prior to submitting the application, except for the living room ceiling. He advised the Tribunal that when he inspected in August, the ceiling was bulging and felt dry to touch. It has now collapsed. He advised that the property seems to be badly affected by dampness or condensation. He does not know the reason for this, although lack of heating for 5 years seems a likely contributory factor. He advised that he understands that no repairs have been carried out to the property since the Tribunal inspection, notwithstanding the terms of the letter from O'Malley Property to the tenant. He also pointed out that O'Malley Property did not require to get a list of defects from the tenant as he has listed these in his letter to the Landlord notifying him of the defects and in the application. He stated that the Tenant has not been provided with EICR, gas safety certificate or energy performance certificate, although he conceded that the latter is desirable rather than essential in relation to the repairing standard. In terms of the gas safety certificate, the gas boiler, heating and cooker will require to be fixed before such a certificate could be produced.



## Findings in Fact

9. The property is a three bedroom end terraced former local authority dwellinghouse located in Bannockburn, Stirling.
10. The living room ceiling is extensively damaged with plaster missing and lath exposed.
11. The light fitting in the living room ceiling is defective and hanging loose.
12. The extractor fans in the bathroom and kitchen are defective.
13. The internal doors to the living room, front bedroom and external front door to the property are defective.
14. The living room carpet is worn and stained.
15. There are holes in walls in the hallway.
16. The pull cord and ceiling mounted light fitting in the bathroom are defective.
17. There is severe damp and condensation in the bathroom.
18. There is a defective gas boiler in the kitchen with a CO detector above it.
19. There is black spot mould in two bedrooms.
20. There is water staining at the top of the wall and ceiling in the rear bedroom.
21. The gas cooker in the kitchen does not work.
22. There is a hole in the cast iron downpipe to the front of the property.
23. There is a large crack to roughcast at eaves above the front door of the property and patches of roughcast spalling on the gable wall.
24. There are no smoke or heat detectors in the property.
25. The front bedroom window is defective.
26. The tenant has not been provided with an up to date EICR or Gas Safety Record.

## Reason for decision

25. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
26. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 3 of the 2006 Act " The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it" The Tribunal is satisfied that the Third Party made the Landlord aware of the repairs issues at the property.
27. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the following; - damaged living room ceiling and light fitting, worn/stained living room carpet, damaged and defective living room, bedroom and front doors, damaged plaster and holes in the hall ceiling and walls, bathroom and kitchen extractor fans defective, pull cord and light fitting in bathroom damaged and not working, dampness and condensation in bathroom and 2 bedrooms upstairs, front bedroom window defective, damaged downpipe and cracked roughcast above the front door, lack of smoke and heat detectors. Some damage to the roof of the property around the chimney head on the rear pitch was noted, this might be a cause of water ingress in the bedrooms. These defects were evident at the inspection of the property.
28. From the additional information provided by the Tenant during the inspection and evidence led at the hearing the Tribunal is also satisfied that the heating and cooker are not working and that no gas safety record or EICR have been provided. There is a CO detector in the property. It's location at close proximity to the boiler does not comply with the relevant guidance and there is no evidence that it is in proper working order. The Tribunal notes that the Tenant has received a letter from O'Malley Property at the beginning of November but is satisfied that although the company have stated that they intend to get repairs and a gas safety check carried out, this has not yet happened. Although the Landlord makes reference in his written representations to access difficulties, he does not specify whether the tenant of this property had caused any problem with access. The Tribunal is satisfied that there is no evidence to suggest that the Tenant has not allowed access for repairs to be carried out.

29. During the inspection the Tribunal noted that, in addition to the defects listed in the application, the underfloor vents in the external walls are below ground level and that there is additional damage to some areas of roughcast. As these are not included within the application, the Tribunal makes no order in connection with same, but notes that these issues could be contributing factors in relation to the damp found in the bathroom and recommends that the Landlord carry out necessary repairs. Lastly, the Tribunal was unable to inspect the third bedroom at the property. Mr Paterson confirmed in his evidence that he had not been able to check this room during his inspection. The Tribunal concluded that it is likely that this room is also affected by the water ingress which affects the other rear bedroom upstairs. It would therefore be prudent for the Landlord to check when investigations are being carried out in relation the cause of dampness within the other rooms in the property. However, in the absence of evidence to support the claim that this room is also affected by dampness, no order is made in relation to same.
30. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(a), (b), (c), (d), (f) and (g). of the Act. As there are no furnishings detailed in the application before the Tribunal no breach of section 13(1)(e ) has been established.

### **Decision**

31. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
32. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)
33. 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.**

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**Ms Josephine Bonnar**

Signed..... 6 December 2018

Josephine Bonnar, Legal Member

6 December 2018

This is the schedule of photographs referred to  
in the decision of the same date

Ms Josephine Bonnar

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



Schedule of photographs taken during the inspection of 2 Firs Crescent, Bannockburn,  
Stirling FK7 0AQ by the First-tier Tribunal for Scotland (Housing and Property Chamber)  
Monday 5 November 2018

Reference Number : FTS/HPC/RT/18/2232



Front Elevation



Living Room - large section of ceiling collapsed - plaster missing and lath exposed



Living Room - ceiling mounted light fitting loose/taped by tenant adjacent to collapsed ceiling



Living Room - door damaged/no handle



Living Room - Carpet worn and extensively stained



Living Room - Carpet worn and extensively stained



Hall - Front door handle defective, key will not turn in lock



Front Door - external - handle loose, not fixed properly



Hall - hole in plaster at base of party wall to LR, part filled with mastic by tenant



Hall - large crack in plaster ceiling above front door



Hall - holes in plaster to left side of living room door



Hall - large hole in plaster at base of party wall to kitchen, brickwork exposed and wire protruding



Bathroom - Extractor fan defective/damaged and not working



Bathroom - pull cord damaged



Bathroom - ceiling mounted light fitting defective/  
damaged and not working



Bathroom - Extensive damp and condensation



Bathroom - Extensive damp and condensation



Bathroom - Extensive damp and condensation



Bathroom - Extensive damp and condensation





Bathroom - damp meter readings high to base of all walls - example shown on gable wall



Bathroom - damp meter readings high to base of all walls - example shown on front elevation



Kitchen - Boiler wall mounted on rear external wall



Front Bedroom (1) - window does not open properly, boards erected by tenant internally



Front Bedroom (1) black spot mould in corner of ceiling at dormer window - right side



Front Bedroom (1) black spot mould in corner of ceiling at dormer window - left side



Front Bedroom (1) - door damaged and handle missing



Rear Bedroom (2) - window - black spot mould around frame and sill



Rear Bedroom (2) - window - black spot mould around frame and sill



Rear Bedroom (2) - water staining to ceiling and wall towards rear elevation/party wall to Bed (3)



Rear Bedroom (2) - water staining to ceiling at party wall



Rear Bedroom (2) high damp meter reading around damp patch on party wall to Bed (3), plaster crumbling under wallpaper



Kitchen - Gas cooker - does not work



Kitchen - extractor fan - does not work



External - Front elevation - hole in cast iron downpipe covered with tape



External - Front elevation - large crack to roughcast at eaves above front door/landing window



External - Front elevation - underfloor vent below ground level



External - Gable Wall - patches of roughcast spalling



External - Gable Wall - underfloor vent below ground level



External - Gable Wall - patches of roughcast spalling



External - rear pitch of roof with chimney positioned above rear bedrooms (2) and (3)



Kitchen - Wall mounted Carbon Monoxide alarm positioned just above the boiler



Hall - possible site of former smoke alarm