

# **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/RP/18/0150**

**Property: 80 St Andrew Street, Galashiels, TD1 1DY, registered in the Land Register under title number SEL2271 ('The House')**

**The Parties:-**

**Lee Miles residing at 80 St Andrew Street, Galashiels TD1 1DY ('the Tenant')**

**Graeme Sloan St John, 9 Walter Street, Wishaw ML2 9LQ and Stephen John Robert Wight, 73 Mossneuk Park, Wishaw, ML2 8LX ('the Landlords')**

**The Key Place, 6 Bank Street, Penicuik, EH26 9BG ('the Landlords' agent)**

Whereas in terms of their decision dated 27<sup>th</sup> April 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)(a) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that the house is:-

- (a) wind and watertight and in all other respects reasonable fit for human habitation;

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 instruct a suitably qualified roofing contractor to carry out works to the roof of the house to ensure that there is no water ingress into the house;
- (b) To carry out works to dry out the walls in the kitchen and living room of the house to ensure that damp meter readings in those rooms are within the normal range;
- (c) To carry out works to repair any damage to the internal decoration in the property as a result of water ingress.

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 Mary-Claire Kelly solicitor 91 Haymarket Terrace, Edinburgh EH12 5HE, chairperson of the tribunal at Edinburgh on 27<sup>th</sup> April 2018 before this witness:-

M C Kelly

E Meikle

\_\_ witness

chairperson

ELCIDA MEIKLE name in full

91 Haymarket Terrace Address

Edinburgh

EH12 5HE.

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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**Graeme Sloan St John, 9 Walter Street, Wishaw ML2 9LQ and Stephen John Robert Wight, 73 Mossneuk Park, Wishaw, ML2 8LX ('the Landlords')**

**The Key Place, 6 Bank Street, Penicuik, EH26 9BG ('the Landlords' agent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are 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 concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of:-

Mary-Claire Kelly, Chairing and Legal Member

Greig Adam, Ordinary Member (surveyor)

### **Background**

1. By application dated 18<sup>th</sup> January 2018, the Tenant applied to the First-tier Tribunal (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.

2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:  
*(a) the house is wind and water tight and in all other respects reasonably for human habitation;*  
*(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.*
3. The application by the Tenant specified that the said failure was established as follows:  
*"1) we have had a worsening ceiling leak in the kitchen since early December 2017 before this there have been other leaks in the living room that have gone unfixed we have been in touch frequently to request help over the phone and by email*  
*2) a recent gas inspection also noted that the boiler flue was not installed correctly and poses a significant hazard to life, as there is the risk it may blow fumes into the house."*
4. The Tenant submitted as part of the application various email correspondence between the Tenant and the Landlords' agents spanning the period from 6<sup>th</sup> December 2016 to 11<sup>th</sup> January 2018, various photographs, a Gas Safety Certificate and a copy lease.
5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 6<sup>th</sup> March 2018 following a decision to refer made by the Convener of the First-tier Tribunal on 13<sup>th</sup> February 2018.
6. On 30<sup>th</sup> March 2018 the Landlords' agents submitted written representations agreeing that there were issues with the roof and boiler at the house. The

Landlords' agents also supplied copies of 3 worksheets dated 23<sup>rd</sup> February 2018 detailing proposed remedial works.

#### Inspection

7. The tribunal inspected the house at 10am on 16<sup>th</sup> April 2018. The Tenant was present at the inspection. The Landlords were represented at the Inspection by Robert Young, Director of The Key Place. Karen Young, Property Manager from The Key Place was also present.
8. Photographs were taken by the tribunal during the Inspection. Copies of the photographs are attached as a schedule to this Statement of Decision.

#### Hearing

9. Following the inspection a hearing took place at Old Gala House, Galashiels. The Tenant was present at the hearing. The Landlords were represented by Robert Young, Director of The Key Place. Karen Young, Property Manager from The Key Place was also present.
10. At the hearing the tribunal confirmed that the lease which had been submitted by the Tenant was valid and dealt with each of the issues specified in the application in turn:-

#### Water ingress to the living room

The Tenant gave evidence that there had been long standing issues with water ingress. The Tenant thought that the water ingress was primarily around the dormer window. The Tenant confirmed that work had been carried out to the roof the previous week and this appeared to have resolved the issue. The Tenant advised that a wall in the living room had been repainted the previous week.

Mr Young accepted that there was water ingress into the living room. He confirmed that quotes had been obtained from three roofers and that works had been instructed to address all defects that had been identified. Mr Young confirmed that works had commenced to renew the flat roof above the dormer window in the living room and to repair slates and flashings. Reference was

made to a worksheet instructing the various repairs to the roof and Mr Young advised that the works would be completed as soon as possible. Mr Young advised that recent inclement weather had affected the progress of works. The tribunal raised the issue of water ingress to the cupboard in the living room which contained an electrical consumer unit. Mr Young confirmed that this was within the scope of the instructed works. Mr Young confirmed that drying work would be undertaken to the house after the repairs to the roof had been completed. Appropriate cosmetic work would also be instructed to make good any damage as result of the water ingress.

#### Water ingress to the kitchen

The Tenant gave evidence that the kitchen continued to be affected by water ingress. The issue had been ongoing for approximately five months. The Tenant require to use pots to capture water coming from the roof. During periods of precipitation the extent of water ingress worsened. The condition of the kitchen was a source of concern for the Tenant and had a detrimental impact on his use of the room. The water ingress had soaked into the kitchen units and led to extensive staining to the ceiling, window and blind.

Mr Young accepted that there was water ingress into the kitchen. He confirmed that works had been instructed to replace the flat roof above the dormer and to repair the slates and flashings. Reference was made to the worksheet setting out the proposed works. Mr Young advised that the repairs would be carried out as soon as possible. Mr Young confirmed that once the roofing repairs had been carried out internal works to make good any damage to the room as a result of the water ingress would be instructed.

#### Gas Boiler

The Tenant produced a Gas Safety Certificate dated 12<sup>th</sup> May 2017. The certificate stated that the boiler was safe to use. The Tenant had become concerned about the boiler in December 2018, when a Scottish gas engineer visited the house to check the gas metre. The engineer advised the tenant that the boiler flue was not properly installed and posed a carbon monoxide risk. The

engineer had placed a warning notice on the boiler. The Tenant confirmed that remedial works had recently been carried out to the boiler.

Mr Young provided an updated Gas Safety Certificate dated 23<sup>rd</sup> February 2018. The Certificate confirmed that the boiler was safe to use and that a sealed Carbon monoxide detector had been fitted. Mr Young confirmed that work had been undertaken to repair the boiler flue prior to the Gas Safety Certificate being issued.

### **Summary of the issues**

11. The issue to be determined is whether the house meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by sections 14(1)(b) of the Act.

### **Findings in fact:-**

12. The tribunal find the following facts to be established:-

- i. The House is a first floor flat. The property is entered via external stairs. Upon entry internal stairs lead to a hallway, kitchen, living room, bathroom and 2 bedrooms, one of which is currently used as an office. The house is of stone construction and approximately 100 years old.
- ii. The Tenant has resided in the property since 26<sup>th</sup> February 2016. The Tenant resides with a joint tenant, Archel Manzano who did not participate in these proceedings. The Tenant signed a lease agreement with the Landlords on 26<sup>th</sup> February 2016. The Key Place were stated to be the Landlords' agents in the lease agreement. The rent payable in terms of the lease is £375 per calendar month.
- iii. The registered owners of the property are Graeme Sloan St John and Stephen John Robert Wright.
- iv. In terms of emails submitted by the Tenant spanning the period from 6<sup>th</sup> December 2016 to 11<sup>th</sup> January 2018 the tribunal were satisfied that those issues identified at paragraph 3 above were properly intimated to the Landlords' Agents.

- v. The living room in the house has been affected by water ingress, primarily around the dormer window. The roof in the area is not watertight.
- vi. Damp meter readings from the external wall in the living room were not within the normal range.
- vii. The kitchen in the house has been affected by extensive water ingress. Water continues to penetrate the ceiling and around the dormer window. The roof in the kitchen is not water tight.
- viii. Some kitchen units were sodden as a result of water penetration. The walls, window blind, ceiling and window were heavily stained as a result of water ingress.
- ix. Damp meter readings in the kitchen were not within the normal range.
- x. The Landlords' agents have instructed remedial works to the roof at the house. The works had commenced as at the date of the inspection and hearing but were not yet complete.
- xi. The gas boiler flue in the house has been repaired and a valid Gas Safety Certificate dated 23<sup>rd</sup> February 2018 confirming that the installation was safe was submitted to the tribunal.
- xii. A sealed carbon monoxide unit has been installed in the compartment housing the gas boiler.

### **Reasons for the Decision**

13. The tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.
14. The tribunal was only able to consider those items which formed part of the intimated application.
15. The tribunal noted at the inspection that both the kitchen and living room were affected by water ingress which was affecting the Tenant's enjoyment of the property.
16. The tribunal noted that in the living room water ingress affected the external wall which housed a cupboard containing an electrical consumer unit and that damp



meter readings on the external wall were not within the normal range. The tribunal noted that water was leaking through the ceiling in the kitchen and around the dormer window. The internal decoration of the property had been affected by water ingress and this was particularly noticeable in the kitchen where extensive staining was visible. Some kitchen units were damp as a result of water penetration. The Landlords' agents accepted that there was water ingress in both rooms and had instructed remedial works to be carried out to ensure the roof is water tight. Those works are ongoing. Accordingly the Tribunal considered that there was a breach of the repairing standard in respect of section 13(1)(a) of the Act.

17. The tribunal noted that works had been carried out to the gas boiler flue and that an updated Gas Safety Certificate had been supplied which confirmed that the installation was safe. A sealed carbon monoxide monitor had also been installed. The tribunal were satisfied that there was no breach of the repairing standard in respect of section 13(1)(c) of the Act.

## **Decision**

The Tribunal determines that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

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

## **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.

M C Kelly

Chairperson

9<sup>th</sup> May 2018  
Date



**Property: 80 St Andrew Street,  
Galashiels, TD1 1DY  
(‘The House’)**

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# **SCHEDULE OF PHOTOGRAPHS**



1 Front Elevation.



2 Rear Elevation and entrance to flat.



3 View of cement skew.



4 Rear roof pitch between box dormer projections.



5 Roof access ladder.



6 Protruding chimneystack.



7 Box dormer projection housing Kitchen.



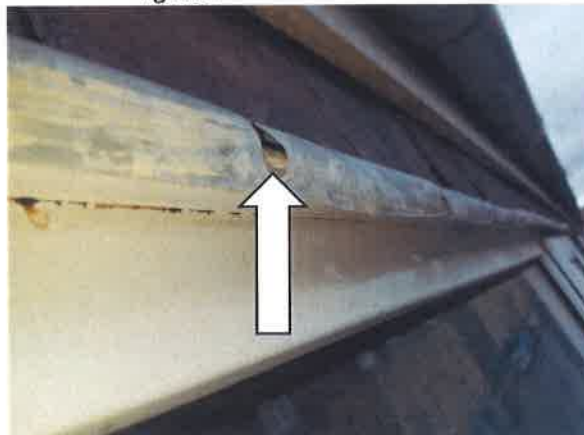
8 View within Living Room tripartite window – staining at sill.



9 View to head window frame and isolated staining from water ingress.



10 View over head of tripartite window.



11 Close view of defective flashing.



12 Electrical Cupboard within Living Room.





13 High moisture readings within Electrical Cupboard.



14 View within Kitchen above window of water ingress damage.



15 Moisture meter readings within Kitchen.



16 Staining at Kitchen window.



17 Staining to kitchen blind.



18 View of kitchen units affected by water ingress.



19 Damage to kitchen units.



20 Boiler.

21



23 Boiler flue and access hatch.

22



24 Tripartite Living Room window.



25 Lead gutter to rear roof pitch.



26 Undulations and deformation to defective lead gutter.

27

28



29 Close view of deformation and ponding water within gutter.



30 Exposed sarking to tiles (no underslating felt present)



31 Roofing works ongoing at dormer location.



32 Poor detailing of slate above kitchen window.

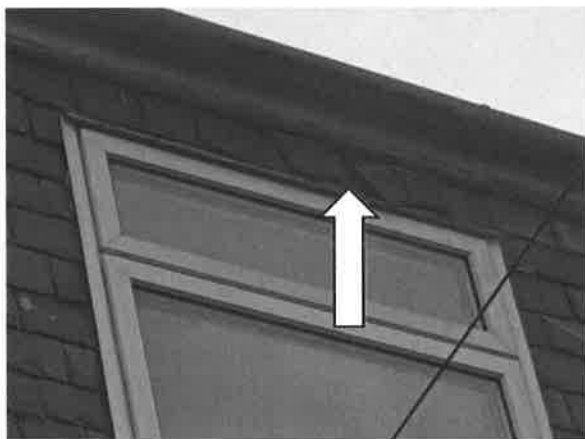


33 Defective joint to lead gutter.



34 Water escape staining from defective gutter.





35 Slipped slated above kitchen window.



36 Box dormer to Kitchen.