

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/RP/17/0469

Title no: STG34628

**Mains of Boquhan Farmhouse, Boquhan Estates, Kippen, Stirlingshire FK8 3JQ
("The House")**

The Parties:-

- **Ms Rosa Clifford, c/o Mulraney Group, Limetree House, North Castle Street, Alloa FK10 1EX ("the Tenant")**
- **Euan Snowie Farms, Boquhan House, Boquhan Estate, Kippen FK8 3HY ("the Landlord")**
- **Claire Middlebrooks, Middlebrooks Business Recovery and Advice, 11a Dublin Street, Edinburgh EH13 1PG ("the Trustee in Sequestration for the Landlord")**

Whereas in terms of their decision dated 10th May 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: -

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) that 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) that the installations in the house for the supply of water, gas and electricity, for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order; and
- (d) that the fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

The Tribunal now requires the Landlord or those acting on behalf of the Landlord, namely the Trustee in Sequestration for the Landlord ("the Trustee"), 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 or Trustee in Sequestration for the Landlord:-

- (a) To carry out sufficient works to the bio-mass boiler to allow space heating and hot water system to be operable within the House or the installation of an alternative heating system to allow heating of the House and hot water in the House and to ensure that all the appropriate safety certificates are in place for the above.
- (b) To ensure that all the plumbing within the House is operating satisfactorily in that it is working and there are no leaks within the system,
- (c) To repair and make good the missing tile and verge mortar fillet at the front of the house,
- (d) To repair and make good the plaster board to the kitchen ceiling including repairing any damage caused to the ceiling structure and make good any decoration,
- (e) To repair and make good or replace the windows to ensure that all windows are properly operable,
- (f) To repair and make good or replace the internal doors to ensure that all doors are properly operable,
- (g) To clean and repair the gutters to ensure that any water in the gutter is able to run freely and
- (h) To provide an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported and it to be dated after the date of the inspection by the Tribunal. The aforementioned EICR should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 6 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 pages are executed by Gabrielle Miller, solicitor, chairperson of the Tribunal at Glasgow on 10th May 2018 in the presence of the undernoted witness: M
E Macmillan G Miller

_____ witness chairperson
E Macmillan
_____ name in full

20 YORK STREET Address

GLASGOW

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



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**Decision and Statement of Reasons: Housing (Scotland) Act 2006
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- **Claire Middlebrooks, Middlebrooks Business Recovery and Advice, 11a Dublin Street, Edinburgh EH13 1PG ('the Trustee in Sequestration for the Landlord')**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Andrew Murray	-	Ordinary Member

Decision

1. 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) in relation to the House and taking account of the Submission by the Trustee in Sequestration for the Landlord's solicitor at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

2. By application received 11th December 2017, the Tenant applied to the Housing and Property Chamber for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
3. The application by Tenant stated that she considered that the Landlord had failed to comply with the duty to ensure that the House met the repairing standard in that House is not wind and watertight and in all other respects reasonably fit for human habitation, the structure of the exterior of the House (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that the installations in the house for the supply of the water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and that the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and not in proper working order, In particular, the complaints consisted of:-
 - a) There is no heating in the property,
 - b) There is no hot water in the property,
 - c) An electrical safety certificate has not been issued and the electrics are not safe,
 - d) There are holes in the roof,
 - e) The gutters are blocked,
 - f) The windows seals are broken and the windows do not operate,
 - g) The internal doors do not fit and
 - h) The plumbing system leaks.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Trustee in Sequestration for the Landlord (hereinafter "the Trustee") dated 7th March 2018.
5. A letter, dated 16th March 2018, was received by the Housing and Property Chamber from the Trustee's solicitor. This letter informed that the Tenant has moved out of the House after an agreement had been reached between the Trustee and the Tenant that the Tenant would voluntarily leave the property. It also informed that the Property was to be sold and not re-let. The letter then asked for confirmation that the inspection and hearing would not proceed.
6. A minute of continuation was issued dated 9th April 2018. The Tribunal considered that there were health and safety issues arising from the application and this allowed the Tribunal to proceed to the inspection and hearing.

The Inspection

7. The Tribunal attended the House on the morning of 20th April 2018. None of the parties were present. The property was unlocked by Galbraith, the estate agents, who are dealing with the sale of the property. It was clear, dry and cold on the day of the inspection. At the date of the hearing the House had been marketed as part of one of two lots relating to the whole of the Mains of Boquhan Farm Estate. There was one note of interest on the file.
8. The House is located in a rural setting with Stirling being the closest city. It is a south facing, detached two storey timber framed dwelling believed to have been erected in the 1990s. The external envelope comprises a pitched timber roof finished with interlocking concrete tiling; walls are masonry with a rendered finish; windows are timber framed, double glazed top hung opening sash units; external doors are timber framed and part glazed. It is located within Mains of Boquhan Farm Estate.
9. The House was not occupied. Some furnishings remained in it and there were floor coverings in place. The heating system was not able to be turned on. The electricity and water supplies were turned off. The electricity was not able to be tested. The electrical switchgear was noted as being in the utility room.
10. It was noted that the house has been neglected in terms of ongoing maintenance for a number of years.
11. The living room and ground floor hallway were inspected first. It was noted that the windows were difficult to open, and some could not be opened at all as it was considered unsafe to do so on health and safety reasons.
12. The kitchen was then inspected. The windows were generally in a poor and unmaintained condition. Some were unable to be opened for health and safety reasons. Water penetration, likely from defective pipework above in the first floor bathroom, had resulted in the part-collapse of the ceiling plasterboard. There was evidence of water staining down the north wall. The doors were ill-fitting and difficult to open and close.
13. The utility room and rear porch were then inspected. The same issues occurred with the doors and windows as detailed above. The lock had been removed from the external door from rear porch.
14. The sun lounge was then inspected. The same issues arose with the windows as detailed above. The door was boarded over and was unable to be opened.
15. The first floor hall was then inspected. The same issues arose with the windows.

16. The first floor bedrooms were all inspected next. The same issues arose with the doors and windows as detailed above. The Velux window in the smallest bedroom was able to be opened and was in working order.
17. The first floor bathroom was then inspected. The wash basin and bath briefly ran water; likely to be residual in the pipework, as the water ceased running and there was a strong drain smell shortly thereafter. The same issues with the windows as detailed above were noted.
18. The gutters were inspected from the upper windows and outside. The gutters are choked with weeds and silt debris.
19. The roof was inspected from ground level without the use of a ladder. It could be seen that there was a tile missing at around eaves level to the front east of the roof and the mortar fillet at the sun lounge gable was displaced and part missing.
20. The bio mass boiler was inspected. This was housed in a separate building in close proximity to the House. We understand that the installation serves a number of buildings on the estate, including the House under inspection. The system was not operational at the time of our visit and therefore there was no space heating or hot water supply to the House on the day of inspection.
21. During the inspection photographs were taken by the Tribunal and a schedule of photographs is attached to this decision.
22. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

23. The hearing took place at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. The Tenant, Landlord and Trustee were not present. The Trustee's solicitor, Mr Thomas MacFarlane came along to make representations on behalf of the Trustee.
24. Mr MacFarlane submitted to the Tribunal that the Trustee was not in the role of landlord in that their role was to deal with the sequestration and the estate of the Landlord. He wished to reiterate the points raised in the letter to the Housing and Property Chamber dated 16th March 2018. He further submitted that the Trustee has not adopted the lease therefore was not the landlord. He submitted that the Tenant had removed themselves from the House which had brought the Tenancy to an end. This lead him to conclude on that point that there was no landlord and no lease. He submitted that the property has been marked for sale and not for the House to be re let. The Property will remain unlet to allow vacant possession to the next owner. Mr MacFarlane then submitted that Euan Snowie Farms have no rights and no access rights to the House so would

not be able to comply with any RSEO if the Tribunal decided to impose one. Mr MacFarlane submitted that the imposition of a RSEO would be unfair against the Trustee and the estate as funds would be needed to comply with the RSEO which would reduce the funds available to the Trustee and estate. He concluded that the Property was to be sold and it would be up to future owners to deal with the property repairs. It is unknown if any future owner would let out the property or not. Mr MacFarlane then left as he did not have an interest in the rest of the hearing.

25. No other party was present after Mr MacFarlane left the hearing.

Summary of the issues

26. The issues to be determined are: -

- a) Whether there was the capacity for heating in the property and whether the central heating system worked,
- b) Whether there was hot water in the property and whether there was the capacity for it to be provided,
- c) Whether there was an electrical safety certificate and whether the electrics were safe,
- d) Whether there were holes in the roof,
- e) Whether the gutters were blocked,
- f) Whether the window seals were broken and whether the windows were able to be operated,
- g) Whether the internal doors were able to be used,
- h) Whether the plumbing system was in good working order and
- i) Whether the electrical system was defective and whether an EICR is required.

Findings of fact

27. Having considered all the evidence, the Tribunal found the following facts to be established: -

- a) The tenancy is an assured tenancy between the Landlord and the Tenant. The tenancy commenced on 1st June 2017.
- b) Claire Middlebrook is the Trustee in Sequestration for the Landlord. She was appointed on 1st August 2017.
- c) After discussions with the Trustee the Tenant left the House.
- d) The Tenant did not leave the House until after the application was made on 11th December 2017.
- e) There was no heating or hot water or electricity within the House at the inspection.
- f) The heating system runs from a biomass boiler located in another building in close proximity to the House.
- g) There was a large significant hole in the kitchen ceiling from where the plasterboard had collapsed.
- h) There was a tile missing at around eaves level to the front east of the roof and the mortar fillet at the sun lounge gable is displaced and part missing.

- i) The gutters are choked with weeds and silt debris.
- j) The windows were in disrepair. This varied from some having poor sealant to some being too dangerous to open. The windows needed to be cleaned on the outside to remove moss build up on the glazing. There is a need for a complete overhaul of all of the windows to ensure that all are wind and watertight and are properly operable. This will likely mean that they will need to be replaced.
- k) The internal doors are ill fitting and do not close properly. All need to be checked to ensure that they are opening and closing freely. The external doors will all need to be checked as some had locks removed. These will need replaced.
- l) The biomass boiler is currently switched off. As a result, there is no heating or hot water within the House.

Reasons for the decision

- 28. The Tribunal determined the application, having regard to the terms of the application, the written representations received prior to the hearing, the findings of their inspection and the representations of the Landlord at the hearing.
- 29. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
- 30. The Tribunal was in no doubt, from its inspection, that the property did not meet the Repairing Standard.
- 31. There was clear evidence the windows needed cleaned of the moss on the outside and repaired or replaced. Many of the windows could not be opened due to concerns about the poor condition of the windows and that opening them could cause further damage. There is a need for a complete overhaul of all of the windows to ensure that all are wind and watertight and are properly operable. There will likely be a need to replace some of the more badly affected units.
- 32. There was clear evidence that the external roof is in need of repair as there is a tile missing around eaves level to the front east of the roof and the mortar fillet at the sun lounge gable is displaced and part missing.
- 33. The plaster board ceiling in the ground floor kitchen is part collapsed which is likely as a result of defective drainage likely from the bathroom above.
- 34. That the internal doors are ill fitting and do not close properly.
- 35. There was no evidence brought forward that the biomass boiler was in operational order. The biomass boiler was switched off and this is the reason that there is no operational space heating or hot water in the House. In any event, the space heating and hot water supply should be

reinstated to ensure adequate heating/hot water throughout. This will include a full check on all of the radiators and pipework, where aged leakage stains could be seen on some of the pipework surfaces.

36. There are concerns that plumbing is not in full working order and able to be used without leaks. The water supply appeared to be turned off at the time of the inspection. It is understood that historic plumbing leaks were reported. Whilst the inspection does not allow for drainage testing, the fittings looked aged and there will be a need for a full inspection of all plumbing pipework to ensure that all fittings, distribution and waste pipework is operating efficiently without leakage or defect.
37. As electricity was turned off it was not possible to confirm if it was working or not. This would be resolved by providing an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported and it to be dated after the date of the inspection by the Tribunal. The aforementioned EICR should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor.
38. We were satisfied that the Trustee holds the responsibilities of the Landlord. We did not accept the position that any RSEO could not be imposed upon the Trustee. The Trustee had been accepting rent from August 2017 until the Tenant left the property after the application was lodged on 11th December 2017. Email correspondence was entered into between agents for the Trustee and the Tenant regarding rent between 9th and 16th November 2017. In the emails it is stated that if the repairs to the Property have been made then the full rent would be expected on 1st December 2017. This makes clear that the Trustee has right, title and interest in the tenancy. We do not accept that there is now not a party who is acting as the Landlord. The email correspondence made it clear that it was addressing the repairs and seeking rent. Further, the Tenant left due to an agreement with the Trustee. This further illustrates the Trustee's ability to make determinations regarding the Lease. The fact that the Tenant is no longer in the property is not an issue as the Tribunal was concerned with matters due to health and safety issues and accordingly has jurisdiction.
39. Accordingly, in view of its findings the Tribunal had no option but to conclude that the Landlord and/or the Trustee in lieu of the Landlord was in breach of the duty to comply with the Repairing Standard.
40. The Act states that where a Tribunal decides that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
41. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Observations

42. The Tribunal would wish to point out that the work needs to be done to ensure that all smoke and heat detectors are in working order and are inter-linked from the mains supply. A heat detector should be provided in the kitchen and smoke detectors provided in the sitting room and in the first-floor hallway. A Carbon dioxide detector should be provided in the Livingroom.

Decision

- (a) The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
- (b) The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) which if the Landlord fails to comply with the RSEO the Landlord will have committed an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (c) The decision of the Tribunal was unanimous.

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.

G Miller

G Miller, Chair

10th May 2018

Photographic Schedule – Mains of Boquhan Farmhouse, Boquhan Estates, Kippen FK8 3JQ

To Accompany Case reference: FTS/HPC/RP/17/0469

Date of Inspection: 20 April 2018



1 South facing front elevation



2 North facing rear elevation



3 Missing tiling front elevation east



4 Missing/displaced mortar fillets at front elevation sun room porch



5 Example of weed build up in the gutters to the rear



6 Example of defective window ironmongery



7 Example of moss build up on external window glazing (first floor front bedroom)



8 Example of ill-fitting window unit (first floor front bedroom)



9 Part collapsed ground floor kitchen ceiling; water staining noted on wall



10 First floor bath; suspected source of kitchen leak below.



11 Secured sun room external door (boarded over internally for security)



12 Electrical switchgear and ad-hoc washing machine plumbing in ground floor utility room



13 Defective ceiling mounted smoke detector in ground floor kitchen



14 View of bio-mass boiler metal container housing (LHS) with dwelling to the rear (RHS)