

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order (RSEO): Section 24 of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/0603

**Property at Beaufort, Culbokie, Dingwall, IV7 8JH registered under Title Number ROS8012
("The Property")**

The Parties:-

Mr Callum Child, formerly residing at Beaufort, Culbokie, Dingwall, IV7 8JH ("the former Tenant")

Mr Kevin Maggs, residing at Timberlee, Coulhill Road, Alness, IV17 0QT ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Mark Andrew	-	Ordinary Member

Whereas in terms of their decision date **25 August 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 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; and
- (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.

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 to:-

- (a) Replace the two external doors to the rear of the property and ensure these are wind and watertight;
- (b) Instruct a qualified electrician to inspect the electrical installations and carry out such works as are necessary to ensure they are in a reasonable state of repair and safe working order and produce a clear electrical installation condition report thereafter;
- (c) Apply draft proofing strips to all opening casement windows;
- (d) Repair the cracked window pane in the lounge to the north east of the property;
- (e) Repair or replace the flat roof to ensure it is watertight;
- (f) Carry out such repairs as are necessary to the slate roofs each side of the flat roof and over the lounge to ensure they are watertight;
- (g) Repair and cap the south west chimney to prevent water ingress;
- (h) Carry out repointing works to, and cap the north east gable chimney;
- (i) In the downstairs bedroom, remove the affected plaster surrounding the fireplace and remove all debris from behind to prevent water ingress;
- (j) Instruct a suitably qualified engineer to inspect the boiler and heating system and carry out such works as are necessary to ensure it is in proper working order and produce a service report thereafter; and
- (k) Carry out any such works to make good decoration following the works at (a) to (j).

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 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.

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 Ruth O'Hare, Chairperson, 2 Mill O'Forest Grove, Stonehaven, AB39 2GH, chairperson of the Tribunal at Aberdeen on 25 August 2018 before this witness:-

E Johnston

R O'Hare

witness

___ chairperson

Elizabeth Johnston, 2 Mill O'Forest Grove
Stonehaven, AB39 2GH

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/0603

**Property at Beaufort, Culbokie, Dingwall, IV7 8JH
("The Property")**

The Parties:-

Mr Callum Child, formerly residing at Beaufort, Culbokie, Dingwall, IV7 8JH ("the former Tenant")

Mr Kevin Maggs, residing at Timberlee, Coulhill Road, Alness, IV17 0QT ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Mark Andrew	-	Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received 15 March 2018 the former Tenant applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had 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; and
 - (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. In summary, the Tenant submitted that the external doors to the rear were letting wind and water into the House and one of the door locks was broken, the windows were draughty and there was a leak in one of the bedrooms from the flat roof, and in the lounge extension, there were problems with the electrics, there was water ingress in one bedroom from the chimney, no service record for the boiler had been produced and the heating was poorly functioning, no Energy Performance Certificate, Legionella Risk Assessment or Electrical Installation Condition Report had been produced, the cap on the oil tank was unsecure, a window pane in the lounge was cracked, there was a lot of debris left in the garden and no tenancy deposit information had been provided by the Landlord.
 4. By Minute dated 3 April 2018 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 96 of the Housing (Scotland) Act 2014, intimated his decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the former Tenant.
 5. Following submission of the application, the former Tenant vacated the property and the tenancy was terminated. By Minute of Continuation dated 4 June 2018, the Tribunal determined to continue with the application given the nature of the disrepair complained of and potential impact on future occupants.
 6. An inspection and hearing was scheduled for 6th June 2018. The Tribunal subsequently received email correspondence from the Landlord advising that he would be unable to give access on that date. The Tribunal therefore agreed to postpone the inspection and hearing to give the Landlord the opportunity to attend.
 7. The inspection took place on 21st August 2018. The Landlord was present and gave access. The weather was overcast with showers and light winds.

The Inspection

8. During the inspection the Tribunal members examined the various areas of complaint raised by the former Tenant.
9. The Tribunal examined the external doors at the rear of the property, one which gave access from the lounge to the north east of the property and one which gave access from the utility room off the kitchen. It was clear that neither was a suitable

external door, having insufficient weight and body therefore allowing for wind to enter. The Landlord explained that he would be arranging for the doors to be replaced and recognised that they were not fit for purpose.

10. The Tribunal noted evidence of water ingress on the ceiling in the lounge to the north east of the property. The Landlord confirmed that works were required to the slate roof over the lounge. There was also evidence of water ingress into the 1st floor central bedroom which had a flat roof covering. Some temporary repairs had been carried out to both flat (felt) and slate roofs however significant repairs were needed to both the flat roof and the slated roofs. The Landlord intended to carry these out over the coming months. The Tribunal proceeded to examine the roof from the garden and noted areas of the slated roof where tiles had become dislodged and required repair which the landlord intended to carry out as part of the overall roof repairs. The Landlord further advised that both chimneys required repair in order to prevent water ingress. The south west chimney required to be capped and the north east gable chimney required repointing. Again, these were works that the Landlord intended to instruct in the due course.
11. The Tribunal inspected the downstairs bedroom at the south west end of the property. Evidence of water ingress was noted above the fireplace. The location of the water ingress indicated debris had dislodged between the stone wall and plaster and fallen onto and to the side of the fireplace and was causing damp to travel from the outer stone wall to the inner plaster wall.
12. The Tribunal examined the windows throughout the property. It was noted that a window pane to the front of lounge 1 was cracked. The condition of the windows was consistent with the character and age of the property. However no draught proofing measures had been undertaken. The Landlord explained that the property was C-listed and therefore there were restrictions on what he could do with the windows.
13. The Tribunal examined the kitchen. Above the kitchen worktop to the left of the room a spur had been created using a double plug socket. The Landlord explained that he did not know who had done this and he intended to arrange for an electrician to inspect the electrics and produce a new EICR. An EICR had been carried out by his former letting agent approximately two to three years ago however they had since closed down and he had been unable to obtain any documentation in this regard. He had carried out works when the new requirements for smoke detectors and carbon monoxide detectors were imposed in around 2013 and the electrics were all in safe working order at that point. However he recognised that a new EICR was needed. The Tribunal noted the fuse box in the front hall which had no RCD protection. The Landlord explained his intention to have this replaced as part of the electrical works previously referred to.
14. The Tribunal examined the oil tank in the garden. A padlock had been fitted to secure the cap on the tank. On further inspection of the garden, the Tribunal found no noticeable debris, albeit it had become overgrown and required maintenance.
15. The Tribunal examined the boiler which was located in a cupboard in the lounge to the north east of the property. The Landlord explained it had been serviced

regularly. There were issues with heating the property but these were to be expected given its age and listed building status.

16. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
17. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

18. The hearing took place at Dingwall Community Centre. No parties were in attendance.
19. The Landlord had stated to the Tribunal at the inspection that he would not be attending the hearing. He explained that he had not received any of the papers for the case. It transpired that the Landlord had moved house and had not updated his address. The Tribunal asked whether the Landlord was seeking an adjournment to give him the opportunity to fully consider the papers. The Landlord advised that he saw no point in prolonging matters and would await the Tribunal's decision before deciding how to proceed.
20. The Tribunal noted that a lengthy trail of email correspondence had taken place between the Landlord and the former Tenant prior to submission of the application and he had received notification of the works required. He had therefore been aware of the issues of disrepair at the property. Indeed, these were not in dispute and he had conceded throughout the inspection that works were required and would be undertaken. The Landlord had been aware of the Tenant's application, having corresponded with the Tribunal to seek a postponement of the inspection in June. He had been present at the inspection and had been given the opportunity to participate in the process. Accordingly, the Tribunal considered that in light of the Landlord's comments at the inspection, it was able to determine the application on the basis of the evidence before it and that to do so would not be prejudicial to the Landlord.

Findings in fact

21. Having considered all the evidence the Tribunal found the following facts to be established:-
 - The House consists of a two-storey C-listed dwelling house. The accommodation comprises an entrance hall, two lounges, a snug, kitchen and utility room, four bedrooms, two bathrooms and a WC.
 - The window pane in the lounge to the north east of the property is cracked and not in a reasonable state of repair.

- The flat roof, slate roofs and the chimneys are not in a reasonable state of repair.
- There is water ingress in the bedroom to the south east of the property as a result of debris in and / or in front of the chimney flue.
- The windows throughout the property are in a reasonable state of repair commensurate to the age and character of the property and subject to draught proofing measures being undertaken to the casement windows.
- The external doors to the rear of the property are not in a reasonable state of repair.
- It cannot be said within the confines of the inspection that the electrical installations throughout the property are in safe working order.
- It cannot be said within the confines of the inspection that the boiler and heating system is in proper working order.

Reasons for the decision

22. The Tribunal determined the application having regard to the terms of the application and the findings of their inspection.
23. 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.
24. The Landlord had conceded throughout the inspection that works were required to the property in order to ensure compliance with the Repairing Standard. In particular the works to both the flat and slate roofs and the chimneys, the inspection of the electrical installations and EICR, the replacement of the external doors to the rear, the repair to the cracked window pane and the work required to address the water ingress above and to the side of the fireplace in the ground floor bedroom would all be undertaken. These matters were not in dispute and had been verified by the Tribunal through the findings of the inspection.
25. With regard to the windows, the Tribunal accepted that it had to assess them having regard to the age and character of the property and was satisfied that they were generally in a reasonable state of repair. However the Tribunal considered that the Landlord could assist in mitigating the occurrence of draughts through the application of draught proof strips to the casement windows.
26. The Tribunal also had some concerns regarding the boiler. The Landlord had indicated that regular service checks were carried out however the Tribunal was unable to satisfy itself within the confines of the inspection that the boiler and the heating system were both in proper working order and capable of heating the whole property. Accordingly the Tribunal would require to see evidence in the form of a

report from a suitably qualified service engineer with particular reference to the adequacy of the boiler to heat the house.

27. The Tribunal had not found any evidence of significant debris in the garden that would cause concern. The Tribunal further noted that a padlock had been fixed to the oil tank and the cap was now secure.
28. There were a number of other issues raised in the application which did not come within the remit of the Tribunal which was solely to consider the Landlord's compliance with the Repairing Standard. In that regard, the tenancy deposit information, the EPC and the Legionella Risk Assessment were not matters that the Tribunal could adjudicate on as part of its determination of the application.
29. The Act states that where a Tribunal decide 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".
30. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.
31. For the avoidance of doubt the Tribunal was aware from its discussions with the Landlord that consideration may be given to the use of the property going forward, with the possibility for conversion into flats. However the Tribunal had to base its decision on the evidence before it and the ongoing use of the property as a single dwellinghouse. In the event that the use of the property changes, the Tribunal would ask that the Landlord provides the relevant details to enable it to consider matters in light of any new information.

Decision

32. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house is not presently wind, watertight and in all respects reasonably fit for human habitation.
33. In respect of section 13(1)(b) of the Act, the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(c) of the Act as the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and not in proper working order
34. In respect of section 13(1)(c) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and not in proper working order.
35. The decision of the Tribunal was unanimous.

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.

R O'Hare

Signed

Ruth O'Hare
Legal Member

25 August 2018



Front (roadside) elevation. Lounge is single storey extension to right of picture (North East gable)



Rear elevation showing two rear bays linked by flat roofed extension



Exterior door from Lounge



Exterior door to utility room



North East gable / flat roof abutment showing slate missing above flat roof



South West gable / flat roof abutment. Slate missing at junction of flat roof/ barge board



Close up of missing slate above and decaying barge board



Loose and missing slates from mansard section below flat roof



Damaged / missing pointing from chimney on North East gable (middle right of stack)



Damp patch in ceiling of single storey lounge extension (below slated roof).



Damp wall above and to side of fireplace in ground floor South West gable bedroom



Damp ceiling to central bedroom under flat roof



Damp to head and side of window in central bedroom beneath flat roof



Cracked pane in lounge window



North East 1st floor bedroom. Damaged astragal and cracked bottom pane



Top opening section of NE bedroom window – no draught-proofing



Opening section of window in central bedroom (below flat roof) – no draught-proofing



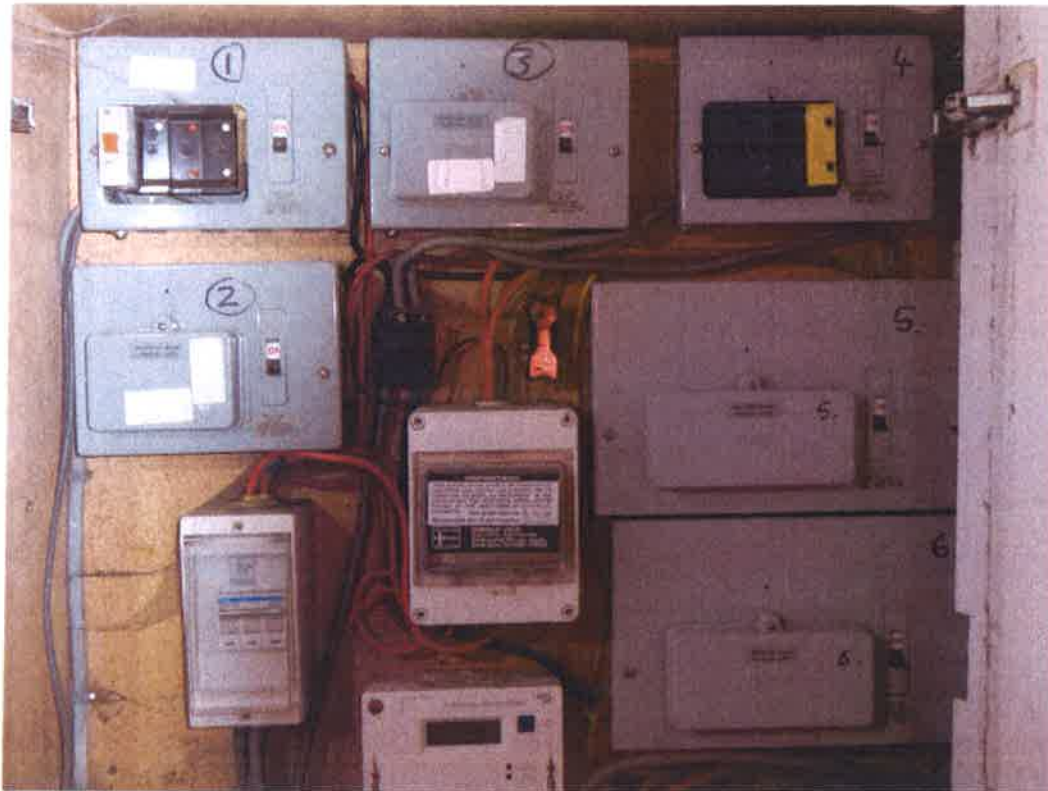
Master bedroom (SW Gable) window in rear elevation showing opening sections



Master bedroom window facing road to Culbokie Arms showing opening sections



Grant Vortex 26-35 oil boiler in lounge cupboard



Electric meter, cut-out and fuses for property



Oil tank with locks on filler cap.

Schedule of photographs of Beaufort, Culbokie taken on 21st August 2018 by M H T Andrew FRICS