

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/18/0837

Sasines Description: Doune Cottage 145 Findhorn, extending to 121 square yards 11/4 square feet, referred to in Feu Charter to Mary Smith and another recorded in the County of Elgin and Forres 20 September 1947 with 103 square yards 1 square foot referred to in Feu Disposition to John Thomson and another recorded in the County of Elgin and Forres 5 February 1976.

**145 Findhorn, Forres, Moray IV36 3YL
("The Property")**

The Parties:-

**Miss Orla Broderick, 145 Findhorn, Forres, Moray IV36 3YL
("the Tenant")**

**Miss Pamela Burnett, 1M Hagen 47, Kleinmachnow, 14532, Germany
(represented by her agent Cockburns, Solicitors, 82 High Street, Elgin IV30 1BL)
("the Landlord(s)")**

Whereas in terms of their decision dated 28 September 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 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 capable of being used safely for the purpose for which they are designed

(e) 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 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 reputable plumbing and drainage engineer to inspect the waste water drains at the rear of the property and the waste pipes from the bathroom and kitchen and to carry out such repairs and renewals as may be recommended by said plumbing and drainage engineer;
- (b) to instruct a report from a reputable firm of timber and damp specialists to report on any issues of damp or rot affecting the property and to carry out all recommendations in terms of said report;
- (c) to remove existing plaster and plasterboard from the walls and ceilings in the property, frame where necessary and install insulating material conforming to current building standards and replace with new plaster and or plasterboard and fill and tape and redecorate as necessary;
- (d) to remove all loose tiles from the bathroom and inspect the condition of the plaster and or plasterboard walls behind and repair or renew as necessary and replace or renew the tiles or replace with waterproof wall panels;
- (e) to instruct a HETAS registered engineer to inspect and service the wood burning stoves in the kitchen and living room of the property and carry out any necessary repairs;
- (f) to replace the existing carbon monoxide detectors in the living room and kitchen with new detectors;
- (g) to instruct a suitably qualified electrician to PAT test all electrical appliances supplied by the Landlord in the property and provide a report and to exhibit same to the Tribunal;
- (h) to instruct a suitably qualified electrician to provide an up to date Electrical Installation Condition Report and to exhibit same to the Tribunal;
- (i) to produce and exhibit to the Tribunal the current Gas Safety Certificate; and
- (j) to instruct a domestic energy assessor to produce an Energy Performance Certificate in respect of the property and to exhibit same to the Tribunal.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 90 days from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Graham Harding, solicitor, 20 York Street Glasgow, chairperson of the tribunal at (location signed) on 28 September 2018 before this witness:-

E S

G Harding	_____	witness
	_____	chairperson
	<u>Emma Shaw</u>	name in full
	<u>20 YORK STREET</u>	Address
	<u>GLASGOW</u>	

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/18/0837

**145 Findhorn, Forres, Moray IV36 3YL
("The Property")**

The Parties:-

**Miss Orla Broderick, 145 Findhorn, Forres, Moray IV36 3YL
("the Tenant")**

**Miss Pamela Burnett, 1M Hagen 47, Kleinmachnow, 14532, Germany
(represented by their agent Cockburns, Solicitors, 82 High Street, Elgin
IV30 1BL)
("the Landlord")**

Tribunal Members

Graham Harding (Legal Member)

Colin Hepburn (Ordinary Member)

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) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application received by the Tribunal on 11 April 2018 the Tenant applied to the 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her 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 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 capable of being used safely for the purpose for which they are designed.
- (e) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Specifically the Tenant complained that the walls in the property were damp and mouldy; that there was no insulation; that the property required a damp proof course; that the drains need cleared; that taps required to be replaced; that felt flat roofs needed replaced and that fencing and screens required to be removed.

3. By Minute dated 3 May 2018 a convenor of the Housing and Property Chamber with delegated powers decided to refer the application under Section 23 (1) of the Act to a Tribunal.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
5. An Inspection and Hearing arranged to take place on 25 July 2018 was postponed at the request of the Landlord due to her non-availability and a fresh Inspection and Hearing was arranged to take place on 13 September 2018.
6. Following service of the Notice of Referral the Tenant by emails dated 12 and 16 July 2018, made written representations to the Tribunal. The Landlord's representatives by emails and letters dated 16 July, 29 August and 4 September 2018, made written representations to the Tribunal.
7. The Tribunal inspected the Property on the morning of 13 September 2018. The Tenant's daughter and the Landlord's representative Mr David Adams were present during the inspection. The Tenant was not present during the inspection.
8. At the inspection the Ordinary Member of the Tribunal used a damp meter to record levels of moisture in the walls and ceilings of the property and

took a series of photographs which are attached and form a Schedule to this Decision.

9. Following the inspection of the Property the Tribunal held a hearing at Inverness and heard from the Tenant and Mr Andrew Mackie of Moray Council. The Landlord was represented by her solicitor, Mr David Adams of Cockburns, Solicitors. The Landlord did not attend the hearing. The Tenant represented herself.
10. The Tenant explained to the Tribunal that the property was subject to heavy growth of black mould that was worst in the two upper bedrooms which had flat roofs. The Tenant said she had no building experience but thought that the felt on the flat roofs may be worn allowing water ingress. She said that over the summer the problem had not been as bad but that it would be worse again as the weather changed.
11. The Tenant said that she first noticed the mould problem in December 2015 and that she had to remove it from the walls and ceiling at least once a week although less during the summer. She spoke of there being an area in the kitchen at the gable end of the property next to the cooker where she thought there might be rising damp. She thought the damp in this area had been made worse since a neighbour had erected fencing close to the boundary. She said she could not leave any food in this area as it would quickly go mouldy and it was not possible to remove the mould there. She spoke of leaving the property for a few days and by the time she returned the mould had spread over the kitchen wall and the cooker and had been difficult to remove. The Tenant said that she had to store her daughter's belongings in boxes to protect them from the mould.
12. The Tenant said that she used plug in electric heaters and dehumidifiers and left windows open to ventilate the property to try to reduce the problem with the mould. She said she had spoken to the Landlord about the problem for three years without it being resolved.
13. The Tenant spoke of there being standing water at the rear of the property and thought that there was a problem with the drains. She said that neighbouring properties had similar problems and repairs had been carried out to their properties but the Landlord had not done anything to hers. The Tenant also thought that some damage may have been caused when an adjoining property was being demolished and diggers were operating close to her property. She thought that it was foul water that was present and that it was not weather related.
14. The Tenant confirmed that the kitchen tap had been replaced by the Landlord's plumber and that was no longer an issue. She said that the water ingress from the porch roof had been a one-off event during heavy rain. She said that there appeared to be a leak in the bathroom that had resulted in the flooring in the bathroom being covered in mould and there had also been a leak in the cupboard under the kitchen sink.

15. The Tenant said that the central heating was working and had been serviced annually and there was a gas safety certificate but that it was very expensive to run and that she was in fuel poverty. She said that the wood burning stoves in the kitchen and living room had never been serviced and the carbon monoxide detectors supplied by the landlord were no longer in date. The Tenant said she had replaced the batteries in the units.
16. For the Landlord Mr Adams referred the Tenant to the series of photographs lodged as productions and asked the Tenant if they represented the condition of the property at the commencement of the tenancy. Whilst the Tenant was unable to say whether or not the photographs were of the property at the commencement of the tenancy the Tenant agreed that at that time there was no mould and the property had recently been cleaned and decorated. She thought there had been some evidence of damp in the kitchen and said that previous tenants had experienced damp and mould.
17. Mr Adams questioned the Tenant as to why she had not permitted the Landlord's, domestic energy assessor, electrician and other tradesmen access to the property and the Tenant said that she had been advised by Shelter to refuse access until after her complaint had been dealt with by the Tribunal.
18. Mr Adams confirmed that there was no Energy Performance Certificate pertaining to the property. He was unaware as to whether the electrical appliances supplied with the property had been PAT tested.
19. Mr Adams indicated that it was his client's position that there had been no mention of there being mould in the property when the property was inspected in the summer of 2017. He also suggested that at that time it had been noted that a drain cap at the rear of the property had been missing and waste water was pouring on to the ground. The Tenant said that she knew nothing about that but there had been standing water on the ground since then.
20. Mr Adams said that his client had provided the Tenant with £20.00 in cash for her to purchase batteries for the CO detectors. This was denied by the Tenant.
21. Mr Mackie advised the Tribunal that he had inspected the property on 21 November 2017 and had identified minor issues with regards to dampness and condensation and had advised the Tenant to speak to her landlord. He had then returned to the property on 26 March 2018 and by then the mould had become worse. There was also a leak under the kitchen sink. He had not seen any standing water at the rear of the property but thought the gable wall may have required some pointing. He had advised the Tenant to contact the Housing and Property Chamber.

Summary of the issues

22. The issues to be determined are:-

- (a) Is the house wind and watertight and in all other respects fit for human habitation.
- (b) Is the structure and exterior of the house (including drains, gutters and external pipes) in a reasonable state of repair and in proper working order?
- (c) Are the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water in a reasonable state of repair and in proper working order?
- (d) Are the fixtures, fittings and appliances provided by the landlord under the tenancy capable of being used safely for the purpose for which they are designed?
- (e) Does the house have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health?

Findings of fact

The Tribunal finds the following facts to be established:-

- 23. The tenancy is a short assured tenancy that commenced on 1 December 2015 and lasted for a period of six months and from month to month thereafter.
- 24. There is no sign of water ingress from the flat roofs in the upper floor bedrooms.
- 25. There is evidence of black spot mould growth throughout the property and particularly in the upper floor bedrooms. The most likely cause of this is due to an imbalance of heating and ventilation leading to condensation forming on external walls and the upper floor flat roofs.
- 26. There is unlikely to be any insulation in the walls or roof of the property given its age and characteristics.
- 27. The lack of insulation contributes to the imbalance of heating and ventilation and leads to the formation of condensation and mould.
- 28. The taps in the kitchen have been replaced. There was no evidence of a leak in the cupboard under the kitchen sink but the wooden skirting there was rotten.

29. There was efflorescence under the bath indicative of ground water issues at the rear of the property
30. The tiling all around the bath was loose and the wall behind damp.
31. The toilet waste is held together with gaffer tape.
32. The wood burning stoves in the living room and kitchen have not been regularly serviced and the glass door in the kitchen stove is loose.
33. The electrical appliances in the property do not appear to have been PAT tested.
34. The felt roof on the front porch has been patched.
35. The carbon monoxide detectors in the property were over ten years old and past their date for replacement.
36. It was the Landlord's duty to provide Carbon Monoxide detectors in the property not the Tenant's.
37. The property had been let without an Energy Performance Certificate first being obtained.

Reasons for the decision

38. The Tribunal was satisfied that the black spot mould growth described by the Tenant and signs of which were evident at the inspection were unlikely to be caused either by rising damp through the lack of a traditional damp proof course or from water ingress from the flat roofs in the upper floor bedrooms. The damp meter readings and visual signs on the ceilings of the upper floor bedrooms were not consistent with that of water ingress.
39. Given the age and design of the property it seemed to the Tribunal that it was very unlikely that there was any insulation in the property. This would mean that the external walls would generally be much colder than the internal temperature of the property. This temperature imbalance would be likely to lead to the increased probability of condensation forming and to mould growth particularly around the upper floor bedroom ceilings under the flat roofs and in spaces where there was restricted air flow such as cupboards and in the corner of the kitchen by the gable end wall.
40. The Tribunal noted the evidence of the Tenant that the cost of running the gas central heating was very high. This would be consistent with there being a lack of insulation and a low thermal efficiency. The Tribunal was concerned to note that the property had been let to the Tenant in December 2015 without an Energy Performance Certificate being provided despite this being a requirement since January 2009.

41. Given the lack of insulation in the property it will not meet the tolerable standard in terms of the regulations and if it does not meet the tolerable standard then it will not meet the repairing standard in terms of the 2006 Act. The Tribunal concluded that in order to avoid mould forming in the property it would be necessary to improve the thermal efficiency.
42. There was efflorescence in the concrete floor under the bath. This was a sign that there may be moisture at ground level. The tenant spoke of seeing standing water at the rear of the property and although none was visible on the day of the inspection it seems to the Tribunal that given the evidence from the bathroom and also the rotten timber skirting in the kitchen that further investigation would be necessary both by a drainage engineer and a timber specialist.
43. Whilst it may not be directly connected to the drainage issue the Tribunal noted at the inspection that the toilet waste pipe was held together by gaffer tape and this was unsatisfactory.
44. The tiling around the bath was loose and, in some cases, falling off the wall. The wall behind the loose tiles had high damp meter readings. It seemed to the Tribunal therefore that the tiling needed to be inspected and repaired or renewed depending on the condition of the walls behind.
45. The Tribunal accepted the evidence of the Tenant that the wood burning stoves in the kitchen and living room had not been serviced during her period of occupation of the property. Mr Adams for the Landlord did not offer any opposition to that assertion. It was accepted that the Tenant had arranged for the chimneys to be swept. It was apparent from the inspection that the glass front in the kitchen stove was loose. The Tribunal was satisfied that the stoves required to be inspected and serviced and repaired if necessary.
46. At the inspection it was apparent that the carbon monoxide detectors were out of date and required to be replaced. Whilst it was suggested at the hearing by Mr Adams that the Landlord had given the Tenant £20.00 in cash to purchase batteries for the detectors this was denied by the Tenant. No receipt was lodged as a production but in any event the onus is on the Landlord to ensure that the property is fitted with carbon monoxide detectors that are compliant with current regulations and clearly that was not the case.
47. It appeared from the photographs in the Landlords productions that the property was let on a furnished basis with a number of electrical appliances being provided. However, there was no evidence apparent at the inspection or from the Tenant or Mr Adams at the hearing that any electrical appliances supplied by the Landlord had been PAT tested either before or during the period of let. The Tribunal did not consider this to be satisfactory. Although the Tenant stated that the gas boiler had been serviced, in view of the Landlords other omissions the Tribunal considered

that it would be appropriate that the Landlord exhibit in addition to an EPC report, PAT test report and EICR report a Gas Safety report as well.

48. The Tenant spoke of there being one occasion when water had leaked from the porch down the external wall of the property during heavy rain. A visual inspection of the felt roof at the area where it had leaked showed that the felt had previously been patched. However, given that this appeared to be a one-off occurrence the Tribunal was satisfied that no further investigation or repair was required at this time.
49. As the kitchen taps had been replaced and there was no sign of a leak the Tribunal was satisfied that this part of the Tenant's complaint was no longer an issue.
50. The Tribunal noted the Tenant's concerns regarding the Heras fencing that had been erected around the boundary with the Landlord's neighbour's property. It did appear that the Landlord had asked the neighbour to remove the fencing but he had refused to do so. In the circumstances the Tribunal did not feel that there was much more that the Landlord could do as the matter was out with her control.
51. The Tenant had not allowed the Landlord's tradesmen access to the property following her application to the Tribunal apparently on the advice of Shelter. The Tribunal noted that one of the persons that the landlord's agent had requested be given access was a domestic energy assessor. This may have been because the Landlord was aware of the issues of mould being caused by a thermal imbalance or possibly because she intended to bring the Tenant's lease to an end and re-let the property and required an Energy Performance Certificate. On balance the Tribunal did not think the Tenant's refusal to allow access to the Landlord's tradesmen had any significant impact upon its decision although perhaps some minor works may have been more likely to have been attended to.
52. The Tribunal concluded that the property did not meet the repairing standard and that a Repairing Standards Enforcement Order was necessary.

Decision

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

Right of Appeal

56. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

57. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G Harding

Signed

Date: 28 September 2018

Chairperson

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Schedule of photographs taken during the inspection of: 145 Findhorn, Forres,
Moray IV36 3YL. G Harding

By: Colin F Hepburn MRICS, Ordinary Member of the First-Tier Tribunal for
Scotland(Housing and Property Chamber) on the 13th September 2018.

















