

# **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(1)**

**Chamber Ref: FTS/HPC/RP/18/2866**

**Title Number: AYR53286**

**39 Girdle Toll, Irvine, KA11 1AP ("The Property")**

**The Parties: -**

**Dorothy Yost, formerly residing at 39 Girdle Toll, Irvine, KA11 1AP ("the former Tenant")**

**James Agnew, 7 Glenlyon Grove, Stanecastle, Irvine, KA11 1RN ("the Landlord")**

Whereas in terms of their decision dated 25 January 2019 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and that the Landlord had failed to ensure that the property meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended: -

- (a) The house is wind and watertight and in all other respects reasonably 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 property 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: -

- (1) To instruct a suitably qualified damp specialist to prepare a detailed survey of the property, to identify the cause and full extent of the dampness, damp staining and any remedial action. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant decoration made good.

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.**

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 typewritten on this and the preceding page are executed by Josephine Bonnar, Solicitor, Legal Member and Chair of the Tribunal at Motherwell on 25 January 2019 before this witness: -

G Bonnar

J Bonnar

\_\_\_\_\_ Witness

Gerard Bonnar \_\_\_\_\_ Name in full

1 Carlton Place

Glasgow

# **Housing and Property Chamber**

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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/RP/18/2866**

**Title Number: AYR53286**

**39 Girdle Toll, Irvine, KA11 1AP ("The Property")**

**The Parties: -**

**Dorothy Yost, formerly residing at 39 Girdle Toll, Irvine, KA11 1AP ("the former Tenant")**

**James Agnew, 7 Glenlyon Grove, Stanecastle, Irvine, KA11 1RN ("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**

**Mr Donald Wooley, Ordinary Member**

## **Background**

1. By application dated 22 October 2018 the former Tenant 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 former Tenant considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. The former Tenant states that the Landlord has failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation. Specifically, the former Tenant complains that there are several areas of dampness throughout the flat which the former Tenant believes to be rising damp.
3. Following receipt of the application the Tribunal was notified that the former tenant had vacated the property and that the tenancy had come to an end. By Minute of Continuation dated 22 November 2018 a Convener with delegated powers decided that the Tribunal would continue to determine the application.
4. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 30 November 2018. The Landlord was notified that an inspection would take place on 11 January 2019 at 10am and that a hearing would take place on 11 January 2019 at 11.30am at Troon Town Hall, Municipal Buildings, South Beach, Troon.
5. The Tribunal inspected the property on the morning of 11 January 2019. The Landlord, Mr Agnew attended accompanied by Meaghan McDiarmid of Hovepark Letting Agents. Thereafter the Tribunal held a hearing at Troon Town Hall, Municipal Buildings, South Beach, Troon. Both Mr Agnew and Ms McDiarmid attended and gave evidence.

## **The Inspection**

6. At the time of the inspection the weather was dry. The Tribunal inspected the property which is a ground floor cottage flat within a two storey block of four similar units. The property is estimated to be about 70 years in age and the outer walls are of brick construction rendered with rough cast under a pitched roof clad externally with slates. The property was formerly owned by the local authority. During the inspection the Tribunal were advised by the

Landlord that a repair has been carried out to the shower as a leak from the shower had caused damp in and around the bathroom. The seal round the bath has also been renewed. A limited inspection behind the bath panel by the Tribunal identified damp in the mutual wall with the hall corresponding with positive damp meter readings in the same wall when taken from within the hall. Positive readings were also noted, above the skirting board, on both sides of the mutual wall between the bathroom and kitchen cupboard, the living room and both bedrooms. The Tribunal noted that hard wired smoke and heat detectors are installed at the property and were advised that a CO detector is installed in one of the bedrooms, next to the boiler. A schedule of photographs taken at the inspection is attached to this decision.

## **The Hearing**

7. At the hearing the Tribunal heard evidence from both the Landlord and Ms McDiarmid, of Hovepark Lettings. It was explained to the Tribunal that the letting agency are not the registered letting agents for the property, but became involved in October 2018, to assist Mr Agnew, when the former tenant refused to deal directly with him. The Tribunal noted that the evidence lodged with the Tribunal by the former tenant of prior notification of the repairs issues comprised a number of emails exchanged between Mr Agnew and the former tenant between 7 and 10 October 2018 and others between Ms McDiarmid and the former tenant between 17 and 22 October 2018. Mr Agnew advised the Tribunal that the former tenant moved into the property in July 2018. Almost immediately she began to make complaints, some of which related to the upstairs neighbour. The former tenant moved out around the end of October 2018, Mr Agnew having agreed to dispense with the requirement to give 28 days' notice. Mr Agnew further advised the Tribunal that he always responded to complaints about repairs, but sometimes, when he went to the house, no one would answer the door. He also advised the Tribunal that he arranged for a plumber to visit the property when the dampness behind the shower was reported. The plumber fixed the leak, but the former tenant insisted that the property suffered from rising damp and continued to complain. In response to questions from the Tribunal, Mr Agnew acknowledged that there appeared to be high damp readings throughout the property, which do not appear to be related to the shower leak. He stated that he thought that there had been a condensation issue during the former tenant's occupation, possibly the result of overcrowding. He concluded his evidence by advising the Tribunal that he recently arranged for Kerlaw Building Preservation Ltd to inspect and provide

a quote for work at the property. They have recommended a course of action, including a damp proof course, at a cost of £2350 plus VAT. He confirmed that he intends to instruct this work, but that the company were unable to carry out the work due to the holiday period.

## **Findings in Fact**

8. The property is a two bedroom ground floor flat in Irvine.
9. The property is unoccupied and unfurnished, the former tenant having vacated at the end of October 2018.
10. The property is affected by damp in the mutual wall between bathroom and hall, the mutual wall between the bathroom and kitchen cupboard, the living room and both bedrooms.

## **Reason for decision**

11. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
12. 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 former tenant made the Landlord aware of the repairs issues at the property.
13. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the dampness at the property. The Tribunal notes that the Landlord arranged for a plumber to attend to repair the shower and reseal the bath. However, it appears that the former tenant continued to complain about damp within the property, which the Landlord did not address. Walls in both bedrooms and the living room showed high damp readings during the inspection by the Tribunal, some considerable distance from the bathroom. The Tribunal concluded that the widespread nature of the damp readings suggest that while the defective seal around the shower and bath may have been a

contributing factor, it is likely that there is a latent damp problem affecting the underfloor area which requires further investigation and repair. Although it appears that access to the problem was sometimes difficult, it is clear from the evidence that the Landlord was sometimes able to get access and that the plumber instructed was able to get into the property to carry out the shower repair. Lastly, the Tribunal notes that the property has been empty since the end of October. Although the landlord has obtained a quote for work to eradicate the damp, he has not arranged for this work to be carried out.

14. The Tribunal is therefore satisfied that there has been a breach of the repairing standard in relation to sections 13(1)(a) of the Act.

### **Decision**

15. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
16. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)
17. 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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J Bonnar

Signed..... 25 January 2019

Josephine Bonnar, Legal Member

Mathemall 25 January 2019

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

39 Girdle Toll Irvine KA11 1AP

J Bonnar

**Schedule of Photographs taken at the inspection on 11<sup>th</sup> January 2019**



1. External View



2. Staining behind bath



3. Damp in hall / bath wall





4. Silicon seal at rim of bath below shower



5. Damp staining in living room



6. Damp reading living room wall



7. Damp reading bedroom wall



8. Damp reading bedroom wall



9. Damp reading bedroom wall.