

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Chamber Ref: RT/18/2570**

### **THE PROPERTY:**

**59 Quoybanks Crescent, Kirkwall, Orkney KW15 1EN**

**Title Number: OAZ2579**

### **THE PARTIES:**

**Orkney Islands Council, School Place, Kirkwall, Orkney KW15 1NY per Mr Paul Turner, Environmental Health Officer. (“the applicant”)**

**Mr Jon O’Joyce, residing at the property. (“the tenant”)**

**and**

**Henry Clive Chaddock and Mrs Cynthia Rebecca Chaddock, residing at The Manse, Harray, Orkney KW15 2JR per Ms Serena Sutherland, Solicitor, D&H Law, 56A Albert Street, Kirkwall, Orkney KW15 1HQ. (“the landlords”)**

### **THE TRIBUNAL:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC):**

**David M Preston (Chairman) and Greig Adams (Surveyor Member)**

**Whereas in terms of its decision dated 22 January 2019, 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”) the tribunal 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:-**

- 1. Examine all glazing and repair or replace any broken glazing units;**
- 2. Replace missing kitchen unit doors;**
- 3. Examine the oven door and repair or replace as necessary;**
- 4. Examine both sides of all internal doors and repair any holes or damage and secure any loose panels including overhaul for binding doors;**
- 5. Repair the hole in the hallway ceiling plaster and redecorate as necessary;**
- 6. Remove the tape from the extract ventilation units in the kitchen and bathroom and repair or replace as necessary;**
- 7. Examine the roof and repair or replace missing or damaged tiles as necessary;**
- 8. Examine and clean eaves guttering and downpipes and repair or replace any misaligned sections and leaking joints;**
- 9. Refit or repair the cover to immersion heater top element;**
- 10. Clear the rear garden and the garden shed and greenhouse of all rubbish and repair as necessary to allow full access and enjoyment;**
- 11. Repair or replace the boundary walls and fences to the rear garden.**
- 12. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical system throughout the property and repair or renew any parts which require to be repaired or renewed. To submit to the Tribunal a satisfactory and contemporary Electrical Installation Condition Report (EICR).**

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

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: IN WITNESS WHEREOF these presents, typewritten on this and the preceding two pages are, together with the Schedule of photographs annexed hereto, subscribed as follows:

D Preston

 , Chairing Member

Glasgow Place of signing

22 July 2019 Date of signing

L Oneil

 Witness signature

Linda O'Neil Witness full name

Glasgow Witness Address

Tribunal Centre

20 York St

G2 2GT

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# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### STATEMENT OF DECISION FOR REPAIRING STANDARD ENFORCEMENT ORDER (RSEO) UNDER SECTION 24 HOUSING (SCOTLAND) ACT 2006.

**Chamber Ref: RT/18/2570**

#### **THE PROPERTY:**

**59 Quoybanks Crescent, Kirkwall, Orkney KW15 1EN**

**Title Number: OAZ2579**

#### **THE PARTIES:**

**Orkney Islands Council, School Place, Kirkwall, Orkney KW15 1NY per Mr Paul Turner, Environmental Health Officer. (“third party applicant”)**

**Mr Jon O’Joyce, residing at the property. (“the tenant”)**

**and**

**Henry Clive Chaddock and Mrs Cynthia Rebecca Chaddock, residing at The Manse, Harray, Orkney KW15 2JR per Ms Serena Sutherland, Solicitor, D&H Law, 56A Albert Street, Kirkwall, Orkney KW15 1HQ. (“the landlords”)**

#### **THE TRIBUNAL:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC):**

**David M Preston (Chairman) and Greig Adams (Surveyor Member)**

#### **Decision:**

**The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlords had complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as “the Act”) in relation to the property, and taking account of the representations by all parties:**

- a. Determined that the landlords had failed to comply with the said duty; and**

**b. Determined to issue a Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Act.**

**Background:**

1. By application dated 2 October 2018, Mr Turner, on behalf of the third party applicant applied to the Private Rented Housing Panel (PRHP) for a determination of whether the landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application stated that he considered that the landlords had failed to comply with their duty to ensure that the house meets the repairing standard at the start of the lease and throughout its duration and in particular that the landlords had failed to ensure that:-
  - The house is wind and watertight and is In all other respects reasonably fit for human habitation;
  - 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;
  - 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;
  - Any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.
3. In particular the third-party applicant made the following complaints as a Schedule to the application following an inspection carried out by Mr Turner on 17 July 2018:
  - a. Broken glazing panes in the: front door side light; bathroom windows; and rear door glazed panel (wired glass)
  - b. Missing cupboard doors to storage units (wall and floor mounted);
  - c. Oven door does not close properly;
  - d. Internal doors: damage and/or insecure panels (eg kitchen doors to rear lobby and front hallway and bathroom door);
  - e. Broken pedestal to wash hand basin in bathroom – large section missing;
  - f. Holed damaged ceiling plaster, front hallway near ceiling light;
  - g. Extractor ventilation units to kitchen and bathroom are covered with tape and sealed up – potential overheating and fire risk if turned on whilst sealed and covered with tape;
  - h. Main house roof – missing ridge tiles to gable end and cracked roof tile to front elevation (just above rain water downpipe);

- i. Cast iron downpipes (including rainwater good and soil pipes) are rusty, blockages to eaves guttering;
- j. Steps to rear door, insecure and badly rusted safety railings;
- k. Insecure top cover to immersion heater top element.

In addition, the Schedule referred to a number of issues as having been reported by the tenant to Mr Turner:

- l. Problems with the electrical installations, namely: kitchen wall sockets and appliances below the missing area of ceiling cut out on occasions; the hallway power socket and some others do not work, the power supply to the greenhouse is not working and the living room light is insufficient;
- m. The shed and greenhouse are full of rubbish/previous tenants' possessions and the tenant wishes these to be cleared so he can make use of the shed and greenhouse;
- n. The rear garden is overgrown and has bits of broken fence etc in it, the tenant would now like to arrange clearing/cutting of the rear garden;
- o. The entrance doors and windows require safety catches to be stop them from being blown closed by the wind.

In a further email dated 2 October 2018 Mr Turner reported:

- p. that the electric shower switch (ceiling mounted pull cord) had ceased working. This had been resolved by the landlord in August 2018.

- 4. By Minute of Decision to Refer Application to Committee dated 31 October 2018, a legal member of the Tribunal, having delegated power for the purpose, referred the application under Section 23(1) of the Act to the tribunal. In terms of the Minute the application paperwork comprises documents received by HPC on or between 2 and 22 October 2018.
- 5. A Notice of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act was served on all parties on 27 November 2018.
- 6. Following service of the Notice of Referral no written representations were received from the landlords. In addition to the supporting documents submitted with the application: the tenant submitted a copy letter dated 4 October 2018 from the tenant's solicitor to the landlord's solicitor; email from the tenant dated 20 December 2018; and email from the applicant dated 7 September 2018.

**Inspection:**

- 7. The tribunal inspected the property on the morning of 10 January 2019. The tenant was in attendance throughout the inspection. Neither the applicant nor the landlord was present or represented at the hearing.
- 8. The property is a two storey semi-detached former council house, dating from the 1960s of traditional cavity wall construction with a render finish and incorporating a simple pitched roof with concrete tiles and common chimneystack. Internally,

ceilings are formed in plasterboard, walls are a combination of plaster on the hard and plasterboard and floors are formed in suspended timber construction with tongue and grooved floorboards with the exception of the Kitchen which is of concrete construction. Accommodation comprises entrance hall at ground floor level leading to the Kitchen, Living Room and stair providing access to first floor level. At first floor level that is a small landing, Bathroom and 2 No. bedrooms.

9. In respect of the items complained of the inspection revealed:
- a. The windows in the side light at the front door and in the bathroom were broken. The glazed panel in the rear door had been replaced by the time of the inspection;
  - b. Doors were missing from wall and floor units in the kitchen;
  - c. The oven door did not close properly;
  - d. The kitchen door to the rear lobby and the bathroom door were damaged or binding;
  - e. The pedestal to wash hand basin in the bathroom had been replaced by the time of the inspection;
  - f. There was damaged plaster in the ceiling of the front hallway near the light fitting;
  - g. The extractor ventilation unit in the bathroom was not covered with tape, but the unit did not work when switched on. The extractor ventilation unit in the kitchen was covered in tape but did not work when switched on;
  - h. Ridge tiles were missing from the gable end and a damaged tile was seen on the front elevation adjacent to the rain water downpipe;
  - i. Neither the cast iron downpipes and rainwater goods nor the eaves guttering appeared to be defective at the time of inspection, although the weather was dry and any blockage to guttering was not evident.
  - j. The steps to the rear door were loose and insecure but the safety railings had been replaced with secure fencing prior to the inspection.
  - k. The cover to the top element of the immersion heater was insecure.
  - l. Electric sockets in the kitchen and hall were not found to be defective, although those in the kitchen may well have been affected by water from the bathroom above. The ceiling light fitting in the living room was seen to be defective, although the sufficiency of lighting will be dependent upon the strength of bulbs fitted.
  - m. The garden shed was clear of rubbish, but the walls were damaged by rot. The greenhouse contained rubbish and was in poor condition with glass strewn over the garden.
  - n. The fence between the property and number 61 and on the rear garden wall both of which had been fitted to the top of the block wall were missing.
  - o. The issue of safety catches on the windows and doors were not considered by the tribunal to be related to the repairing standard.
10. A series of photographs was taken throughout the inspection and form the Schedule attached hereto.

## Hearing:

11. Following the inspection of the property the tribunal held a hearing at Kirkwall Community Centre, Broad Street, Kirkwall KW15 1DH and heard representations from the parties.
12. Present at the hearing were: Mr Turner; the landlord; and the tenant.
13. At the start of the hearing the convener confirmed the procedure which it was intended to be followed. In particular, he noted that the issues to be considered were restricted to those referred to in the application and supporting documents. The tribunal was not in a position to review any matters from the previous RSEO dated 31 July 2018 in respect of which a Notice of Failure had been issued and a letter had been sent to the police. That was out of the hands of this tribunal, although it was inevitable that there would be discussion about some aspects of the work required under the previous RSEO which had not been carried out.
14. The landlord said that he had gone to the Council the previous day and had been told that the tenant had told them that he had given up the tenancy. He also said that he was concerned that some of the damage to the property had been caused by the tenant and the tribunal was informed that there was a pending criminal court trial scheduled for 22 February 2019 in respect of a charge of vandalism. In particular he believed that the broken windows, bathroom pedestal, oven door and damaged doors and kitchen units had been caused deliberately. This restricted the ability of the parties in what they might be prepared to say at today's hearing as all were due to give evidence at the trial.
15. Neither Mr Turner nor the tenant could understand why the Council believed that the tenant had given up the tenancy. It was explained that the tenant had left the property on 7 November 2018 because he was unable to stay in it during the winter due to: its condition; the lack of heating; and his inability to use the bathroom and shower without water leaking to the kitchen below.
16. Mr Turner explained that when the tenant had left he had given him a key with instructions and authority to provide access to the landlord for the purpose of carrying out work. He had returned in advance of the hearing and had understood that the bathroom work had been completed and was safe to use, however although a new bath had been installed and the walls had been boarded, he found that water still leaked from the shower and there was still a leak from the WC which penetrated to the kitchen. Mr Turner advised that after the work had been done it could not be tested until the tenant came back because the plumber had just applied the silicone seal. It was confirmed that the wash hand basin and pedestal had been replaced, which had been seen at the inspection.
17. The landlord complained that he had not received any rent from the tenant and did not see why he should be put to the expense of carrying out extensive works and get nothing in return. He did not believe that he would get any outstanding rent from the tenant even after the works had been done. He re-iterated that he was continuing to pursue the tenant to recover possession of the property. He said that



he believed that the tenant had another property and that he was using this property as a holiday home.

18. The landlord said that he had carried out some of the work. In addition to the work in the bathroom: he had instructed an electrician to carry out the PAT tests and attend to the immersion heater before the holidays and was disappointed that this had not been done; he said that he had instructed a roofer to attend to the ridge and tiles but this was weather dependent; the railings on the steps leading to the rear entrance had been replaced; the pull switch on the electric shower had been fixed; and the glass panel in the back door replaced. He said that he did not intend to replace the ceiling in the kitchen until the water leaks from the bathroom had been resolved and did not see what he had to replace the bathroom floor which had been removed by the tenant.
19. The tenant repeated that he had been advised by his then solicitor, Ms Herd, to withhold the rent in view of the condition of the property until the work had been carried out. The money amounting to about £900 had been held by her but had been returned after a conflict of interest arose when she joined the firm of D&H Law which acts for the landlords. He explained that he had been in receipt of housing benefit which paid the balance of rent to the landlords and he said that he had not instructed the Council to withhold the benefit. Mr Turner had no knowledge of the situation about housing benefit or council tax.
20. The landlord said that he now accepted that he was obliged to carry out the work as required by the existing RSEO and by the RSEO which would follow upon this hearing and that he would do so, provided he could get access to the property. The tenant said that he was leaving the property again at the weekend and access could still be gained through Mr Turner who confirmed that position.

**Findings of fact:**

21. In reaching its decision the tribunal had regard to:
  - a. The application dated 2 October 2018, including the accompanying documents;
  - b. Additional information from the applicant and the tenant as detailed above;
  - c. The oral representations by the parties at the hearing.
22. The tribunal finds in fact that:
  - a. The tenancy between the parties is an informal tenancy in respect of which there is no written record or terms under which the tenant is liable for rent to the landlords and was constituted by a verbal agreement between the parties dated entered into in about October or November 2017.
  - b. The applicant had advised the landlord of the issues with the property and of the specific complaints as detailed above, together with recommendations for the work needed to resolve them.

- c. The property fails to meet the repairing standard in a number of respects as detailed below.
- d. The landlords have attended to some of the repairs identified in the report of inspection dated 17 July 2018 to a minimal extent, namely: replacement of wash hand basin pedestal; replacement of safety hand rail on steps to rear door; replacement of pull switch for electric shower unit.
- e. Although the safety rails on the back steps had been replaced, the steps to the east side of the rear door were seen to be loose and required to be re-bedded and secured;
- f. The damage to the internal doors and kitchen unit doors was confirmed by the inspection;
- g. The electrical installation in the kitchen had been affected by water leakage and may be compromised and the light fitting in the living room was faulty. It would be prudent for a full electrical inspection of the property to be carried out and an up to date Electrical Installation Condition Report (EICR) obtained;
- h. The garden shed, greenhouse and boundary fences form part of the property and should be in a reasonable state of repair;
- i. The issue of safety catches on doors and windows has no bearing on the repairing standard and the tribunal makes no finding.

**Reasons for the decision:**

23. From its inspection of the property and having heard the representations from the parties, the tribunal was satisfied that it failed to meet the repairing standard in relation to the issues detailed in the application.

24. The tribunal determined to issue a RSEO to require the landlords to:

- a. Examine all glazing and repair or replace any broken glazing units;
- b. Replace any missing kitchen unit doors;
- c. Examine the oven door and repair or replace as necessary;
- d. Examine both sides of all internal doors and repair any holes or damage and secure any loose panels including overhaul for binding doors;
- e. Repair and redecorate as necessary the hole in the hallway ceiling plaster;
- f. Remove the tape and repair or replace the extract ventilation units in the kitchen and bathroom;
- g. Examine all the roof and repair or replace missing or damaged tiles as necessary;
- h. Examine and clean eaves guttering and downpipes and repair or replace any misaligned sections and leaking joints;
- i. Refit or repair the cover to immersion heater top element;
- j. Clear the rear garden and the garden shed and greenhouse of all rubbish and repair as necessary to allow full access and enjoyment;
- k. Repair or replace the boundary walls and fences to the rear garden.
- l. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical system throughout the property and repair or renew any

parts which require to be repaired or renewed. To submit to the Tribunal a satisfactory and contemporary Electrical Installation Condition Report (EICR).

25. The tribunal determined to issue a Repairing Standard Enforcement Order and considered that a period of eight weeks for the work to be completed was a reasonable time to undertake the works.

**In terms of section 46 of the Tribunals (Scotland) Act, 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.**

D Preston

.....  
..... Chairman

22 January 2019



Glasgow, 22 January 2019

This is the Schedule of Photographs referred to in the foregoing Statement of Decision.

D Preston

..... Chairman



**Property at 59 Quoybanks Crescent, Kirkwall,  
Orkney, KW15 1EN (“the Property”)**

Chamber Ref: RT/18/2570

# SCHEDULE OF PHOTOGRAPHS



1 View of Front Elevation.



2 Cracked side glazed entrance panel.



3 Rear entrance door.



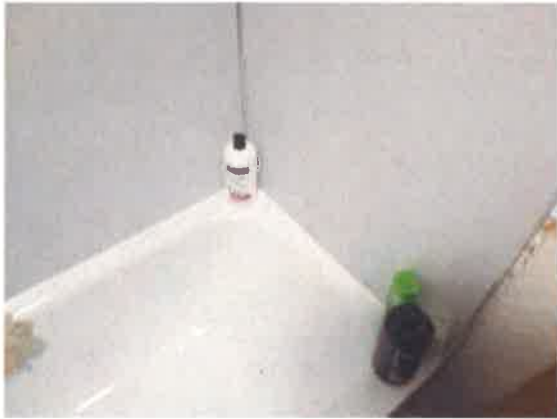
4 Cracked glass - bathroom.



5 Cracked glass to top hopper - bathroom.



6 Extract ventilation - bathroom.



7 Bath and wall panels.



8 Bath and wall panels.



9 Water escape adjacent to bath.



10 Water escape adjacent to bath.



11 Hot water cylinder.



12 Unsecured cap to cylinder.



13 Carbon monoxide detector – bedroom.



14 Pedestrian pass door.



15 Example of impact damage to pass door.



16 Further example of damage to pass door.



17 Handle in dropped position.



18 Localised impact damage to pass doors.





19 Kitchen base unit – doorfront missing.



20 Damage to base unit in kitchen.



21 Missing doorfront to wall unit.



22 Ceiling damage remains.



23 Cooker.



24 Oven door ajar.





25 Damage to ceiling in hall.



26 Extract ventilation blocked.



27 Front Elevation.



28 Damaged roof tiles.



29 Damage at ridge.



30 Rear entrance steps – loose.



31 Cast iron downpipe.



32 Cast iron downpipe.



33 Rear entrance door.



34 Downpipe.



35 Kitchen window.



36 Kitchen window.



37 Rear steps – loose.



38 Greenhouse.



39 Damaged glazing to greenhouse.



40 Timber outbuilding/shed.



41 Damage to external paneling to shed.



42 Timber decay to floor of shed and framework.





43 Rear garden.



44 Blockwork boundary wall.



45 Fencing failed to boundary wall.



46 Socket testing.



47 Light fitting defective to Living Room.



48 Fire within Living Room.