

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO) under section 24(2) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/18/2716

**Property at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ forming part of the
subjects 109 Logie Street, Dundee, DD2 2PZ as more particularly described in
Disposition by Elizabeth Constance Milne, Margaret Milne or Drimmie and
Thomas Herbert Kerr Drimmie to Richard Black recorded 15 May 1920 (Search
Sheet Angus 3191) ("The Property")**

The Parties:-

Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee, DD1 3BA
("the Third Party Applicant")

Mr Ryan Anderson, residing at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ ("the
former Tenant")

Mr David Barn, Barn Properties, Melville House, Monimail, Cupar, KY15 7RJ ("the
Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Robert Buchan - Ordinary Member

Whereas in terms of their decision dated 2 July 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") and in particular that the landlord has failed to ensure that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for
human habitation;
- (b) 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) Investigate the source of damp in the bedroom and carry out any remedial works required to ensure the property is wind and watertight;
- (b) Investigate the issue with the erratic shower temperature and repair or replace the unit to ensure it is in proper working order;
- (c) Repair the living room window to ensure it can open and close and is wind and watertight; and
- (d) Carry out any internal decoration required after the works at (a) to (c).

The Tribunal order that the works specified in this Order must be carried out and completed within the period of **one month** 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 of the Tribunal at Aberdeen on 2 July 2019 before this witness:-

R O'Hare

witness

—

chairperson

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/18/2716

**Property at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ
("The Property")**

The Parties:-

Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee, DD1 3BA
("the Third Party Applicant")

Mr Ryan Anderson, residing at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ ("the former Tenant")

Mr David Barn, Barn Properties, Melville House, Monimail, Cupar, KY15 7RJ ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Robert Buchan - Ordinary Member

Background

1. By application dated 15th October 2018 the Third Party Applicant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act. The application stated that the Third Party Applicant 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 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;

- (c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order;
 - (d) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
 - (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
2. In particular the Third Party Applicant submitted that an additional smoke detector was required in the living room, damp in the bedroom required to be investigated, the water heaters in the kitchen, toilet and shower room did not produce hot water, the water temperature in the shower was erratic, the living room window was difficult to open and close, there was a hole in the wall in the bedroom, the light in the hall required repair and there was no Electrical Installation Condition Report in the property.
 3. By Minute dated 16th November 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 Third Party Applicant, the Landlord and the Tenant.
 4. Following submission of the application, the Landlord submitted written representations by email dated 19 December 2018 which can be summarised as follows:-
 - (a) The additional smoke detector had been fitted in the living room;
 - (b) The damp issue was caused by roof damage which would be repaired at the start of 2019;
 - (c) The water heaters in the kitchen, toilet and shower room had been replaced;
 - (d) The shower had been tested and found to be in working order;
 - (e) The windows opened and closed;
 - (f) The hole in the bedroom wall was cosmetic and caused by the Tenant. It would be repaired;
 - (g) The light fitting had been checked and required a new bulb which was the Tenant's responsibility; and
 - (h) The EICR would be produced.

The Landlord further advised that the Tenant was occupying the Property whilst repairs were being carried out to his tenancy and had not reported the repairs issues directly. Furthermore he was in arrears of rent.

5. An inspection was scheduled for 18th January 2019. The Tribunal attended the property on that date. Mr Stuart Cuthill on behalf of the Third Party Applicant was present. The Landlord was represented by Mr Mark Evans. The Tribunal attempted to gain access to the Property however it transpired that the Tenant was absent. The Landlord's Representative attempted to contact the Tenant by telephone however the Tenant did not respond. In the absence of any explicit

consent from the Tenant permitting entry to the Property, the Tribunal considered it was unable to proceed with the inspection and hearing and therefore by Minute of Adjournment dated 25th January 2019 determined to adjourn the inspection and hearing. The Tribunal was subsequently advised that the former Tenant had vacated the property and the tenancy had been terminated.

6. By email dated 9 April 2019 the Landlord provided photographs to the Tribunal which purported to show damage caused to the property by the former Tenant. The Landlord further advised by email dated 15th April 2019 that works were ongoing. The Tribunal therefore agreed to postpone the date of the inspection to allow the Landlord further time to complete the works.
7. The inspection took place on 13th June 2019. Mr Cuthill attended on behalf of the Third Party Applicant. Darren Drape gave access on behalf of the Landlord but did not remain for the inspection. He confirmed that he had been instructed by the Landlord solely to permit access to the property. 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 Third Party Applicant.
9. The Tribunal noted a hard wired smoke detector on the ceiling of the living room and a heat detector in the kitchen. Both appeared to conform with current standards.
10. The Tribunal examined the window in the living room. Upon testing it was difficult to open and close and there was a gap between the window and the frame. The Tribunal noted the same issue with the window in the bedroom.
11. The Tribunal inspected the hot water taps in the bathroom, kitchen and shower room. All appeared to be working properly, albeit there were no warning labels that would ordinarily have been expected on hot water heaters of that type. The Tribunal tested the shower and noted that it took some time to achieve a suitable temperature when adjusting the controls.
12. The Tribunal noted the light in the hall appeared to be in proper working order and the hole in the wall of the bedroom had been repaired. The Tribunal then examined the bedroom wall with a damp meter and noted high damp readings in the section pertaining to the gable end below the chimney.
13. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
14. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

15. The hearing took place at Caledonian House, Dundee. Mr Cuthill was in attendance. The Landlord was represented by his partner Mrs Marion McAllister.

16. The Tribunal heard from the parties regarding the items raised in the application as follows:-

a. Smoke detectors

Both parties agreed with the Tribunal's finding that this had been addressed and that the property had adequate provision for smoke and heat detection in compliance with current standards.

b. Damp area in the bedroom

The parties were advised of the high meter readings found during the inspection. Mrs McAllister produced a report from a timber and damp proofing specialist dated 15th May 2019 which confirmed that damp readings taken during an inspection were acceptable. The hearing was paused to allow time for both the Tribunal members and Mr Cuthill to consider the content of the property. Mrs McAllister advised that the flat had been empty since the report had been produced. No heating had been on in the property as the former Tenant had ripped the electric heaters off the walls. She further advised that works had been carried out to the roof and produced photographs as evidence of the work done. She advised that the roofing works had only been completed in the last couple of weeks. There had been considerable problems with the roof which had now been addressed, including repairs to the coping, slates and lead flashing.

c. Hot water in kitchen, bathroom and shower room

The parties agreed with the Tribunal's finding that the hot water taps in the aforesaid rooms were all in proper working order. Mrs McAllister advised that it would be the Landlord's intention to put caution stickers on the heaters prior to reletting the property.

d. Shower

The Tribunal noted that it had taken some time to adjust the controls in order to achieve a suitable water temperature. Mrs McAllister advised that the shower could be replaced if need be.

e. Living room window

The Tribunal noted that it had been possible to open and close the windows but that there was a gap at the bottom and side through which daylight could be seen. The same problem was noted in respect of the bedroom window. Mrs McAllister advised that she was sure the windows could be fixed. Mr

Cuthill advised that the issues with the windows meant that the property was not presently wind and watertight.

f. Hole in wall in bedroom

Both parties agreed with the Tribunal's finding that the hole in the wall had been repaired.

g. Light in hall

Both parties agreed with the Tribunal's finding that the light in the hall was in proper working order.

h. EICR

Mrs McAllister produced an up to date EICR at the hearing. The Tribunal paused to allow Members and Mr Cuthill the opportunity to consider same. It was noted that there was a C1 item which signalled immediate action required however this had been remedied. There was also a C3 item in relation to a circuit which was not RCD protected. Mrs McAllister was unable to confirm whether this had since been addressed.

i. Ancillary issues

The Tribunal had some discussion with the parties regarding observations made during the inspection which did not form part of the application, in particular the lack of heating in the property and lack of warning stickers on the hot water heaters. The Tribunal further noted the poor condition of the common parts which appeared to pose a health and safety risk to occupants. Mrs McAllister advised that it was unclear who owned some of the outhouses but the Landlord could undertake investigations in this regard and take action as appropriate.

Findings in fact

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

- The property consists of a one bedroom top floor flat.
- There are significant damp readings in the bedroom at the gable end wall.
- The window in the living room does not close properly.
- The property cannot therefore be said to be wind and watertight.
- The shower temperature is erratic and requires prolonged adjustment to achieve a suitable temperature level.
- The shower is not therefore in proper working order.

Reasons for the decision

18. The Tribunal determined the application having regard to the terms of the application and the findings of their inspection.
19. 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.
20. The Tribunal was satisfied from the findings of the inspection that a number of items had been addressed by the Landlord, namely the hot water taps, the light in the hall, the hole in the bedroom wall and the smoke and heat detectors. The Tribunal further accepted that the EICR produced by the Landlord confirmed that the installations for the supply of electricity throughout the property are presently in a reasonable state of repair and proper working order, albeit the Tribunal would expect the Landlord to address the C3 item which may still be outstanding.
21. With regard to the living room window, it was clear from the Tribunal's inspection that this required repair and was not presently wind and watertight. The same applied to the bedroom window. The Tribunal was conscious that the latter did not form part of the application before the Tribunal however the Tribunal would expect the Landlord to undertake repairs to both windows in order to ensure they are wind and watertight.
22. The Tribunal considered the timber and damp report produced by Mrs McAllister which did indicate normal damp readings throughout the property at the time the report was instructed in May 2019. However the Tribunal had to have regard to the findings of its inspection in respect of which high damp readings had been noted in the bedroom. Accordingly the Tribunal could not conclude within the confines of the inspection that the property is presently wind and watertight. The Tribunal will therefore require the Landlord to undertake further investigations to identify and address the cause of damp in the bedroom.
23. Finally the Tribunal noted that the shower required significant adjustment in order to achieve a suitable temperature. In light of this, the Tribunal could not conclude that the shower is presently in proper working order. The Tribunal noted Mrs McAllister's comments that the shower could be replaced if need be.
24. Accordingly in light of its findings regarding the living room window, damp readings in the bedroom and the faulty shower, the Tribunal concluded that the property does not presently meet the Repairing Standard.
25. 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".
26. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

27. The Tribunal would also wish to make a number of observations that are outwith its remit in terms of the current application. In particular the Tribunal has significant concerns regarding the condition of the common parts. The outhouses to the back of the property are in a state of disrepair and potentially hazardous. Accordingly the Tribunal would suggest that the Landlord undertake investigations to determine the extent of ownership and take such action as is necessary to address the potential health and safety risks posed by the present condition of the common parts.
28. The Tribunal further noted the property does not currently have any heating but it is the Landlord's intention to replace the electric heaters that the Landlord states were removed by the former Tenant. The Tribunal would wish to stress that it is imperative the heaters are reinstated in advance of the property being re-let, notwithstanding they do not form part of the current application.
29. Finally the Tribunal welcomed the Landlord's intention to put warning stickers on the three hot water taps in the bathroom, shower room and kitchen prior to the property being re-let. The Tribunal would expect such warnings to be present in relation to water heaters of the type installed by the Landlord.

Decision

30. 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.
31. 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.
32. The decision of the Tribunal was unanimous.

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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

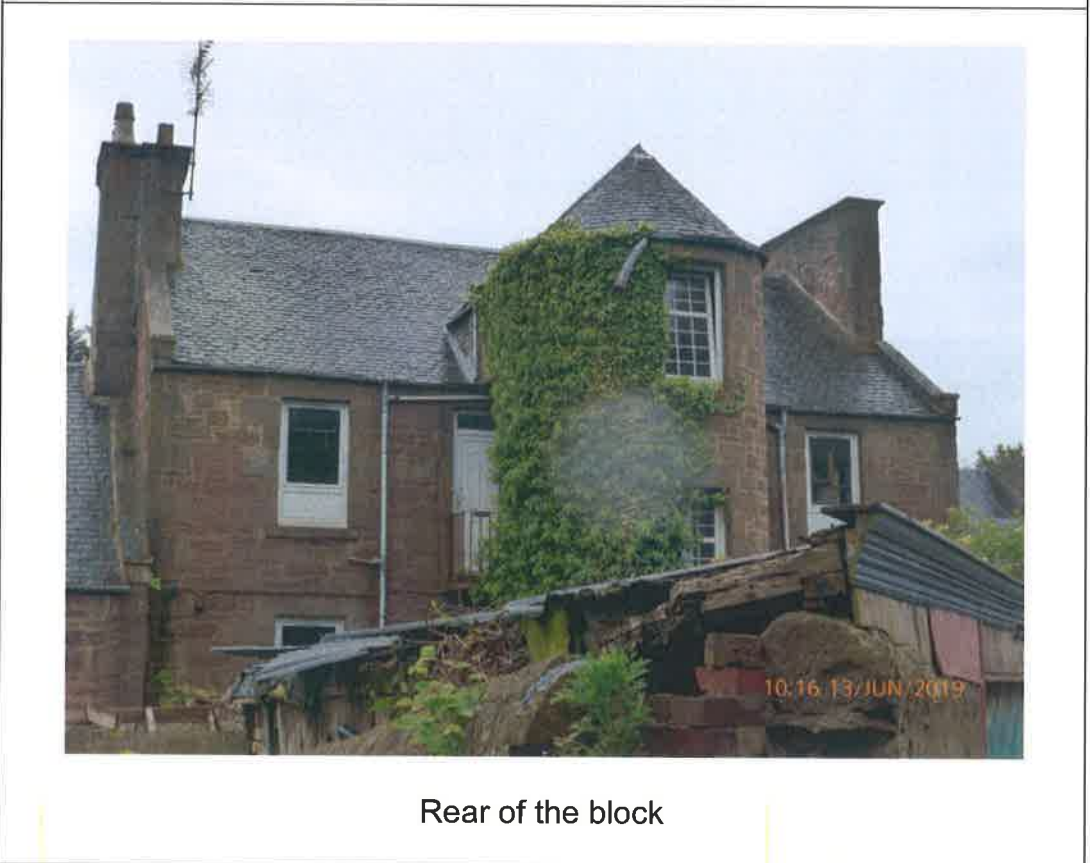
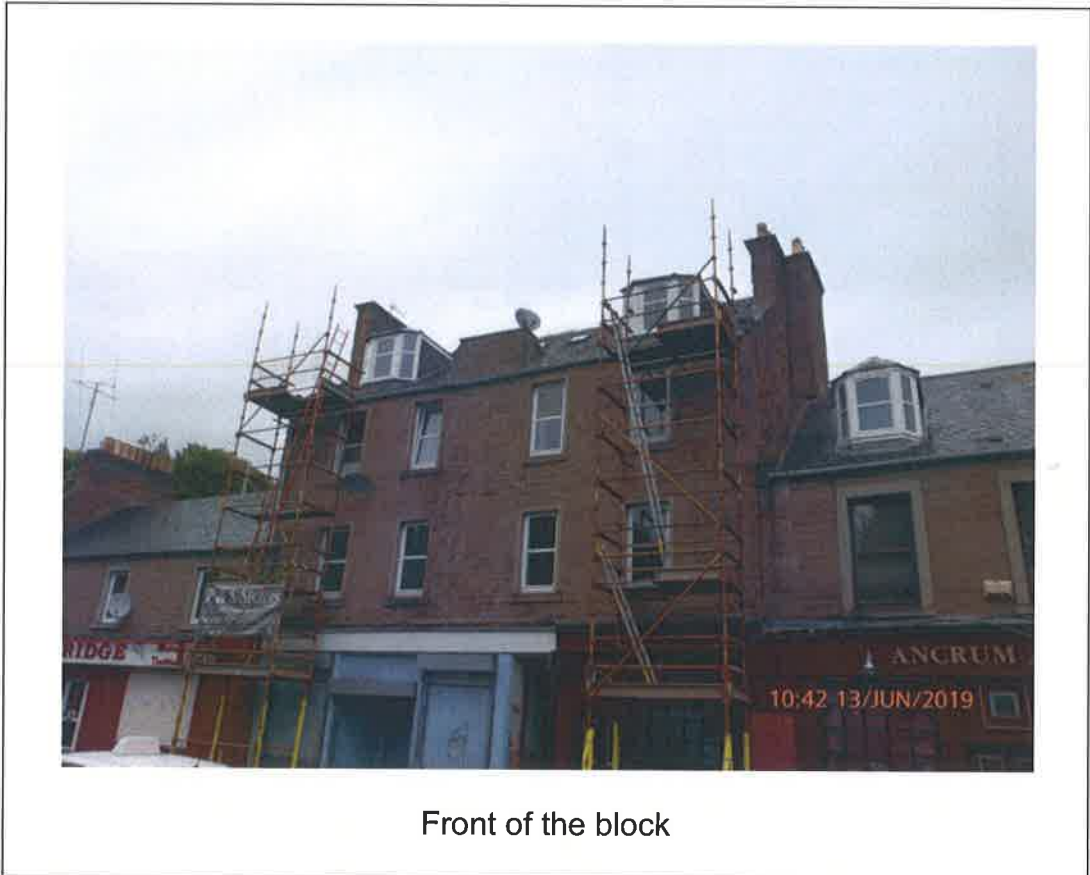
which the appeal is abandoned or so determined.

Signe

Ruth O'Hare
Legal Member

2 July 2019

Schedule of photographs taken during the inspection of
Flat A/0, 109 Logie Street, Dundee, DD2 2PZ



Schedule of photographs taken during the inspection of
Flat A/0, 109 Logie Street, Dundee, DD2 2PZ



Common close



Dilapidated outhouse

Schedule of photographs taken during the inspection of
Flat A/0, 109 Logie Street, Dundee, DD2 2PZ



Recent repair to flashing



Dampness in bedroom below the stack

Schedule of photographs taken during the inspection of
Flat A/0, 109 Logie Street, Dundee, DD2 2PZ



New consumer unit



Hot water heater in the kitchen

Schedule of photographs taken during the inspection of
Flat A/0, 109 Logie Street, Dundee, DD2 2PZ



Missing dials on the washing machine



New WC

Schedule of photographs taken during the inspection of
Flat A/0, 109 Logie Street, Dundee, DD2 2PZ



Ill-fitting window