

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/16/1022

Title no: ARG15156

**Top Flat, Portdrishaig House, Tighnabruaich, PA21 2EB
("The Property")**

The Parties:-

**Mr. Edward Pybus, residing at the property
("the Tenant")**

**Mr. Alan Davidson and Ms. Fiona Davidson, Mortgages and Financial Services
for All, 73 High Street, Lochee, Dundee, DD2 3AT (represented by Margaret
Cowley of Rosemount Property, www.rosemountproperty.co.uk)
("the Landlords")**

Whereas in terms of their decision dated 1 April 2017, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlords have 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 landlords have failed to ensure that:-

(i) The house is wind and watertight and in all other respects reasonably fit for human habitation.

ii) 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 landlords 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 landlords:-

- (a) To repair or replace the roof, including the roof located above the common stairwell of the property, and to repair any source of water ingress and dampness within the property whether emanating from the gable end wall or otherwise, to ensure that the property is wind and watertight and reasonably fit for human habitation.
- (b) To repair or replace the windows in the property to ensure that the property is wind and watertight and reasonably fit for human habitation.
- (c) To repair or replace the electrical socket located in the kitchen to ensure that that is in a reasonable state of repair and in proper working order.
- (d) To produce an Electrical Installation Condition Report by a suitably qualified and registered electrician, which report is to be completed after the repair of the electrical socket in (c) above is carried out.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 12 weeks 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 are executed by Patricia Anne Pryce, solicitor, Atlantic Quay, Glasgow, chairperson of the tribunal at Glasgow on 1 April 2017 before this witness:-

B Quinn

witness

P Pryce

Brian Quinn

name in full

1 Atlantic Quay

Address

Chairperson

Glasgow

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/16/1022

**Top Flat, Portdrishaig House, Tighnabruaich, PA21 2EB
("The Property")**

The Parties:-

**Mr. Edward Pybus, residing at the property
("the Tenant")**

**Mr. Alan Davidson and Ms. Fiona Davidson, Mortgages and Financial
Services for All, 73 High Street, Lochee, Dundee, DD2 3AT (represented
by Margaret Cowley of Rosemount Property,
www.rosemountproperty.co.uk)
("the Landlords")**

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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the representations submitted by both the Landlords and the Tenant, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The tribunal consisted of:-

Patricia Anne Pryce	-	Chairing Member
Carol Jones	-	Ordinary Member

Background

1. By application received on 14 December 2016, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) 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 by the Tenant stated that the Tenant considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and that the said failure was established as follows: -

- (a) Roof leaks. Repairs to the roof – water ingress in the back bedroom and stair well.
- (b) Repairs to the gable end of the building – water ingress to the living room.
- (c) Windows not wind and watertight. Repair the windows in the living room, back bedroom, bathroom, front bedroom and box room – they are not wind and watertight and don't open and close correctly.
- (d) Fit fire alarms throughout.
- (e) Repair electric socket in the kitchen.
- (f) Repair the lock on the front door so we can secure the property.
- (g) Dampness.

The Tenant considered that the Landlords are in breach of their duty under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) 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.
- (iii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

3. By Minute dated 25 January 2017 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision 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 the Landlords and the Tenant.

5. Following service of the Notice of Referral (by letter dated 16 February 2017), the Landlords' representative submitted written representations to the tribunal by way of a letter dated 8 March 2017 and emailed to the tribunal on the same date. She advised that the dampness had been rectified as it had been due to a leak from the common roof which had now been repaired. She further advised that the windows are old style sash and case windows and that a window specialist had attended at the property and effected repairs. She submitted that smoke and heat

detectors had been installed within the property and that an Electrical Installation Condition Report ("EICR") had been done. The EICR was not produced to the tribunal. In short, she submitted that all of the repairs had been effected by the Landlords. She lastly confirmed that the Landlords would not be attending the inspection and hearing. She also provided a copy of email correspondence between Mr. Davidson and the Tenant.

6. The Tenant submitted further representations to the tribunal by way of an email on 12 March 2017. The Tenant submitted that the repairs remained outstanding. The Tenant confirmed that fire alarms had been installed and that temporary repairs had been carried out to the windows and roof but that the property was still not wind and watertight. He submitted that the windows were not sash and case but were modern UPVC double glazed windows which, despite the temporary repairs, still suffered from water ingress. He confirmed that some repairs had been carried out to the roof over the common stairwell but was unsure as to how effective these had been. He further confirmed that water ingress from the roof remained a live issue in the property.

The Inspection

7. An inspection and hearing were arranged for 30 March 2017 at 11 am and 12 noon respectively. The tribunal attended at the property. The Tenant's partner, Ms. Marylou Anderson, provided access to the property. The Landlords did not attend nor were they represented. The tribunal noted the following at inspection:-
 - There was significant dampness on the camceil ceiling and base of the wall to the right side of the dormer window in the bedroom to the rear of the property which was confirmed by a high moisture reading taken with the damp meter. There was a hole in the plasterboard and a build up of black spot mould. There was staining on the carpet below which Ms. Anderson confirmed had been caused by water ingress.
 - Ms. Anderson confirmed that the window in the rear bedroom functioned well.
 - There were high moisture readings taken in the living room in the corner where the party wall to the rear bedroom meets the gable end of the property. The damp meter readings were at the top end of the scale. The walls were wet to the touch. There was a distinct damp stain just above the skirting boards in the corner and some paintwork was peeling.
 - There were high moisture readings taken and obvious staining on the camceil ceiling in the living room to the right of the dormer window.
 - The window in the living room only opened into the room as the tilt function no longer worked. Ms. Anderson confirmed that the window contractor had attempted to seal the window by putting silicone around the window but that it was still draughty and

whistling could be heard when it was windy. She advised that the contractor had warned her not to attempt the tilt mechanism of the window as it was broken.

- The window in the bathroom on the left side of the room had been sealed shut and the handle removed by the contractor. This window could no longer be opened. The other windows in the bathroom could open and close. Once again, the windows had been sealed with silicone. Ms. Anderson confirmed that the draughts had improved but were still there.
- There was a heat detector located in the ceiling of the kitchen and a smoke detector on the ceilings of the hallway and the living room. They appeared to be hardwired and interlinked. Ms. Anderson confirmed that these had been installed a couple of weeks previously.
- The double electric socket above the worktop to the left of the sink unit in the kitchen was loose and coming away from the wall.
- The lock on the front door of the property had been repaired and now locked securely.
- The window in the bedroom to the front of the property could open and close and had been sealed with silicone but Ms. Anderson confirmed that water still came in from this window when it rained. There were water stains on the window sill.
- The window in the box room to the front of the property had been fixed and now opened. It had also been sealed with silicone. Ms. Anderson confirmed that it was still draughty and that her younger son could not sleep in it as it was too cold and his bed used to get wet from the water ingress. The seal to the double-glazed Velux window had failed and there was extensive misting in between the panes of this window.
- The window in the kitchen had been fixed but Ms. Anderson confirmed that the kitchen still suffered badly from draughts which she and the Tenant believed emanated from the roof rather than the window itself.
- Ms. Anderson confirmed that water ingress was still a live issue in the common stairwell. She advised that repairs had been carried out to the roof above this space but these works had caused the water ingress to move along the wall and had simply relocated the water ingress.
- Ms. Anderson confirmed that she and the Tenant and her two children would be moving out of the property at the end of April 2017.
- There is water damage to the ceiling over the internal staircase, Ms. Anderson said this has been evident since the start of the tenancy and had not changed.

The photograph schedule prepared by the ordinary member is attached to this decision.

The Hearing

8. No one attended at the hearing.

Summary of the issues

9. The issue to be determined is whether the repairing standard has been met in light of the submissions made by the Landlords and the Tenant and in light of what the tribunal viewed at the inspection.

Findings of fact

10. The tribunal finds the following facts to be established: -
- The Tenant entered into a short assured tenancy with the Landlords which runs from 28 October 2016 until 29 April 2017.
 - The property is the attic flat located in a two storey house with attic and basement which was constructed in the late 1800s. It is constructed of stone with a pitched slated roof. All exterior elevations are painted except for the south gable end wall which has a roughcast finish. The accommodation comprises a hall, living room, 2 bedrooms, box-room, kitchen and bathroom.
 - The property is located in the village of Tighnabruaich on the Cowal peninsula in Argyll. It is situated on the sea front with open aspects over the Kyles of Bute.
 - The property suffers from water ingress/dampness in various rooms as noted above in the inspection findings.
 - The windows in the property are draughty and some are defective.
 - The electric socket in the kitchen is loose and coming away from the wall.
 - The windows in the property are double glazed and constructed of UPVC. They were made in or around 1996.
 - Fire and heat detectors have been installed in the property.

Reasons for the decision

11. At the inspection, Ms. Anderson spoke in a straightforward manner and without rancour. She made no attempt to embellish her statements and was honest when answering the questions of the tribunal.

It was clear to the tribunal at the inspection that water ingress was a live issue in various rooms within the property as noted above. It was also clear to the tribunal that the windows were in a poor state of repair and draughty, with some allowing water ingress as noted above. The tribunal did question the Landlords' knowledge of the property as, in terms of their representations to the tribunal, they did not know what type of windows were installed at the property. Furthermore, any repairs carried out to the windows were wholly inadequate with only the window located in the rear bedroom functioning adequately. The tribunal was concerned to note that

the Landlords appeared to consider that sealing a window shut and removing its handle was an acceptable repair, as had been undertaken within the bathroom. The tribunal was also very concerned about the state and safety of the electric socket located within the kitchen.

The tribunal did note that some of the repairs had been carried out, albeit ineffectively. The tribunal was concerned to note that the installation of the heat and smoke detection devices had only taken place a couple of weeks prior to the inspection and hearing.

Given all of the circumstances, the tribunal is satisfied that the house is not wind and watertight and in all other respects reasonably fit for human habitation as there is water ingress and dampness in the rear bedroom, the living room and the common stairwell of the property and that all of the windows in the property are draughty and some are defective and cannot be opened properly apart from the window located in the rear bedroom; 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 in proper working order as the electrical socket within the kitchen is loose and coming away from the wall.

The tribunal is satisfied that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order as the front door lock now functions properly and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire as sufficient heat and smoke detection devices had been installed in the property.

Decision

12. The tribunal accordingly determined that the Landlords had not complied with the duty imposed by Section 14 (1)(b) of the Act.
13. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
14. The decision of the tribunal was unanimous.

Right of Appeal

15. In terms of section 46 of the Tribunals (Scotland) Act 2014, 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.

P Pryce

Signed

Date 1 April 2017

Chair and Legal Member



Schedule of photographs taken during the inspection of Top Flat, Portdrishaig House, Tighnabruaich PA21 2EB by the First-tier Tribunal for Scotland (Housing and Property Chamber) on 30 March 2017.

Reference Number : FTS/HPC/RP/16/1022



External view - Front elevation of property



Back Bedroom - camceil ceiling to right side of dormer window showing water damage to plasterboard and black spot mould



Back Bedroom - camceil ceiling to right side of dormer window showing closer view of water damage to plasterboard



Back Bedroom - high moisture reading to base of wall to right side of dormer window



Back Bedroom - water stain to carpet under camceil ceiling on right side of dormer window



Living Room - damp patch on corner of gable wall and party wall to back bedroom



Living Room - high moisture reading to base of gable wall.



Living Room - high moisture reading to base of party wall to back bedroom



Living Room - damp patch to camceil ceiling/wall on right side of dormer window



Living Room - high moisture reading to wall at right side of dormer window



Living Room - damp patch to camceil ceiling on right side of dormer window



Living Room - high moisture reading at damp patch on camceil ceiling on right side of dormer window



Internal staircase - damp patch to ceiling



Communal Hall



Communal Hall - left corner adjacent to recessed bookcase



Living Room window



Bathroom windows



Bathroom window to left side - sealed shut and handle removed



Front Bedroom window



Front Bedroom window - showing water staining to sill



Box Room - Velux window



Box Room - Failed seal to Velux window - condensation between double glazing panes



Kitchen window



Kitchen window - showing dislodged seal



Kitchen - loose double socket above worktop



Internal Front door lock



Kitchen - ceiling mounted heat alarm



Hall - ceiling mounted smoke alarm



Living Room - ceiling mounted smoke alarm



Front Elevation showing gable/dormer window/
chimney and roof



Rear elevation showing external wall of communal
staircase

