

# 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)**

Reference Number: FTS/HPC/RP/17/0131

Property: flat ground right situated at and known as 10 Avenue Street, Stewarton, Ayrshire, KA3 5AP, being the subjects registered in the Land Register of Scotland under Title Number: AYR32145 ("The Property")

The Parties:-

East Ayrshire Council, Private Sector Housing Unit, Civic Centre North, John Dickie Street, Kilmarnock, KA1 1HW ("the Third Party Applicant")

and

Brian Green, residing at 3 MacPhail Drive, Kilmarnock, KA3 7EL ("the Landlord")

Tribunal Members:-

Mr James Bauld – Legal Member

Mr Alex Hewton – Ordinary Member

### NOTICE TO

Mr Brian Green, residing at 3 MacPhail Drive, Kilmarnock, KA3 7EL ("**the Landlord**")

Whereas in terms of their decision dated 24<sup>th</sup> July 2017, 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 in particular that the Landlord has failed to ensure that:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation;
- (b) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;
- (c) That the property has satisfactory provision for the detection of carbon monoxide;
- (d) An Energy Performance Certificate has been made available to the Tenant, in respect of the Property.

The tribunal now requires the Landlord to carry out such works as are 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 to:-

- (a) obtain and produce an electrical installation condition report within twenty one days and to carry out any works which are necessary in terms of that report to meet the repairing standard;
- (b) to obtain and produce an energy performance certificate within twenty one days;
- (c) to install within the property appropriate smoke alarms, carbon monoxide detectors and heat detectors within twenty eight days to ensure the property meets the terms of the repairing standard;
- (d) to obtain a report within 28 days from an appropriately qualified and registered roofing contractor or registered building professional in respect of the roof area of the whole building, including the roof coverings, the roof structure and all associated areas. The report should ascertain the overall condition and also specify any repairs required at the present time to make the roof area wind and watertight or whether the roof covering should be replaced along with any consequent work to the structure or associated areas. . Any works required in terms of said report are to be carried out within three months.

Such a report may be obtained from either a Chartered Building Surveyor, a Registered Architect, or a member of a Registered Roofing Contractors Association e.g. The National Federation of Roofing Contractors, The Confederation of Roofing Contractors or a similar independent organisation.

**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 Repairing Standard Enforcement Order ("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 agreement 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 two pages only are signed by James Bauld, chairperson of the tribunal at Glasgow on 24<sup>th</sup> July 2017 before this witness:-

**J Bauld**

James Bauld, Chairperson

**D Jones**

Witness

*Donna Jones*

Full name

*SECRETARY*

Designation

7 West George Street,  
Glasgow,  
G2 1BA



# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



### **First-tier Tribunal for Scotland (Housing and Property Chamber) Determination by First-tier Tribunal for Scotland (Housing and Property Chamber)**

### **Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006**

Reference Number: FTS/HPC/RP/17/0131

Property: flat ground right situated at and known as 10 Avenue Street, Stewarton, Ayrshire, KA3 5AP, being the subjects registered in the Land Register of Scotland under Title Number: AYR32145 ("The Property")

The Parties:-

East Ayrshire Council, Private Sector Housing Unit, Civic Centre North, John Dickie Street, Kilmarnock, KA1 1HW ("the Third Party Applicant")

and

Brian Green, residing at 3 MacPhail Drive, Kilmarnock, KA3 7EL ("the Landlord")

Tribunal Members:-

Mr James Bauld – Legal Member

Mr Alex Hewton – Ordinary Member

### **Background**

1. By application dated 31<sup>st</sup> March 2017, the Third Party Applicant (hereinafter referred to as "the Council") made an application the First-tier Tribunal (Housing and Property Chamber) indicating that they believed that the Landlord was failing to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006(hereinafter referred to as "the 2006 Act"). By letters dated 31<sup>st</sup> May 2017, the Tribunal indicated to the parties that the application had been referred to a Tribunal and that a hearing would take place on 29<sup>th</sup> June 2017 in the North West Kilmarnock Area Centre, Western Road, Kilmarnock. Intimation of the hearing was also sent to Mr Gordon Thompson, the tenant of the property, Mrs Susan Bell of Bell &

Co, 12 Grange Place, Kilmarnock, KA1 2AB, the agent for the Landlord and to the Landlord at two separate addresses namely 3 MacPhail Drive, Kilmarnock, KA3 7EL and 23 Mackenzie Drive, Kilmarnock, KA3 7EG.

2. In the application, the Council claimed that the property failed to meet the repairing standard in a variety of respects. They indicated the house was not wind and water tight and in all respects reasonably fit for human habitation, that the structure and exterior of the house was not in a reasonable state of repair, that installations within the house were not in a reasonable state of repair, the fixtures and fittings within the house were not in a reasonable state of repair and that the house lacked both smoke alarms and carbon monoxide detectors. The Council also indicated that the Landlord had failed to provide relevant certificates in respect of gas safety, electrical safety and energy performance.

### **Inspection and Hearing**

3. The Tribunal members attended at the property on 29<sup>th</sup> June 2017 to carry out the inspection. The tenant was present within the property as was the Landlord. The agent was not present. Karen Walker from East Ayrshire Council was also present.
4. The property was found to be a ground floor flat in a two storey terraced building. Entrance was via a common close which gave access to the property on the right hand side of the ground floor. There was another flat on the left hand side of the ground floor and two flats on the first floor. The first floor flats were accessed through a common staircase within the common close. The main walls are thought to be brick with a stone facing to front and rear, and the roof is timber framed, pitched and slated. Floors are mainly timber. The property is more than 100 years old.
5. During the inspection the members of the Tribunal inspected the property and noted that it was a ground floor flat containing a living room, shower room, kitchen, two bedrooms and a box room. The Tribunal members noted evidence within the flat of previous water ingress. During the course of the inspection of the premises, the Tribunal members were also invited by the Council representative to inspect the flat above which was owned and occupied by Ms Gillian Kirkpatrick. The Tribunal members took the opportunity to inspect that flat and noted that within that property there was significant evidence of previous traumatic water ingress to the property. In one room the wallpaper for the ceiling was still hanging down and had clearly suffered from significant water penetration. Evidence of water penetration was also noted within the common close. A schedule of photographs prepared by the ordinary member is attached to this decision.
6. After the inspection, the Tribunal members proceeded to the hearing venue and the hearing commenced at 11.30. The hearing was attended by Karen Walker from East Ayrshire Council who was accompanied by other Council staff members, namely Elaine Cavanagh, an Environmental Health Officer and Leigh Richardson, an Environmental Health Officer. The Landlord Mr

Green was present at the hearing. Ms Gillian Kirkpatrick was also in attendance at the hearing as a witness brought by the Council.

7. In addition to the Tribunal members, the hearing and inspection was observed by two other members of the First-tier Tribunal, Mrs Patricia Pryce and Mr Michael Links. They were there in an observational capacity.
8. During the course of the hearing the Landlord was questioned by members of the Tribunal. He admitted that he did not have an energy performance certificate for the property but indicated he was in the process of obtaining it and would email it to the Tribunal offices.
9. The Landlord also admitted that he did not have an electrical installation condition report for the property. He indicated he owned a number of properties throughout the Ayrshire region and that he was in the process of obtaining these certificates for all his properties based on a works schedule. He indicated he was doing about one a week. He did not provide any indication of when he would provide the certificate for this particular property.
10. The Tribunal were advised by Karen Walker that the Landlord's registration as a private landlord had been continued by the Council with a condition attached that he use an agent to manage his properties. That condition had been in place for approximately eighteen months to two years. Ms Walker indicated that the appointed agent was Susan Bell who was a solicitor and letting agent. The hearing had been intimated to Ms Bell but she was not in attendance.
11. On being further questioned by the Tribunal, the Landlord was unable to identify the full name of his electrician other than he was called "Mark". He thought his surname might be Pearson. He indicated that the electrician was self-employed and was contacted only via a mobile telephone number. When asked why he had not instructed the electrician to carry out the electrical installation condition report for this property in advance of the hearing the Landlord could provide no coherent or cogent answer.
12. During the inspection the Tribunal had noted that the whole tenement property at 10 Avenue Street had suffered significant and serious water ingress. The Landlord admitted that roof repairs to the property were needed. It was agreed that certain works had been carried out in or around November 2016. Ms Kirkpatrick, the owner of Flat C indicated that each of the owners had paid a share of approximately £189 to carry out works at that time. Those works had been carried out by Annick Roofing. Mrs Kirkpatrick indicated to the Tribunal that since those repairs had been done she was not aware of any water further penetrating directly into her property but had significant concerns that the water was still leaking from the roof into the attic area.
13. The Tribunal members then questioned the Council representatives on the steps they had taken to try to ensure that repairs had been done to this building. It was accepted by the Council members that the Council had various powers under various parts of the legislation. Ms Elaine Cavanagh

candidly admitted that she was aware of the prospect of a works notice being issued under Section 30 of the 2006 Act. She admitted that the Council had made a policy decision that they would not issue these notices because the Council could not afford to fund the relevant works which may be required.

14. Further discussion was then heard with regard to a variety of quotes which had been obtained to reroof the building. Ms Kirkpatrick indicated that the owners of the other three flats within the building had obtained a quote from Annick Roofing amounting to £20,100. That would be a cost of £5,025 per owner. Mr Green had obtained a quote from Alex Goodyear Roofing Contractor which showed a cost of £17,256. The Landlord and Mrs Kirkpatrick were in dispute with regard to the question of whether the roof needed to be replaced rather than repaired. It appeared to be the Landlord's position that he simply could not afford to contribute to the full reroofing of the property. Mrs Kirkpatrick had indicated that if the Landlord was willing to agree to the quote from Annick Roofing the other three owners would accept the Landlord paying only the share he would have paid for the lower quote from Goodyear Roofing and the three other owners would have made up the shortfall. It was Ms Kirkpatrick's position that the roof of this property required to be replaced. Her position was that the roof would need constant repair over the next twenty to twenty five years and that if it was reroofed and properly done those repair works could be avoided. That position was supported by the representatives from the Council. The Landlord was asked by the Council why he was not able to contribute approximately £4,500 towards a complete reroofing. He was asked by the Tribunal what profit he made from his rental properties. He had indicated to the Tribunal that he owned approximately thirty properties. He was unwilling to disclose the profit he made from this enterprise and indicated to the Tribunal that he had no idea how much profit he was making. He was evasive in respect of these questions and professed that he had no idea of any profit figure from his landlord operations which may have been included in a tax return. He accepted that the various quotes relating to reroofing had been obtained.
15. The Tribunal then considered the position with regard to smoke alarms and carbon monoxide detectors. During their inspection, the Tribunal members had noted that there were no hard wired smoke alarms within the property, no heat detector in the kitchen and no carbon monoxide detector anywhere within the property. This position was accepted by all present as being correct.
16. The Tribunal then returned to the question of the roof repairs required. It appeared to be accepted by all parties that a variety of quotes had been obtained from a variety of companies in respect of a reroofing of the property. However it appeared clear that none of these companies had been asked to actually provide an answer to the question of whether a reroofing of this property was actually required. The Landlord indicated he simply wishes to keep the roof wind and water tight. Elaine Cavanagh indicated that the Council have concerns whether this property currently meets with tolerable standard never mind the repairing standard given there is evidence of more than 10% visual water penetration in many places.



17. The Council's representatives indicated that Mr Green was at severe risk of being removed from the Register of Private Landlords given his failure to cooperate with the Council in respect of this matter and indeed other matters.

## **Decision**

18. The Tribunal considered the evidence which had been obtained at both the inspection and the hearing. The Tribunal were satisfied that there were significant breaches of the Repairing Standard and that a Repairing Standard Enforcement Order should be made. There appeared to be little dispute with regard to the factual issues behind the application. There was no dispute that the tenement had suffered significant water ingress owing to problems with the common roof.
19. Similarly, it was accepted by the Landlord that he did not have an electrical installation condition report for the property. That is a requirement of the Repairing Standard. Failure to produce one is a breach of the Repairing Standard.
20. The Landlord also accepted that he had never obtained an energy performance certificate in respect of the property. Again that is a clear breach of the Repairing Standard and such a report should be available.
21. It was accepted that the property lacked appropriate smoke alarms, carbon monoxide detectors and a heat detector as required by the repairing standard and the guidance issued in connection with same. Again this was a clear breach of the Repairing Standard.
22. The main question which had to be determined by the Committee was in respect of the roof. It was accepted by all parties that there had been significant difficulties with the roof and that there had been significant water penetration in to the building. The tribunal had noted clear evidence of water penetration within the common close, the flat above the specific property in question and within the property itself. the Tribunal took the view the definition of "house" contained in Section 194 of the Act 2006 included any part of the living accommodation including its structure and exterior which is owned in common with other persons. Accordingly the roof of the tenement was part of the flat in question. The Tribunal were satisfied that there had been significant prior difficulties with the roof and were concerned whether it was still wind and water tight. The Tribunal determined that the Landlord should be ordered to obtain a report from an appropriately qualified roofing contractor, or a registered building professional to indicate whether the roof is currently wind and water tight, and to provide an opinion on whether the roof itself should be replaced or whether it could be repaired.
23. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order and the decision of the Tribunal in this regard was unanimous.

## Rights of Appeal

24. 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.
25. 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.

**J Bauld**

James Bauld, Chairperson

Date *24 July 2017*

**D Jones**

Witness

*Donna Jones*

Full name

*SECRETARY*

Designation

7 West George Street,  
Glasgow  
G2 1BA

**FLAT Ground right, 10 Avenue Street, Stewarton, KA3 5AP**

Schedule of photographs taken at the inspection on 29<sup>th</sup> June 2017.

**Photo 1 – Exterior of property**

**Photo 2 – Consumer unit**

**Photo 3 – Gas boiler – no CO Monitor**

**Photo 4 –Gas fire – no CO Monitor**

**Photo 5 – Old water penetration , front bedroom.**

**Photo 6 – Roof - front**

**Photo 7 –Roof – rear, showing vegetation**

**Photo 8 – Water damage – stairwell ceiling**

**Photo 9 – Water damage – stairwell wall**

**By kind permission of owner of flat 10C directly above**

**Photo 10 – Water damage to lounge ceiling at No 10C**

Flat Ground right, 10 Avenue Street , Stewarton, KA3 5AP

Schedule of Photographs taken at inspection on 29<sup>th</sup> June 2017



Exterior of property



Consumer unit



Gas boiler ( no CO Monitor )



Gas fire ( no CO Monitor )

Flat Ground right, 10 Avenue Street , Stewarton, KA3 5AP

Schedule of Photographs taken at inspection on 29<sup>th</sup> June 2017



Old water penetration ( front bedroom )



Roof front



Roof – rear , showing vegetation

Flat Ground right, 10 Avenue Street , Stewarton, KA3 5AP

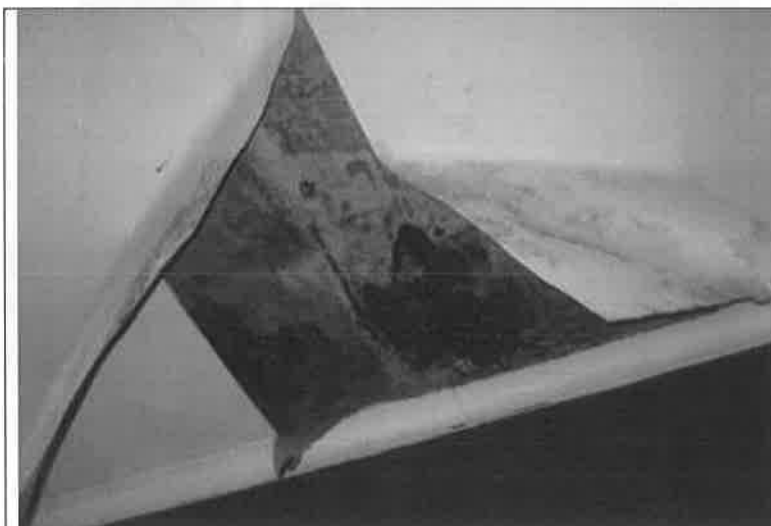
Schedule of Photographs taken at inspection on 29<sup>th</sup> June 2017



Water penetration common close ceiling



Water penetration common close wall



Upstairs flat water penetration ( Flat 10C)