

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 section 24(2)

Chamber Ref: PRHP/RT/16/0309

Sasines Description: Crossroads Farmhouse, Keig, Alford, AB33 8DB being part of the subjects described in Disposition by Trustees under Settlement of the said Jonathan Andrew Forbes dated 28th August and recorded in the division of the General Register of Sasines for the County of Aberdeen on 16th September 1986 (Search Sheet number 1099).

House address

Crossroads Farmhouse, Keig, Alford, AB33 8DB ("The House")

The Parties:-

**Miss Eilidh MacKay, Aberdeenshire Council, Gordon House, Blackhall
("the Third Party Applicant")**

Harthill Farms, Keig, Alford, AB33 8DB represented by their agent Jonathon Forbes ("the Landlords")

NOTICE TO Harthill Farms, Keig, Alford, AB33

Whereas in terms of their decision dated 19th December 2016, the First-tier Tribunal for Scotland (Housing and Property Chamber) has determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that:

1. The House is wind and watertight and in all other respects reasonably fit for human habitation;
2. 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 Tribunal now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the House 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 to:-

Repair or replace the front door to ensure that the door is wind and water tight, and in a reasonable state of repair and in proper working order.

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 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.

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 Helen Forbes, solicitor, chairperson of the tribunal at Inverness on 19th December 2016 before this witness:-

M Forbes _____
witness

H Forbes _____
chairperson

Margaret Forbes, 67B Glenurquhart Road, Inverness, IV3 5PB

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(2)

Chamber Ref: PRHP/RT/16/0309

Sasines Description: Crossroads Farmhouse, Keig, Alford, AB33 8DB being part of the subjects described in Disposition by Trustees under Settlement of the said Jonathan Andrew Forbes dated 28th August and recorded in the division of the General Register of Sasines for the County of Aberdeen on 16th September 1986 (Search Sheet number 1099).

House address

Crossroads Farmhouse, Keig, Alford, AB33 8DB ("The House")

The Parties:-

**Miss Eilidh MacKay, Aberdeenshire Council, Gordon House, Blackhall
("the Third Party Applicant")**

**Harthill Farms, Keig, Alford, AB33 8DB represented by their agent Jonathon Forbes
("the Landlords")**

Decision

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 Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application received 22nd September 2016, the Third Party Applicant applied to the Private Rented Housing Panel for a determination as to whether the Landlords have 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 Third Party Applicant stated that she considered that the Landlords have failed to comply with their duty to ensure that the House meets the repairing standard. She advised that:-**

The landlord has failed to keep the house wind and water tight by failing to repair the front door.

The landlord has failed to keep the structure and exterior of the house in a reasonable state of repair by failing to repair the front door.

The landlord has failed to provide satisfactory provision for detecting fires.

The work required was described as:-

Front door to be repaired to prevent rain water from leaking into the house and causing damage to the interior floor.

Fire detection in house to be brought up to current private rented standard.

3. The Third Party Applicant had notified the Landlord of the alleged defects by email dated 20th April 2016, mentioning that the Tenant had been waiting for repairs to the front door, and that the water ingress had recently been such that the hall carpet had to be lifted to allow the floor to dry out. The Landlords' representative, Sandra Innes, responded on the same date, stating that the matter would be passed to the relevant party. The Third Party Applicant emailed the Landlords on 9th and 12th May 2016, in an attempt to get an update as to whether the repairs were to be carried out. Ms Innes responded to say the matter was in hand. At the time of making the application, there was a Tenant in the house – Mr Daniel Moorhouse; however, the Tenancy was terminated on 7th November 2016.
4. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22(1) of the Act to a Committee.
5. The Committee members were Helen Forbes (Chairperson) and Colin Hepburn (Surveyor Member).
6. The Private Rented Housing Panel served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties dated 19th October 2016.
7. On 28th October 2016, the Tenant notified the Committee that they would be represented by the Aberdeen Law Project. On 8th November 2016, the Committee was notified by the Landlords that the house had been vacated by the Tenant and the tenancy had ended on 7th November 2016. The Tenant confirmed by email to the Committee that the House had been vacated on 4th November 2016. The Third Party Applicant confirmed on 8th November 2016 that she wished to proceed with the application.

On 10th November 2016 the representatives of the Tenant made submissions, as follows:-

All submissions by the tenant are based upon the state of the property prior to the termination of the tenancy. The landlord fails to comply with the Repairing Standard, for the following reasons.

(A) *The house is not wind and watertight and in all other respects reasonably fit for human habitation. This is so on two counts. Firstly, water leaks through the front door whenever it rains. On one occasion the carpet had to be lifted so as allow the floor to dry out. Secondly, there has been a problem of dampness in the conservatory of the*

property since flooding occurred at the beginning of the tenancy. A severe storm led to a crack in the conservatory exterior with water coming in. The landlord sought to remedy this crack by placing a piece of wood over it. However, this was inadequate as mould thereafter developed in the conservatory. On inspection, the Tribunal should carefully observe whether dampness/mould remains an issue in the conservatory.

(B) The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order. This is so on two counts. Firstly, in terms of the failure to repair the front door, for this door should prevent rainwater from leaking into the property. It should not be necessary for the carpet at the front door to be lifted to prevent damage to the interior floor. Secondly, the guttering was not cleared by the landlord on request and thereafter collapsed. It was not the tenant's responsibility to remedy this defect. On being informed by the tenant that the gutter had collapsed, the landlord told the tenant to fix it herself.

(C) The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The property does not conform to the latest guidance on fire prevention. Only one smoke alarm was installed, in the hallway on the ground floor. There was also no heat alarm.

(D) The house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The landlord has neglected to follow statutory guidance. No carbon monoxide alarms were installed in the property.

The additional matters mentioned in the representations, i.e. the condition of the conservatory and the guttering, and the lack of provision for giving warning if carbon monoxide is present, had not been notified to the Landlords, or included in the application. Furthermore, at the date the representations were made, the tenancy had been terminated.

8. The Committee attended at the House on 30th November 2016. The weather was dull and dry. The House is a two storey detached stone-built, granite-dressed farmhouse built around one hundred years ago. It has a slated pitched roof. On the ground floor, there are a kitchen, two public rooms, a toilet and a boiler room. On the first floor, there are three bedrooms and a bathroom. The House has oil-fired central heating and wood-burning stoves in both public rooms. There is a private water supply. There is a perspex and timber conservatory attached to the rear of the House, allowing entry to the back door of the property.

The Third Party Applicant was present at the inspection, with her colleague, Julia Leonard. The Landlords' representative Jonathan Forbes attended at the House and provided access, however, he did not attend the inspection. Mr Mike Links, Surveyor, was also present at the inspection, for the purposes of appraisal of the surveyor member.

The Committee inspected the alleged defects and found as follows:-

8.1 The front door

The front door was of timber construction. Weather strips on the vertical aspects of the door were loose. There was rot in the timber door posts, with a hole at the end of

one of the posts. The carpet was not fixed down and could be lifted to allow access to the floorboards. The surveyor member tested the floorboards with a damp meter. The meter readings were red, indicating damp in the flooring on both sides of the door.

8.2 Provision for detecting fires

A heat detector had been fitted in the kitchen. Hard-wired smoke detectors were fitted throughout the House. Carbon monoxide monitors had also been fitted.

Photographs were taken during the inspection and are attached as a Schedule to the report.

9. Following the inspection of the House, the Committee held a hearing in the Alford Golf Club. The Third Party Applicant was present with her colleague, Julia Leonard. Ms Leonard was an observer, taking no part in the Hearing. Mr Mike Links was present for the purposes of appraisal of the surveyor member. He took no part in the Hearing. The Landlords' representative, Mr Jonathan Forbes, was present. Mr Forbes provided the Committee with some background information on the House, and an Electrical Installation Condition Report (EICR). Inspection had been carried out following the fitting of the smoke and carbon monoxide detectors on 24th November 2016.

Discussion on the application

9.1 The front door

The Third Party Applicant said the Tenant had notified the Landlords of the problem some time ago. He had complained on several occasions and received no response from the Landlords, even when the situation had deteriorated and the carpet had to be lifted due to water ingress. Had the Landlords responded, the matter could have been dealt with some time ago. The Third Party Applicant said she had not personally attended the property until the day of the inspection and hearing.

The Landlords' representative said that the Landlords were at fault for failing to address this problem. He gave his apologies in that regard.

There was some discussion about the condition of the front door. The surveyor member said that there were signs of damp, the weather strips had almost detached, and there was rot to the door frame. The Landlords' representative confirmed that no work had been carried out to the front door prior to the inspection, and it had not been looked at by a contractor. He said that a cat flap had been boarded over, and that it was difficult to stop water entering the property when the wind and rain came from a south-easterly direction. He had observed this in his own property. He indicated that the door would be attended to, and advice taken as to whether to replace or repair the front door.

9.2 Provision for detecting fires

The Landlords' representative said that the heat and smoke detectors were fitted on 24th November 2016. The Third Party Applicant said she was satisfied that the problem had been addressed.

10. Summary of the issues

The issues to be determined are:

10.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the condition of the front door results in the House not being wind and watertight and in all other respects reasonably fit for human habitation.

10.2 The structure and exterior of the House (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006)

Whether the front door is in a reasonable state of repair and in proper working order.

10.3 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; (Section 13(1)(f) of the Housing (Scotland) Act 2006)

Whether the House has satisfactory provision for detecting fires and giving warning of fires.

11. On 1st December 2016, the functions and members of the Private Rented Housing Panel transferred to the First Tier Tribunal for Scotland, with allocation to the First Tier Tribunal for Scotland (Housing and Property Chamber).

12. Findings of fact

The Tribunal determined that:

12.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Housing (Scotland) Act 2006).

The House is NOT wind and watertight, due to the condition of the front door. There was evidence of water ingress and damp in the floorboards inside the front door.

12.2 The structure and exterior of the House (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006).

The structure and exterior of the House is NOT in a reasonable state of repair or in proper working order, given the condition of the front door, and the evidence of rot and water ingress.

12.3 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; (Section 13(1)(f) of the Housing (Scotland) Act 2006)

The House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The smoke detection and alarm equipment had been fitted in accordance with legislative requirements.

The Tribunal members further observed that the timber and perspex conservatory to the rear of the House was in extremely poor repair. The door had come off its runners and was fixed in an open position, the frame was showing signs of rot, and there were signs of water leakage through the perspex roof. An electric consumer unit had been fitted to the outside wall of the House, below an area of damaged perspex. This is potentially unsafe due to the possibility of water leakage through the perspex roof. The Tribunal members further observed that there was staining and damp plasterwork in the gable wall of the north-most front bedroom, and a failed double-glazing unit in the back bedroom. The Tribunal members were unable to make an order in regard to these observations as no prior notification of these matters had been made to the Landlords.

13. Decision

The Tribunal accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14(1(b), of the Act, as stated.

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. 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.

Effect of section 63

16. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Signed
Chairperson

..... Date 19th December 2016









