

# 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/17/0066**

**Sasines Description:** ALL and WHOLE those first and attic floor subjects being the subjects more particularly described in and disposed by Disposition to Nelly Smith Brand recorded GRS (Angus) 12 September 1961

**178 Perth Road, Dundee, DD1 4JS ("The Property")**

**The Parties:-**

**NIAL PATRICK MCDONNELL, residing at 178 Perth Road, Dundee, DD1 4JS ("the Tenant")**

**MR RAGHUNATH LALL, residing at Wallwood House, Park Road, Banstead, Surrey (represented by his agent, Mr Richard Hawkins, 2RentMe, 55 Perth Road, Dundee) ("the Landlord")**

Whereas in terms of their decision dated 27 April 2017, 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed;

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:-

- (a) to carry out such works of repair to the roof of the Property to render it properly wind and watertight and to prevent further water ingress into the storeroom within the Property; and

(b) to remove the condemned gas fire in the 2<sup>nd</sup> lounge and to carry out such works as are necessary to the fireplace behind it to render it compliant with the repairing standard.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 3 months 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(s) are executed by Ewan K Miller, Chairman, Solicitor, Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Tribunal at Dundee on 27 April 2017 before this witness:-

E MILLER

Chairperson

L JOHNSTON

(witness)

Lindsay Johnston  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier tribunal for Scotland (Housing and Property Chamber)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/17/0066**

**178 Perth Road, Dundee, DD1 4JS ("The Property")**

**The Parties:-**

**NIALL PATRICK MCDONNELL, residing at 178 Perth Road, Dundee, DD1 4JS ("the Tenant")**

**MR RAGHUNATH LALL, residing at Wallwood House, Park Road, Banstead, Surrey (represented by his agent, Mr Richard Hawkins, 2RentMe, 55 Perth Road, Dundee) ("the Landlord")**

**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 Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord's agent and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application dated 15 February 2017 the Tenant applied to the Housing and Property Chamber for a determination of whether the Landlord 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 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;**
  - (b) The installations in the Property 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;
3. By letter dated 7 March 2017 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (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 both the Landlord and the Tenant.
  5. Following service of the Notice of Referral the Landlord made written representations dated 5 April 2017.
  6. The tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mrs G Wooley, Ordinary Member) inspected the Property on the morning of 19 April 2017. The Tenant, Mr McDonnell was present along with his flatmate Mr Ben Gray and Ms Lindsey Gow. Mr Hawkins for the Landlord's agent was present.
  7. Following an inspection of the Property the tribunal held a hearing at Caledonian House, Greenmarket, Dundee and heard from the Tenant, Mr Gray, Ms Gow and the Tenant's father. The Landlord was represented by Mr Hawkins.
  8. The Tenant submitted that the Property did not meet the repairing standard and suffered from numerous issues. That said, that Tenant acknowledged that a number of the issues originally complained of had been dealt with. However, he submitted that there were still a number of issues within the Property. In the second living room (and generally throughout the Property as well) he complained of uneven floorboards and also that there was a condemned gas fire left in the Property with rubbish in the open fireplace behind it. In the two first floor bedrooms the Tenant again complained that the floorboards were uneven and that there were areas of damp within the bedrooms.

In the storeroom on the upper floor the Tenant complained that over the last 2 years there had been three repairs but these had been ineffective. The Tenant was of the view that there were still areas of damp and water penetration coming into the room. This was impacting on the overall condition of the Property and causing him health issues. In the boiler room there were holes in the walls from an old washing machine that had not been removed. In the upstairs bedroom (which was the Tenant's) the Tenant again alleged that there was damp within the Property and that since moving into the Property he had been feeling unwell and was on

medication as a result. The Tenant was of the view that this was caused by the poor conditions within the Property. He also complained of uneven floorboards within the bedroom. The Tenant alleged that whilst the water tanks had been disconnected they had been left full of water that was now stagnant and that this was a health hazard. The Tenant also complained about the small cupboard in the bathroom which he alleged was in general disrepair. He also complained of nails coming through the flooring.

9. The Landlord's agent submitted that whilst the Property was dated and would benefit from upgrading, it did generally meet the repairing standard. Whilst there were uneven floorboards within the Property they were characteristic of a property of this age. The gas fire in the second living room was decorative and whilst there was mess in the open fireplace the Tenant themselves could remove this if they so desired. In relation to the two first floor bedrooms, the Landlord's agent was of the view that the levels of damp, whilst perhaps slightly elevated, were still at acceptable levels.

In relation to the storeroom, this had not been let as habitable living space but a storage area. The Landlord's agent acknowledged that there had been water penetration here in the past and a number of repairs had been carried out. The Landlord's agent submitted that they had been monitoring this area and it had generally been drying out. In relation to the holes in the boiler room, the Landlord's agent submitted that these were *de minimis*. In relation to the upstairs bedroom, again the Landlord's agent submitted that there were no current damp issues within the room. The Landlord's agent submitted that the water tanks had been disconnected when the new combi-boiler had been installed and whilst there was water in the tanks a qualified plumber had stated that this was acceptable. In relation to the bathroom, the Landlord's agent removed one of the nails during the Hearing and accepted that there was some small item under the linoleum still present.

### **Summary of the issues**

10. The issues to be determined are:
  - (1) Whether the floorboards within the Property were generally in sufficient order and repair and meet the repairing standard.
  - (2) Whether the gas fire and general condition of the open fireplace behind it met the repairing standard.
  - (3) Whether the two first floor bedrooms were suffering from damp.
  - (4) Whether there was water penetration still occurring in the upper floor storeroom.
  - (5) Whether the holes in the boiler room were a breach of the repairing standard.

(6) Whether the upstairs bedroom was damp or otherwise met the repairing standard.

(7) Whether the bathroom at the Property met the repairing standard.

### **Findings of fact**

11. The tribunal found the following facts to be established:-

- Whilst the floorboards within the Property were dated, they generally met the repairing standard.
- The gas fire and open fireplace behind it did not meet the repairing standard.
- The levels of damp within the two first floor bedrooms was not sufficient to be a breach of the repairing standard.
- The Property was not wind and watertight in that the storeroom was still suffering from ongoing water penetration.
- The holes in the boiler room were in not in breach of the repairing standard.
- There did not appear to be damp to a level breaching the repairing standard in the upstairs bedroom.
- The bathroom met the repairing standard.

### **Reasons for the decision**

12. The tribunal based its decision primarily on the evidence obtained during the course of the inspection of the Property. The tribunal first inspected the main lounge. It was accepted by the parties that any issues within this room had been addressed.

The tribunal then inspected the second living room on the first floor. There was a gas fire which had been condemned. It appeared that it ought to have been removed from the Property but had not been. The tribunal was of the view that if the Tenant wished it to be removed by the Landlord then it should be. The open fireplace behind it was filled with loose debris from the chimney. The tribunal was of the view that it was for the Landlord to attend to this and to have it cleaned and ensure that no further debris came into the Property.

Whilst not complained of in the Tenant's application, the tribunal did note that there was a significant crack running along the roof of the ceiling of the second living room. Whilst the tribunal could not state definitively, this did not necessarily look as if it was caused by historical movement but



perhaps by more current movement. Whilst not forming a part of any order, the tribunal was of the view that a prudent Landlord would carry out further investigation in this regard.

The tribunal inspected the two bedrooms on the first floor. Damp meter readings were taken. Generally these were showing damp levels at around 9%. Whilst this was slightly elevated the tribunal was of the view that not significantly high enough to be a breach of the repairing standard. There had been historic water ingress that had caused damp penetration in this area and there may be an element of the walls and ceilings still drying out. In addition there may be slightly elevated levels of damp throughout the Property due to the ongoing water ingress in the storeroom. Once this was rectified this would assist in overall damp levels within the Property reducing.

The tribunal next inspected the storeroom at the Property. Whilst the tribunal accepted this had not been let as habitable property, nonetheless the repairing standard required the whole of the Property to be properly wind and watertight. It was evident from the ceiling of the Property that water penetration had been ongoing for some time. The tribunal accepted that the Landlord's agent had carried out a number of repairs to try and address this. Whilst it appeared that there had been an improvement in the area and that some of it was drying out there were still two significant areas of damp. In the middle of the party wall at the ceiling there were still elevated levels of damp around 18%. On the internal slope of the dormer there was very high moisture meter readings in excess of 35%. The tribunal was satisfied that these levels of damp indicated that water penetration was still ongoing. Accordingly the tribunal was satisfied that the Property was not wind and watertight in this regard and that further roof repairs and subsequent redecoration would require to be carried out by the Landlord.

In relation to the holes in the boiler room these were small and did not materially impact on the Tenants enjoyment of the property. The tribunal was of the view that this was a *de minimis* issue and was not a breach of the repairing standard.

In relation to the upstairs bedroom, the tribunal took extensive damp meter readings but could not find any elevated areas of damp. Whilst the Tenant alleged that the room was causing ill health, the tribunal could not identify anything within the building that would cause this. The tribunal was satisfied that this room met the repairing standard.

In relation to the bathroom the Landlord's agent removed one of the nails that had come through the flooring during the course of the inspection. There was another small area where something hard lay beneath the linoleum however it was located close to the wall and was of no inconvenience to the Tenant. Accordingly the tribunal was satisfied that this was a *de minimis* issue that did not breach the repairing standard.

The small hatch in the bathroom that gave access into the eaves was in poor condition but was typical of a property of this age. It was not really meant to be used for storage and accordingly the tribunal did not view this as a breach of the repairing standard.

In relation to the floorboards generally within the Property, the tribunal accepted that they were uneven in a number of places however they were not so bad as to constitute a trip hazard or a danger. The tribunal are obliged to take into account the age, character and location of the Property. This was an old property that would typically have uneven floorboards. Whilst one or two floorboards would benefit from being replaced or repaired, nonetheless the tribunal was satisfied that overall there was not a breach of the repairing standard.

The tribunal did note that the water tanks at the Property were still full albeit they had been disconnected. Whilst this had not been complained of in the original application the tribunal was of the view that a prudent landlord would drain these down. Over a period of time the tanks would, inevitably, fail and there was also a health and safety risk from stagnant water being in the Property.

Overall, whilst the Property was dated and generally unappealing, it did meet the basic standard bar two points. A number of the issues complained about in relation to matters such as the electricity had been attended to. The parties accepted this and a clear EICR was provided at the Hearing.

The tribunal was satisfied that there were two breaches of the repairing standard in that the gas fire ought to be removed and the open fireplace attended to. The primary concern was the ongoing water penetration into the Property via the storeroom which was causing slightly elevated damp levels and meant the Property was not properly wind and watertight.

At the Hearing a discussion was had as to how long a period would be required to attend to these works. The Landlord's agent suggested that 3 months would be required to attend to this given the communal nature of the works. The tribunal did not disagree that this was a fair period and accordingly determined that the RSEO would be for 3 months.

Photographs taken during the course of the inspection are annexed to this decision for information.

### **Decision**

13. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).



15. The decision of the tribunal was unanimous.

### **Right of Appeal**

16. 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.

### **Effect of section 63**

17. 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.

E MILLER

Signed

Date

27/4/17

Chairperson



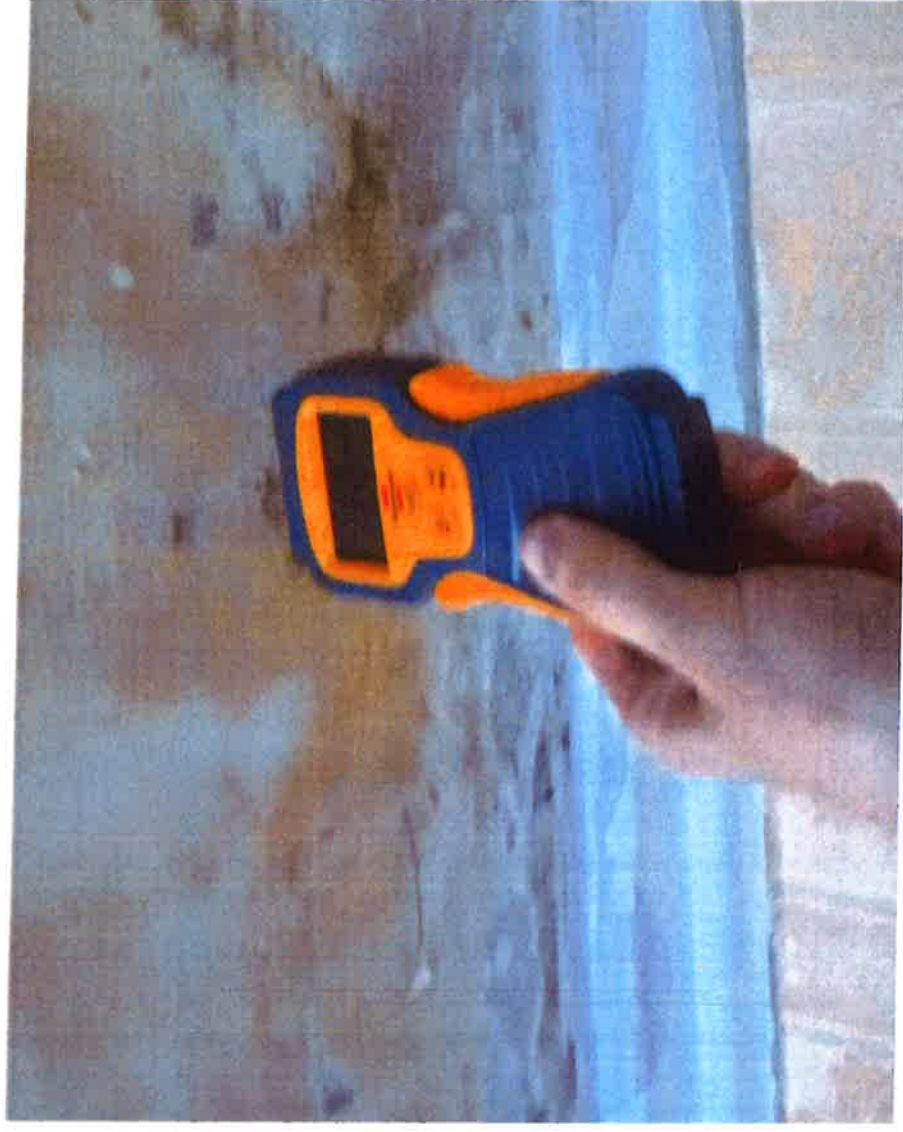
**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**178 Perth Rd Dundee**  
**DD1 4JS**

**Inspection and Hearing 19 April 2017**

Damp in attic storage  
room – reading of  
approx. 20 in ceiling  
on party wall side  
under the chimney



Damp in attic storage  
room – reading of  
32.9 in coombed  
ceiling on party wall  
side under the  
chimney





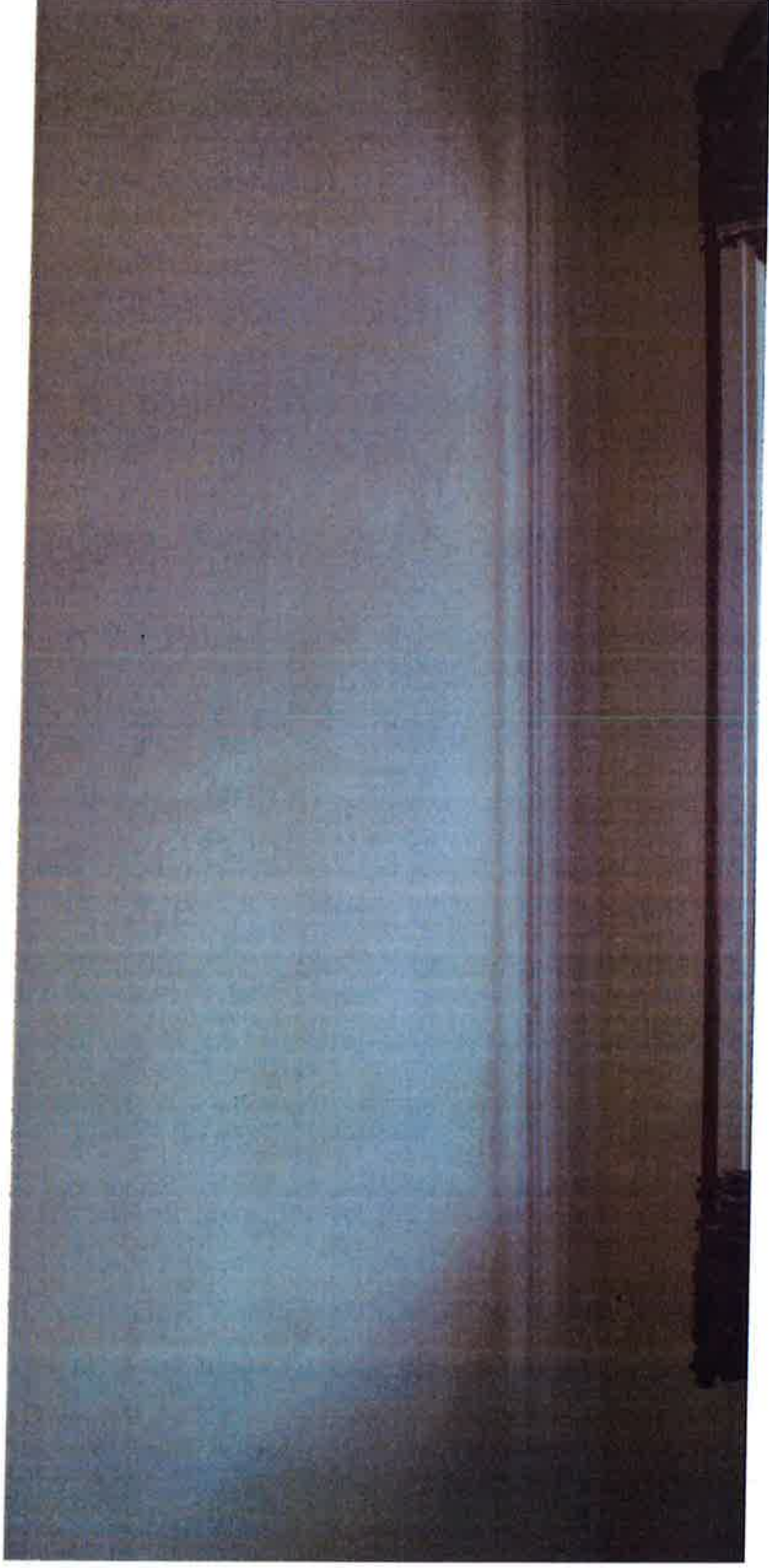
Damp in attic storage  
room – condition of  
roof and chimney  
above ceiling area  
with high level of  
moisture



Signs of damp in  
ceilings of first  
floor: meter  
reading of approx.  
9 in spare bedroom







Signs of damp in ceilings of first floor:  
water stain to ceiling



Sitting room appliances: gas fire disconnected

Sitting room  
appliances: fire place  
behind gas fire

