

# **Housing and Property Chamber**

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

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**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/17/0106**

**Title Number: FFE59688**

**7 Wellesley Road, Buckhaven, Fife, KY8 1HU ("The Property")**

**The Parties:-**

**MRS THERESA DODDS, 7 Wellesley Road, Buckhaven, Fife, KY8 1HU ("the Tenant")**

**KENNETH RUDOLF DROOG and MRS FIONA SARAH KERR ROSS-DROOG,  
Windsor Cottage, 39 Dundee Loan, Forfar, DD8 1DY ("the Landlords")**

Whereas in terms of their decision dated 9 August 2017 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlords 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 Landlords have failed to ensure that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) 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;
- (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (e) The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

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 landlord:-

- (a) to carry out such works to the structure and exterior of the Property to ensure that the Property is properly wind and watertight and free from ongoing water penetration, As part of these works the Landlords will require to provide the Tribunal with:-
  - A report from a suitably qualified roofer confirming the works that have been carried out;
  - A report from a suitably qualified timber and damp specialist confirming any areas of rot found and what appropriate preventative works, if any, have been carried out.
  - Any appropriate guarantees given following the carrying out of the works.
- (b) to carry out such electrical works to the Property as are necessary to allow the issue of a clear Electrical Installation Condition Report with no items marked C1 or C2.
- (c) to carry out such works of repair or replacement to the rhones, downpipes and drains to ensure that they are in proper working order and meet the repairing standard.
- (d) to install an appropriate hardwired interlinked smoke detection system (including a heat detector in the kitchen) compliant with the repairing standard.
- (e) to install appropriate carbon monoxide detection systems within the Property.
- (f) to carry out such works of repair or replacement to the windows and lintels above them to ensure that they are properly wind and watertight and in proper working order.
- (g) to provide a clear and current gas safety certificate over the Property.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 4 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 are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Housing Property Chamber Tribunal at Dundee on 9 August 2017 before this witness:-

L Johnston

witness

E Miller

Chairman

Lindsay Johnston  
Secretary  
Thorntons Law LLP  
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/17/0106**

**7 Wellesley Road, Buckhaven, Fife, KY8 1HU ("The Property")**

**The Parties:-**

**MRS THERESA DODDS, 7 Wellesley Road, Buckhaven, Fife, KY8 1HU ("the Tenant")**

**KENNETH RUDOLF DROOG and MRS FIONA SARAH KERR ROSS-DROOG, Windsor Cottage, 39 Dundee Loan, Forfar, DD8 1DY ("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 had complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence obtained by inspection of the Property, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application received 13<sup>th</sup> March 2017 the Tenant applied to the 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 met the repairing standard and in particular that the Landlords had failed to ensure that:-**
  - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;**
  - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;**

- (c) 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;
  - (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
  - (e) The Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By letter dated 6<sup>th</sup> April 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 Landlords and the Tenant.
  5. Following service of the Notice of Referral no further material written representations to the Tribunal were made by the Tenant. The Landlords, by written representation dated 25 April 2017, alleged that there had been difficulty in gaining access to the Property over the last couple of years.
  6. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr David Lawrie, Ordinary Member) inspected the Property on the morning of 15 May 2017. The Tenant was present and gave access to the Tribunal. The Landlords were not present and nor were there representatives.
  7. Following the inspection of the Property the Tribunal held a Hearing at The Lomond Centre, Woodside Way, Glenrothes. Neither Party was present or represented.
  8. During the course of the inspection the Tenant had submitted that there were a number of issues with the Property. The primary issue of concern was water penetration into the Property. The Tenant highlighted a number of areas of damp. She also highlighted the lack of the required statutory documentation such as smoke detection systems, carbon monoxide detectors and the lack of an Electrical Installation Condition Report (EICR).
  9. The Landlords were neither present nor represented at proceedings and therefore the Tribunal had limited information to ascertain their position from. The Tribunal did note the written representations of 25 April 2017 regarding difficulties they had alleged they had encountered in obtaining access. The submission did highlight that some roofing works had been carried out by them, a fact the Tenant confirmed during the course of the inspection.

### **Summary of the issues**

10. The issues to be determined were:-

- (1) Whether the Property was properly wind and water tight or suffering from water penetration.
- (2) Whether there was an EICR available for the Property.
- (3) Whether the windows at the Property were properly wind and water tight and in good order.
- (4) Whether the rhones and downpipes were in proper working order and met the repairing standard.
- (5) Whether there were hardwired smoke detectors compliant with the repairing standard.
- (6) Whether the gas system within the Property was properly compliant with the repairing standard.
- (7) Whether there were carbon monoxide detectors compliant with the repairing standard in the Property.
- (8) Whether there was an infestation of woodlice.
- (9) Whether the heating system in the Property met the repairing standard.
- (10) Whether there was an infestation of snails within the Property.

#### **Findings of fact**

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

- The Property breached the repairing standard as there was water ingress to the Property at numerous points and it was clear it was not properly watertight.
- There was no evidence that an EICR was available.
- Some of the windows were in poor order and water ingress was occurring due to defective cementwork at lintels.
- There was evidence of leaks and choking at the rhones and downpipes.
- There did not appear to be a hardwired smoke detection system in the Property compliant with the repairing standard.
- There was no evidence of a gas safety certificate being in place.
- There was no evidence of carbon monoxide detectors present.

- As at the date of inspection there was evidence of dead woodlice in the conservatory.
- Whilst the heating system was relatively poor for a Property of this size, nonetheless it met the repairing standard.
- There was no evidence of an infestation of snails within the Property as at the date of inspection.

### **Reasons for the decision**

12. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection.

The Property was a very large detached house with numerous public rooms and bedrooms. It had formerly been a Bed & Breakfast. The Tenant had amassed a significant degree of personal possessions that were stored within the Property, to the extent that a full inspection of some rooms was difficult to achieve. Nonetheless the Property was in generally good decorative order and had been carpeted and decorated to a good standard by the Tenant during her period of occupation.

The Tribunal first inspected the conservatory at the Property. This was in very poor condition. The prevailing weather conditions were poor and there was heavy rain ongoing during the course of inspection. This made it apparent that the rhones around the conservatory were choked and overflowing. A number of the wooden posts of the conservatory were severely rotted. The plaster on the brick base of the conservatory was in very poor condition. There was weed growth on the inside of the conservatory, such was the level of damp. Overall, it was readily apparent that the conservatory did not meet the repairing standard and was not properly wind and watertight. The normal course of action by the Tribunal would be to require its repair or replacement. However, the Tribunal was aware that the tenancy had been terminated and the Tenant was intending on moving out in the next few weeks. In the view of the Tribunal the conservatory was beyond economic repair. In the particular circumstances of this case the Tribunal would not insist on repair or replacement (although this remained an option for the Landlords). The Tribunal would not object if the Landlords simply wished to demolish the conservatory as being the most cost effective method of complying with the repairing standard.

The Tribunal next inspected the living room. Generally this was in good condition however it was evident that there was an issue with rising damp occurring to the rear as significant damp meter readings were taken.

The Tribunal next inspected the downstairs bedroom. Generally this was dry but water ingress was occurring to the left of the main window (when

viewed from inside the room). Again high damp meter readings were found.

Around the rear door of the Property and in the small hall area lying between the kitchen and dining room very high moisture meter readings were found and it was clear that significant water penetration was occurring. The Tribunal noted that a downpipe extending down the rear of the building appeared to be in poor order and leaking water and this could be the cause.

The Tribunal inspected the dining room and on the side wall there were again high damp meter readings indicative of water penetration. The Tribunal noted there was a small step down in to the dining room, which had a concrete floor. The Tribunal noted that the concrete base was also damp and this was indicative of rising damp. Any membrane may have failed and works would be required to stop damp penetrating through the concrete floor.

There was a small bathroom off the dining room which, whilst it appeared to have had some mild condensation was generally dry.

Next, the Tribunal inspected the kitchen. The wall behind the dishwasher was again damp and very high moisture meter readings were found.

The Tribunal inspected the downstairs shower room. Whilst this displayed evidence of minor condensation, there was no indication of damp penetration.

The Tribunal then inspected the upstairs of the Property. The main bedroom had significant damp penetration to the extent that some of the wallpaper had come away. Water penetration was also occurring on the coombed ceiling.

The Tribunal inspected the dressing room on the upper floor but found this to be generally dry.

The Tribunal inspected the upstairs bathroom. Again whilst there was some minor condensation present there did not appear to be any water penetration.

The Tribunal inspected the linen room. Again, there was significant evidence of water penetration and high damp meter readings. The Tribunal was of the view that this was being caused by the same downpipe that was affecting the kitchen/hall area.

The Tribunal inspected a further bedroom, which was used by the Tenant to store her voluminous collection of shoes. There was clear evidence of previous water penetration and evidence could be seen of where water had been penetrating in through the ceiling.



The Tribunal inspected the second front bedroom, occupied by the Tenant's son, but found this to be in generally dry condition.

The Tribunal then inspected the rear bedroom occupied by the Tenant's daughter. Again, water penetration was occurring along the front and side walls and high damp meter readings were obtained.

Lastly, the Tribunal inspected a further bedroom that was currently being utilised as a storeroom. The level of the Tenant's possessions in this room was such that the Tribunal could not physically enter the room to take damp meter readings. However in the left hand corner the wallpaper had come away due to water penetration and a visual inspection was sufficient to establish there was water penetration.

The Tribunal, during the course of its inspection, noted that no carbon monoxide detectors had been provided as were required.

The Tribunal did note that there was an old hardwired smoke detection system stemming from the Property's days as a B&B. However the Tenant confirmed that this did not work and a number of the detectors looked like they were inoperable to the Tribunal. The Tribunal was satisfied that the smoke detection system did not appear to be in proper working order and would require to be upgraded to the current standard.

In light of the significant water penetration within the Property the Tribunal was of the view that it would be prudent to have the electrics checked and an Electrical Installation Condition Report provided showing no items marked C1 or C2 would require to be produced by the Landlords.

The Tenant had complained of woodlice and snail infestation. Upon questioning the Tenant during the course of the inspection it transpired that these had been isolated incidents some time ago. The Tribunal was not of the view that there was an ongoing issue in this regard.

The Tribunal carried out an external inspection of the Property. It was clear that a number of the gullies, drains and downpipes were broken, choked and overflowing. This was doubtless contributing to the significant water penetration within the Property and would require to be addressed.

The Tribunal also carried out a visual inspection of the windows. Whilst the windows themselves appeared to be in reasonable working order the Tribunal did note that on a number of the lintels above the windows the plasterwork had come away and that the lintels had cracked. The Tribunal was of the view that the Landlords would require to carry out investigation works to the lintels to see whether any of them had failed or whether or not they could be repaired. In any event it appeared that the windows/lintels were to some extent defective and these would require remedial work.

The Tribunal noted that the Tenant complained that the heating system was inadequate. Upon questioning, she confirmed that the radiators did

heat up but they were slow to do so. The Tribunal was of the view that it may well be the case that the heating system was relatively inadequate for a large property. The majority of the rooms in the Property were of significant size and the building was old. Accordingly it would take a lot of heat to warm the Property up. However the system did appear to be in working order. However, the Tribunal determined, in light of the other defects within the Property, that it would be prudent for the Tribunal to have sight of a clear and current gas safety certificate. This was a statutory obligation upon the Landlords in any event.

The Tribunal considered the Landlords' submissions about the difficulties relating to access. The Tribunal noted that the Landlords alleged these had gone on for a number of years. The Tribunal noted that if that was the case the Landlords had had a long period in which they could have obtained access through the courts if they wished to check the Property. The Tenant, from the brief meeting the Tribunal had with her, did not appear to be unreasonable and was generally keeping the Property in good order and repair and had carried out some works herself. In any event the Tribunal took the view that its task was to determine at the date of inspection whether the Property met the repairing standard. It was clear that it did not and that issues had been going on with water penetration for several years. Accordingly, the Tribunal was satisfied that it was appropriate for it to serve a Repairing Standard Enforcement Order on the Property. The Tribunal considered the period that the Landlords would require to carry out the works. Given the extensive nature of the water penetration and some of the disruptive works required to resolve this the Tribunal was of the view that four months would be appropriate.

Given that water penetration had been ongoing for some years there was a high possibility of rot within the timbers of the Property and there was also the issue of the rising damp. Accordingly, the Tribunal was of the view that it would be appropriate for the Landlords, having carried out the works, to provide the Tribunal with reports from a suitably qualified roofer and damp/timber specialist to identify what appropriate works had been carried out.

Lastly, a schedule of photographs taken at the inspection is annexed for information.

### **Decision**

13. The Tribunal accordingly determined that the Landlords 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.

### **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.

Signed                      E Miller    Chairperson

Date                      9/8/17 .....