

# 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/RT/17/0237**

**Land Register Title No: ABN11792**

**Property at 5 Drostan Drive, Mintlaw, Peterhead, AB42 5EG  
("The Property")**

**The Parties:-**

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie, AB51  
3WA  
("the Third Party Applicant")**

**Mrs LORRAINE JUNOR, 5 Drostan Drive, Mintlaw, Peterhead, AB42 5EG  
("the Tenant")**

**MR DAVID BROWN, 13 Drostan Drive, Mintlaw, Peterhead, AB42 5EG  
("the Landlord")**

Whereas in terms of their decision dated 27 September 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 structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state or repair and in proper working order.
- (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.

the tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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 carry out the following works:-

- (a) To repair or replace the mixer tap at the kitchen sink to ensure that the tap operates correctly and is in a reasonable state of repair and in proper working order.
- (b) To repair or replace the light fitting above the shower in the bathroom to ensure that it is in a reasonable state of repair and in proper working order.
- (c) To replace the handle on the internal door from the hall into the spare bedroom to ensure that the door opens and closes correctly and is in a reasonable state of repair and in proper working order.
- (d) To repair or replace the middle spotlight beneath the fitted units over the bed in the main bedroom to ensure that it is in a reasonable state of repair and in proper working order.
- (e) To install sufficient insulation in the loft where presently absent to ensure the insulation is in a reasonable state of repair and in proper working order.
- (f) To replace the broken concrete slab within the driveway near the entrance thereto to ensure that it is in a reasonable state of repair and in proper working order.
- (g) To produce a clear Electrical Installation Condition Report from a suitably qualified electrician confirming that the electrical installations within the property are in proper working order and comply with the relevant regulations with no items marked as Category 1 or Category 2. The Landlords are to exhibit such clear Electrical Installation Condition Report to the tribunal.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of 4 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 pages are executed by Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Legal Member and Chairperson of the tribunal at Dundee on 16 October 2017 before this witness:-

Gillian Buchanan

J Grewar

\_\_\_\_\_ witness  
 ✓  
Joanne Kennedy Grewar name in full

Chairperson

C/O Thorntons Law LLP, Address  
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/RT/17/0237**

**Property at 5 Drostan Drive, Mintlaw, Peterhead, AB42 5EG**  
**("The Property")**

**The Parties:-**

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie, AB51 3WA**  
**("the Third Party Applicant")**

**Mrs LORRAINE JUNOR, 5 Drostan Drive, Mintlaw, Peterhead, AB42 5EG**  
**("the Tenant")**

**MR DAVID BROWN, 13 Drostan Drive, Mintlaw, Peterhead, AB42 5EG**  
**("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 Property, and taking account of the evidence led by the Third Party Applicant and the Landlord 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, comprising paperwork received between 22 June and 2 August 2017, the Third Party Applicant 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 Third Party Applicant stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) 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.
  - (b) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
  - (c) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 9 August 2017 the Convenor 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 the Third Party Applicant, the Landlords and the Tenant.
  5. Following service of the Notice of Referral, the Third Party Applicant and the Landlord made written representations to the tribunal solely to the effect that they each wished to attend a hearing and did not wish to submit written representations. The Tenant made no written representations to the tribunal.
  6. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Mark Andrew, Ordinary (Surveyor) Member, inspected the Property on the morning of 27 September 2017. The Third Party Applicant was represented by Ms Emma Bain during the inspection and the Tenant was present. The Landlord was not present and was not represented. Photographs were taken and are attached.
  7. At the time of the inspection it was fair and dry.
  8. Following the inspection of the Property the tribunal held a hearing at The Palace Hotel, Prince Street, Peterhead, AB42 1PL and heard from the Third Party Applicant represented by Ms Emma Bain and the Landlord. The Tenant was neither present nor represented.
  9. The Third Party Applicant submitted as follows:-
    - (a) That the Third Party Applicant was first contacted by the Tenant on 23 February 2017.
    - (b) That Mrs Mackay representing the Third Party Applicant visited the Property on 2 March 2017 and subsequently wrote to the Landlord on 9 March 2017.
    - (c) That on 13 March 2017 Mrs Mackay spoke with the Landlord who intimated that he was not aware of the repairs identified and that he would visit the Property.
    - (d) That on 3 May 2017 the Tenant advised the Third Party Applicant that the Landlord had repaired the spotlight in the bathroom but the other repairs remained



outstanding. The Tenant also referred to there being live wires from the fuse box.

- (e) That on 18 May 2017 the Tenant advised the Third Party Applicant that the shower door had been replaced by the Landlord but that the new shower door leaked.
- (f) That the Third Party Applicant subsequently submitted the application to the tribunal.
- (g) That on or around 24 July 2017 Mrs Diane Coutts representing the Third Party Applicant spoke with the Landlord who intimated that his electrician had not been able to gain access to the Property. The Landlord indicated that the Tenant was not being helpful in facilitating the repairs being carried out and that he did not consider there to be any repairs required to the driveway.
- (h) That on around 8 September 2017 the Landlord intimated to the Third Party Applicant that the fuse box had been replaced and that an Electrical Installation Condition Report was to be issued.

10. The Landlord submitted as follows:-

- (a) That the water staining in the kitchen had been caused by a leak from the boiler pump in the loft which had resulted in water gathering in the loft and dripping through to the kitchen ceiling and walls beneath. The pump had been repaired and subsequently the boiler was replaced. The Landlord had indicated that he was willing to paint the kitchen. However, the Tenant refused as to do so would cause her too much hassle.
- (b) That in around March 2017 the Tenant contacted the Landlord's plumber. The Landlord attended at the Property to enquire of the Tenant as to what was wrong. On attending, the Tenant refused the Landlord access. The Landlord could see on the floor the door handle for the spare room in a bag and also one of the drawers from the bedroom units.
- (c) That with regard to the mixer tap in the kitchen, the Landlord accepted there to be a hairline crack along the back over which he had put tape during the evening before the tribunal's inspection.
- (d) That the kitchen cupboard door which had been loose had been tightened by the Landlord during the evening before the tribunal's inspection.
- (e) That the Tenant complained of the shower leaking approximately one year ago. On inspection the Landlord identified that the silicon between the shower tray and adjacent wall had been removed. The Landlord had resealed the shower tray with fresh silicon and there had been no further leaks.
- (f) That the glass enclosure of the shower cubicle had been replaced by the Landlord in around June or July 2017 and no further repairs are therefore required.

- (g) That the bath panel had previously been cut and siliconed into position when the corner bath was installed. The panel had sprung out of position and the Landlord had reinstated the silicon when the shower cubicle was being replaced.
  - (h) That he will have his electrician examine and repair the malfunctioning spotlight above the shower in the bathroom.
  - (i) That he had purchased a new barrel to repair the door handle on the spare bedroom door. However, the Tenant had thrown out the other parts of the handle which he had intended to repair during the evening before the tribunal's inspection. Accordingly he now needed to purchase an entirely new handle which he would install shortly.
  - (j) That the Landlord had reinstated the switch operating the row of three lights beneath the fitted units above the bed in the main bedroom. The Landlord had also replaced the bulbs in the two lights at either end of the row. The spotlights blew again around a month later which the Landlord understood to have been caused by the Tenant plugging in her sunbed. He replaced the bulbs again. He replaced the middle spotlight above the bed on the Friday prior to the tribunal's inspection. If that bulb has blown again as appears to be the case, the Landlord would have his electrician change all the bulbs for LED type bulbs.
  - (k) That the drawer units required repair due to having been roughly handled by the Tenant but are now operating correctly.
  - (l) That there is plenty insulation in the loft.
  - (m) That the drive way does not require any repair. It has been in its current condition since the Landlord bought the Property and the Tenant did not complain about the driveway until June 2017.
11. At the hearing the Landlord produced to the tribunal an Electrical Installation Condition Report dated 1 August 2017 prepared and signed by Mr Steve Brown who the Landlord indicated was his uncle. The Landlord also produced to the tribunal a Gas Safety Record prepared by Mr Wayne Bruce, 38 John Morrison Crescent, Maud, Aberdeenshire, AB42 4NF, Gas Safe registration number 2948526 and dated 18 February 2017.

### **Summary of the issues**

12. The issues to be determined are:-

- (a) Whether there are watermarks on the ceiling and walls within the kitchen which breach the repairing standard and require repainted.
- (b) Whether the mixer tap in the kitchen is in a reasonable state of repair and in proper working order.



- (c) Whether the kitchen cupboard door is loose and therefore not in a reasonable state of repair and in proper working order.
- (d) Whether there is any leak from under the shower tray in the bathroom such that the shower arrangement is not in a reasonable state of repair and in proper working order.
- (e) Whether the shower door is in a reasonable state of repair and in proper working order.
- (f) Whether the bath panel is in a reasonable state of repair and in proper working order.
- (g) Whether the spotlight on the bathroom ceiling above the shower is in a reasonable state of repair and in proper working order.
- (h) Whether the door handle on the spare bedroom door is in a reasonable state of repair and in proper working order.
- (i) Whether the spotlights under the fitted units over the bed in the main bedroom are in a reasonable state of repair and in proper working order.
- (j) Whether the drawers within the fitted units to the left-hand side of the bed in the main bedroom are in a reasonable state of repair and in proper working order.
- (k) Whether the insulation in the loft is adequate and therefore in a reasonable state of repair and in proper working order.
- (l) Whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (m) Whether the driveway is in a reasonable state of repair and in proper working order.
- (n) Whether there is adequate certification of the electrical and gas installations.

### **Findings of fact**

13. The tribunal finds the following facts to be established:-

- (a) That the Landlord is the heritable proprietor of the Property.
- (b) That the Tenant is the tenant of the Property.
- (c) That there is no written tenancy agreement between the Landlord and the Tenant.
- (d) That the tenancy is an assured tenancy that commenced in or around July 2013.

- (e) That the water marks on the ceiling and walls in the kitchen are very faint and are isolated to the corner of the kitchen above the window.
- (f) That the kitchen tap has been taped over due to a crack along the back thereof and that when the cold tap is turned on then off again the water continues to run briefly before stopping and when the hot tap is turned on then off the tap continues to drip for a brief period.
- (g) That the kitchen cupboard door behind which the boiler is located had previously been loose but had been repaired by the Landlord and is in a reasonable state of repair and in proper working order.
- (h) That there was no evidence of any leak from under the shower tray in the bathroom with no smell of damp and with no indication that the flooring has failed. The shower tray is properly sealed with silicon where it meets the wet wall at the rear of the shower. The shower tray is in a reasonable state of repair and in proper working order.
- (i) That the shower doors open and close and operate correctly.
- (j) That the bath panel has slight movement at the top right hand corner but is in a reasonable state of repair and in proper working order.
- (k) That the spotlight above the shower was not operating at the time of the tribunal's inspection.
- (l) That the door handle was completely missing from the internal door from the hall into the spare bedroom.
- (m) That within the main bedroom the middle light of the three spotlights beneath the fitted units above the bed was not functioning, that there was no evidence of any loose wires and that all drawer units were in a reasonable state of repair and in proper working order.
- (n) That within the loft there was substantial insulation. Insulation was missing from beneath those areas where boards had been placed.
- (o) That satisfactory provision existed for detecting fires and for giving warning in the event of a fire or suspected fire.
- (p) That there is a broken concrete slab believed to cover a drain within the driveway and near the entrance thereto that is not in a reasonable state of repair.
- (q) That the Electrical Installation Condition Report produced by the Landlord to the tribunal is not satisfactory in that it has not been prepared by a suitably qualified contractor who is registered with either SELECT or NICEIC.
- (r) That the Landlord Gas Safety Record produced by the Landlord to the tribunal is



satisfactory in its terms.

### **Reasons for the decision**

14. The Property is a semi-detached bungalow comprising a kitchen/diner with living-room, bathroom and two bedrooms all leading from a central hallway.

On arrival the Tenant advised the tribunal that the Landlord had attended at the Property the previous evening and had carried out various repairs.

The tribunal examined the water marks on the ceiling and walls within the kitchen. The water marks were faint and were confined to an area in the corner of the kitchen near to and above one of the kitchen windows. The tribunal was satisfied that the existence of the water marks in question did not breach the repairing standard.

The tribunal examined the mixer tap. There was red tape around the mixer tap. At the hearing the Landlord explained that he had applied black tape to the mixer tap the previous evening. That tape appeared to have been removed by the Tenant prior to the tribunal's inspection. In any event the Landlord accepted that the mixer tap was cracked at the back. When the tribunal operated the cold tap the water ran but failed to stop running immediately the tap was turned off. When the hot water tap was turned on the water ran properly but when turned off the tap continued to drip for a brief period. The tribunal was satisfied that the mixer tap was not in a reasonable state of repair and in proper working order, and therefore breached the repairing standard.

On examining the kitchen cupboard doors, all of them were found to open and close correctly and to be in a reasonable state of repair and in proper working order.

The tribunal carefully examined around the shower tray in the bathroom. The adjacent floor was dry and did not show any signs of having failed. The shower tray was appropriately sealed with silicon at the back where it meets the wet wall. The shower doors were found to open and close correctly and the tribunal was satisfied that the entire shower arrangement was in a reasonable state of repair and in proper working order.

On examining the bath panel the tribunal found the panel to move slightly when pressed inwards at the top right hand corner. However, the tribunal considered the movement to be extremely minor and did not consider there to be any repairs required.

The spotlight above the shower within the bathroom did not operate at the time of the tribunal's inspection and the tribunal was not satisfied that the electrical installations within the property are in a reasonable state of repair and in proper working order.

On examining the spare bedroom door, the handle was found to be entirely missing and tribunal therefore considered that the door was not in a reasonable state of repair and in proper working order.



Within the main bedroom the tribunal operated the three spotlights above the bed and beneath the fitted units using the switch therefor. The middle light of the three spotlights was found not to operate. The tribunal was therefore not satisfied that the electrical installations in the Property are in a reasonable state of repair and in proper working order. No loose wires were found.

All of the drawers within the fitted units within the main bedroom operated correctly.

The Ordinary (Surveyor) Member of the tribunal inspected the loft and found substantial insulation present other than under various boards within the loft where the insulation appeared to be missing. The tribunal was therefore not satisfied that the loft insulation was in a reasonable state of repair and in proper working order.

The tribunal examined the driveway of the Property. Within the driveway and near the entrance thereto a concrete paving slab was found to be broken. The slab is believed to cover a drain and is in need of replacement.

Whilst not forming part of the application to the tribunal, the tribunal observed there to be no carbon monoxide detector within the kitchen where the gas boiler is located.

At the hearing the Landlord produced to the tribunal an Electrical Installation Condition Report prepared by Mr Steve Brown and dated 1 August 2017. The Landlord indicated that Mr Steve Brown is his uncle. The tribunal enquired as to whether Mr Steve Brown is registered with SELECT or NICEIC and asked for his registration number. The Landlord was unable to confirm whether Mr Steve Brown was registered with either organisation and undertook to make enquiries. The Landlord undertook to forward a copy of the Electrical Installation Condition Report prepared by Mr Steve Brown together with the outcome of his enquiries as to Mr Steve Brown's registration to the tribunal's office.

The Landlord also produced to the tribunal at the hearing a Gas Safety Record prepared by Mr Wayne Bruce of 38 John Morrison Crescent, Maud, Aberdeenshire, AB42 4NF on 18 February 2017. The tribunal was satisfied that the Gas Safety Record was satisfactory and asked the Landlord to forward a copy thereof to the tribunal's office which the Landlord agreed to do.

15. Subsequently by email dated 2 October 2017 the Landlord forwarded to the tribunal a copy of the Electrical Installation Condition Report and Gas Safety Record. By email dated 4 October 2017 the Landlord confirmed that Mr Steve Brown is not registered with either SELECT or NICEIC.

## **Decision**

16. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

17. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
18. The decision of the tribunal was unanimous.

### **Observations**

19. The tribunal noted no carbon monoxide detector to be installed in the kitchen where the gas boiler is located and observe that a carbon monoxide detector requires to be installed to comply with the requirements of the relevant legislation.

### **Right of Appeal**

- 20. 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**

21. 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.

Gillian Buchanan

Signed.

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Date 16 October 2017

Legal Member and Chairperson



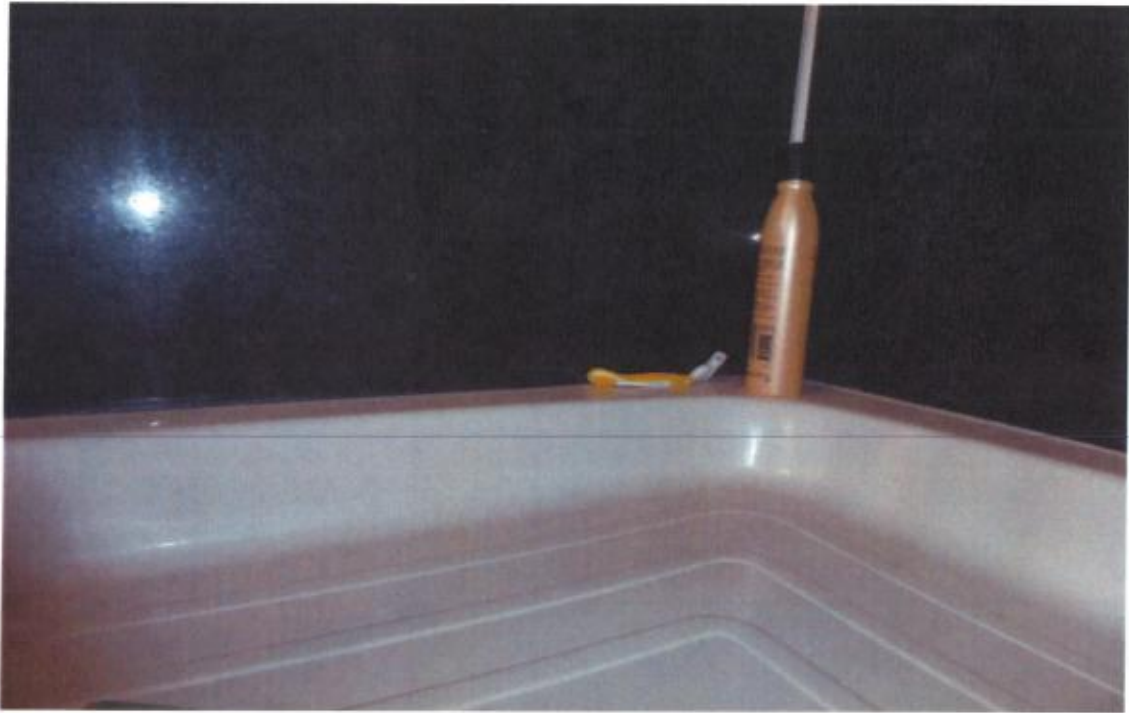




Ceiling and upper wall discoloured by water damage from leaking water pump in loft



Bathroom light over shower which failed to work



Aquapanel and shower tray joint showing clear silicon seal



Shower door upper track working properly



Spare bedroom door with missing handle and latch



Lights above bed. Centre light not working





Loft insulation missing from beneath boarding



Loft boarding

Photographs taken on 27<sup>th</sup> September 2017 by M H T Andrew FRICS