

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/17/0337

Title no/Sasines Description: SS161

Property: 23 Kirkgate, Currie, Edinburgh EH14 6AP ("The House")

Proprietor: The Earl of Rosebery ("the Third Party Applicant")

The Parties:-

Ms Jill Robert, 23 Kirkgate, Currie, Edinburgh EH14 6AP ("the tenant")

Mr John Steven and Ms Carolyn Steven ("the Landlords")

Whereas in terms of their decision dated 9 May 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlords have 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 the house meets the repair standard with reference to the following provisions under Section 13 of the Act (as amended):-

- (a) The house is wind and watertight and in all other aspects reasonably fit for human habitation;
- (b) The structure and exterior of the house (including drains, gutters and external pipes) are all 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 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 landlords:-

- (a) To obtain a report in respect of the dampness in the whole of the building from a suitably qualified damp specialist surveyor or other such specialist to confirm the nature and extent of the damp in the rooms within the property and thereafter to attend to such work as is identified in terms of such a report.

- (b) To obtain a report in respect of all windows within the property from a suitably qualified expert to confirm the nature and extent of the work required to be undertaken to the windows in the premises and thereafter to attend to such work as is identified in terms of such report.
- (c) To obtain a report in respect of the roof of the building from a suitably qualified expert to confirm the nature and extent of the work required to be undertaken to the roof in order to make it wind and watertight and thereafter attend to such work as is identified in terms of such report.
- (d) To undertake such work as is necessary to the external doors in order to ensure that they fit appropriately and both open and shut as is required.

The tribunal order that the works specified in this Order must be carried out and completed within the period of six months from the date of service of this Notice.

A landlord, tenant or third party applicant 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.

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 Mark Thorley, 20 Hopetoun Street, Edinburgh chairperson of the tribunal at Edinburgh on 16 May 2018 before this witness:-

M Thorley

witness

chairperson

ALISON GIBSON name in full

20 Hopetoun Street Address

Edinburgh EH7 4SH

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/17/0337

Title no/Sasines Description: SS161

Property: 23 Kirkgate, Currie, Edinburgh EH14 6AP ("The House")

Proprietor: The Earl of Rosebery ("the Third Party Applicant")

The Parties:-

Ms Jill Robert, 23 Kirkgate, Currie, Edinburgh EH14 6AP ("the tenant")

Mr John Steven and Ms Carolyn Steven ("the Landlords")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal')

The tribunal having made such enquiries as is fit for the purposes of determining whether the landlords have complied with the duties imposed upon them by Section 14(1)(b) in relation to the property concerned, and taking account of the evidence presented and the written and oral representations, determine that the landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") and accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received on 1 September 2017 the tenant applied for a determination of whether the landlords have failed to comply with duties imposed by them under Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the tenant narrates that the landlords have failed to comply with their duties to ensure the house meets the repairing standard and in particular the landlords have failed to ensure compliance with Section 13(1)(a) and (b) of the Act. The tenant's complaint set out the following:-
 - (a) That the roof was leaking.
 - (b) That the windows were leaking and mostly were nailed or screwed shut or open.

- (c) Neither exterior doors have working locks so the property could not be secured from inside or outside.
 - (d) The gutters were leaking above both entrances.
 - (e) The electric sockets were unsafe due to water accumulating in the fabric of the wall.
 - (f) There was mould growing on one wallpaper.
 - (g) One chimney is leaking onto the carpet.
3. In documentation provided by the tenant it was established that the tenant had a lease which commenced on 1 November 2016.

The tribunal consisted of the following members:

- (a) Mark Thorley – Legal Member
- (b) Robert Buchan – Ordinary Member

1. The tribunal inspected the house on the morning of 11 January 2018. The tenant was present. Both landlords Mr and Mrs Steven were also present.
2. The hearing subsequently did not take place on that date due to the unavailability of the tenant.
3. The matter then proceeded to a hearing on 3 May 2018 at Riverside House, 502 Gorgie Road, Edinburgh.

Summary of Issues

The issue is whether the house meets the repairing standard as set out in Section 13(1) of the Act and whether the landlords have complied with the duties imposed by Section 14(1)(b) of the Housing (Scotland) 2006.

The inspection

1. The accommodation comprised a cottage in a set of cottages. The accommodation is on one level. The property comprised an entrance lobby/kitchen, three bedrooms, livingroom and bathroom.
2. It was apparent on visual inspection from the external aspects of the building that there were a variety of issues –
 - (i) There was a hole in the gable wall;
 - (ii) The north chimney needed repair;
 - (iii) There was debris falling down off the walled garden;

- (iv) There was an outhouse building which was in a state of collapse;
- (v) The windows in the property were not operable and frames were rotten;
- (vi) The rainwater fittings at places were leaking;
- (vii) The doors to the outside were difficult to work;
- (viii) There was damp within the building;
- (ix) There was a significant aspect of water penetration;
- (x) The tenant used one of the rooms to house rabbits. That room in itself was uninhabitable;
- (xi) The adjacent room to the back room was again showing significant aspects of damp;
- (xii) The livingroom was damp;
- (xiii) The bathroom floor was damp;
- (xiv) Inspection at the rear of the property indicated that work to the rainwater fittings needed to be done;

The property in general was in a poor state of condition.

3. The tribunal members examined the house both externally and internally and also from the rear of the property accessed through a cemetery.
4. During the inspection, photographs were taken by the ordinary member and a schedule of photographs is attached to this decision.
5. Although the inspection concluded on 11 January 2018 no hearing took place on that date due to the tenant's unavailability.

Preliminary issues

1. The tenant no longer appears to be resident within the property. Recorded delivery and email notice of the hearing had been given to the tenant. The recorded delivery intimation had not been collected by the tenant but an email had been sent. It appeared in any event that the tenant was no longer within the property. Separate and distinct proceedings have been raised by the landlords in connection with the tenant and the tenant's current address is otherwise unknown. Further the property appears to be now padlocked and there is no-one within the premises. In the circumstances the hearing proceed to deal with matters in the absence of the tenant.
2. There was a discussion as to the status of the landlords. The house forms part of the Malleny Estate title which is held by the Earl of Rosebery. Mr and Mrs Steven are farmers within the estate. They have acquired control of the property at 23 Kirkgate, Currie. They rent it out. They completed the lease for the premises. Accordingly it was determined that they are the landlords of the property.
3. The hearing was conducted solely by the legal member. It was determined with the information available that the matter could be conducted by the legal member alone.

The hearing

The hearing took place at Riverside House, 502 Gorgie Road, Edinburgh on 3 May 2018. The tenant was not present. Both Mr and Mrs Steven attended.

At the hearing the landlords acknowledged that a significant amount of work required to be done to the property. They themselves were quick shocked with the state of the property. One of the issues for them was as to who funded the cost of the repair and whether it was the estate and/or themselves as landlords. On the basis that there was currently no tenant within the property they acknowledged that a significant amount of work had to be done at present to put the property into a position where it could ever be let again.

Findings in Fact

1. Reference is made to the tribunal's findings on inspection.
2. The tenant occupied the house under a short assured tenancy which appears to have commenced on 1 November 2006. The tenant moved out of the property on or about 8 February 2018.
3. The landlords have not as yet recovered possession of the premises.
4. Aside from some work to the rainwater fittings at the rear of the premises there has been no access otherwise available for the landlords to undertaken any further work to the property. There remains a significant amount of work to be undertaken.

Reasons for decision

1. The tribunal considered the issues of disrepair set out in the application and noted at the time of inspection.
2. The tribunal was not satisfied that the house met the requirements of Section 13(1)(a) or (b) of the Act.
3. There is a significant amount of work to be undertaken to the property in relation to the following --
 - (1) The rainwater fittings surrounding the house.
 - (2) The holes in the gable wall.
 - (3) The chimney repair.
 - (4) The outhouse building being in a state of collapse.
 - (5) All windows requiring to be looked at with a view to replacement.
 - (6) Removal of damp from all of the building.
 - (7) The property needs to be made wind and watertight.
 - (8) The doors need to be adequately fitted to ensure that they work appropriately.
 - (9) All water penetration in the building needs to be resolved.
4. The tribunal is of the view that it requires to make a Repairing Standard Enforcement Order (RSEO) in respect of the outstanding matters specified above. Given the nature of the required repairs the tribunal is of the view that a period of six months from the

service of the RSEO is an adequate and reasonable timescale for all the repairs to be completed.

Decision

1. The tribunal accordingly determined that the landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act
2. The tribunal proceed to make a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.

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In witness whereof these presents type written on this and the preceding pages are executed by Mark Thorley, chairperson of the tribunal at Edinburgh on 16 May 2018 before this witness:-

M Thorley

witness

chairperson

ELISON GIBSON name in full

20 Hopetoun Street Address

Edinburgh EH7 4GH

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Front



Street

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Rear



Hole in gable

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Collapsing flat roof



Underside of flat roof

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Hole in gutter



Broken/defective guttering

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Back door



Typical window



Rotten window sill

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Interior 1



Interior 2

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Interior 3



Damp meter reading

Schedule of photographs taken during the inspection of
23 Kirkgate, Currie, Edinburgh EH14 6AP



Interior dampness