

Housing and Property Chamber
First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 24

Reference Number: FTS/HPC/RP/18/1095

RE: Property at New Cottage, Millhole, Newtyle, Blairgowrie, Angus PH12 8UP

(hereinafter referred to as “the Property”).

Title Number: ANG79221 in the Land Register of Scotland

The Parties:-

Mr Stuart Edwards, formerly New Cottage, Millhole, Newtyle, Blairgowrie, Angus PH12 8UP

(“the Tenant”)

And

**Mr Alex Neillie, C/O Economy Car and Van Hire, East Perrie Street, Dundee DD2 2RD;
Inverbashie House, Kettins, Blairgowrie PH13 9JT**

(“the Landlord”)

NOTICE TO

**Mr Alex Neillie, C/O Economy Car and Van Hire, East Perrie Street, Dundee DD2 2RD;
Inverbashie House, Kettins, Blairgowrie PH13 9JT**

(“the Landlord”)

Whereas in terms of their decision dated 6th August 2018, the First-tier 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 structure and exterior of the Property is in a reasonable state of repair and in proper working order.

The First-tier 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 under section 13(1) of the Act and that any damage caused by carrying out of any work required under this Order is made good.

In particular, the First-tier Tribunal requires the Landlord:-

- 1) To repair or replace the windows in the living/sitting room, the bathroom and the rear bedroom to ensure that they are in a reasonable state of repair and in proper working order.

The First-tier Tribunal order that works specified in this Order must be carried out and completed within the period of three months from the date of service of this Order.

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 of 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 Repairing Standard Enforcement Order (RSEO) commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (including any successor in title) also commits an offence if he or she or they enter into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to a house. This is in terms of Section 28(5) of the Act.

IN WITNESS HEREOF, these presents typewritten on this page and the preceding page are executed by Rory A. B. Cowan, Legal Member of the First-tier Tribunal: Housing and Property Chamber at Glasgow on 7th August 2018 before this witness:

Signature R Cowan



Date: 7th August 2018

Rory A. B. Cowan
E Matheson

..... Witness Date: 7th August 2018

EUPHEMIA MATHESON Name of Witness

40 BKF, 16 ROYAL EXCHANGE SQ

GLASGOW, G1 3AG Address of Witness

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 (1)

Chamber Ref: FTS/HPC/RP/18/1095

Property at New Cottage, Millhole, Newtyle, Blairgowrie, Angus PH12 8UP

("The Property")

The Parties:-

Mr Stuart Edwards, formerly New Cottage, Millhole, Newtyle, Blairgowrie, Angus PH12 8UP

("the Tenant")

Mr Alex Neillie, C/O Economy Car and Van Hire, East Perri Street, Dundee DD2 2RD; Inverbashie House, Kettins, Blairgowrie PH13 9JT

("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 written representations by the Tenant, those on behalf of the Landlord, the inspection and representations at the hearing by the Landlord, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Robert Buchan – Surveyor/Ordinary Member

Background

- 1) By application received on 14th May 2018 the Tenant applied to the First-tier tribunal: 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 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 structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- 3) By letter dated 19th June 2018 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 the Landlord and the Tenant.
- 5) Following service of the Notice of Referral, written representations were received from the Landlord.
- 6) Further correspondence was received from the Tenant on 1st June 2018 indicating that he would be vacating the Property on 30th June 2018. By Minute of Continuance dated 27th July 2018 the tribunal determined to continue with the application.
- 7) The tribunal inspected the Property on the morning of 31st July 2018. The Landlord was present and provided access. The Tenant was not present at the inspection.
- 8) Following the inspection of the Property, the tribunal held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee DD3 0AX. The Landlord attended the hearing with a supporter Olaf Hindmarsh. The Tenant did not attend.

The Hearing

- 9) The Landlord submitted as follows:

Living/Sitting Room Window

That he had advised the Tenant at the outset that all the windows in the Property were to be replaced when funds allowed. That his intention was to

replace the window with a set of patio doors to the garden so did not want to carry out a repair to the window which would be subsequently removed. No building warrants had been applied for or had been obtained as yet. The Landlord accepted that the double-glazed unit in the Living/sitting room window had failed. That the "misting" had worsened from the date the Tenant had taken occupation. That the Tenant had not complained about the windows at the outset and had been fully aware of the issue when he took occupation of the Property. The Landlord indicated that he was not sure why the Tenant's attitude changed towards him.

Bathroom Window

The Landlord accepted that the bathroom window was misted and that the double-glazed unit had therefore failed. He indicated that he had planned to replace all the Property's windows within twelve months of the start of the tenancy and therefore by February 2019.

Rear Bedroom Window Frame

The Landlord indicated that he could see that at a particular point the paint had been scrapped away on the external windowsill and that the wood was "a bit soft". His view was that he did not think that was an issue as the window was wind and water tight and that the window itself was in proper working order. The Landlord again indicated his intention to replace all the windows to the Property and that with the benefit of hindsight he should have replaced the windows to the Property rather than installing a new wood burning stove to the Property. He indicated that he had done so after discussion with the Tenant and that he had been "desperate for it" (the wood burning stove). The wood burning stove had therefore been installed for the Tenant taking occupation.

Summary of the issues

10) The issue to be determined is whether:

- a) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

Findings of fact

11) The tribunal finds the following facts to be established:-

- a) The Tenant was a tenant for the purposes of section 14(1) of the Act.
- b) That the tenancy commenced on or around 28th February 2018.
- c) That the Tenant vacated the Property on or around 30th June 2018.

- d) The Property is a detached bungalow of a cavity brick construction, hard rendered externally with a concrete interlocking tiled roof. The Property was built circa 1960.
- e) The Property comprises of two bedrooms, a bathroom, a kitchen and a separate living/sitting room. All rooms are accessible off an internal hallway.
- f) The Property has oil fired central heating.
- g) The Property is double-glazed throughout with wooden framed windows.
- h) The main double-glazed unit in the Living/sitting room window has failed and misting is evident within the window.
- i) The main double-glazed unit within the bathroom window has failed and misting is evident within the window.
- j) The window frame and windowsill to the rear bedroom window are rotten in places externally.
- k) That the living/sitting room window, the bathroom window and the rear bedroom window frame and windowsill are therefore not in a reasonable state of repair and in proper working order.

Reasons for the decision

- 12) The tribunal was not satisfied that structure and exterior of the Property was in a reasonable state of repair and in proper working order for the following reasons:
 - a) It was patently obvious and accepted by the Landlord that the double-glazed units in the living/sitting room and bathroom windows had failed. Whilst it may be the case that the windows were still wind and watertight, it could not be said they were in proper working order and in a reasonable state of repair.
 - b) In relation to the rear bedroom window, it was again obvious that not only was the windowsill affected by rot, the window frame was too. The window frame and windowsill were therefore not in a reasonable state of repair and not in proper working order. Whether they were still wind and watertight was immaterial. If left untreated, the window frame would eventually fail leading to water ingress.

Decision

- 13) The tribunal accordingly determined that the Landlord has failed to comply with his duties imposed by Section 14 (1)(a), (b) and (c) of the Act.
- 14) The tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).

- 15) The decision of the tribunal was unanimous.
- 16) The Surveyor/Ordinary Member of the tribunal took several photographs which form the schedule attached to this decision.

Right of Appeal

- 17) 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.
- 18) 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.

R Cowan

Signed



Date

.....7th August 2018.....

Chairperson

Glasgow 7th August 2018
In the schedule of photographs
referred to in the above dated
7th August 2018
R Cowan

Photographs taken during the inspection of
New Cottage, Millhole, Newtyle, Blairgowrie, PH12 8UP



Front



Lounge window

Photographs taken during the inspection of
New Cottage, Millhole, Newtyle, Blairgowrie, PH12 8UP



Bathroom window



Back bedroom window