

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

Property: South Barbeth Cottage, New Abbey, Dumfries DG2 8DB (“the Property”/ “the house”)

Title No: KRK2334 (part)

Chamber Reference: FTS/HPC/RT/19/2313

Mr Scott Wright and Ms Bernadette Ellis, South Barbeth Cottage, New Abbey, Dumfries DG2 8DB (“the Tenant”)

Mr Hope Vere Anderson, Barbeth House, New Abbey, Dumfries DG2 8DB (“the Landlord”)

Dumfries & Galloway Council, Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD (“Third Party Applicant”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/Surveyor)

Whereas in terms of their decision dated 1 October 2019, 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”), 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 to:

- (1) Repair or renew the defective areas of the front timber entrance door and or surrounding timber frame, ensuring that they are in a reasonable state of repair, in proper working order and that the resultant internal damp within the porch is eradicated.
- (2) Sand down and repair delaminating and badly flaking top surface paint/varnish at side entry door and redecorate as necessary, ensuring that it is in a reasonable state of repair and in proper working order.
- (3) Repair or renew badly rotted boiler house door and defective hinge, ensuring that it in a reasonable state of repair and in proper working order.

- (4) Repair or renew the defective rainwater goods at the boiler house, specifically at the joint between the gutter and downpipe ensuring that the fittings are in a reasonable state of repair and in proper working order.
- (5) Obtain an Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT registered electrician in respect of the property and undertake any work which is identified in said report to be of Category C1 or C2.
- (6) Establish the source of the water supply to the Property and obtain from Scottish Water, or other suitably qualified contractor, a more detailed report regarding the repair necessary to the water supply as highlighted by Scottish Water in their Leakage Detection Report which accompanied the application. Thereafter all necessary repairs should be completed and duly certified by a suitably qualified contractor or relevant statutory organisation confirming that the supply is in a reasonable state of repair and in proper working order. If it is subsequently established that it is a private water supply, appropriate certification should be exhibited confirming that the supply satisfies "The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017".

The Tribunal orders that the works required by this Order must be carried out and that the Electrical Condition Installation Report and other documentation must be exhibited within five weeks of the date of service of this Order on the Landlord.

Right of Appeal

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.

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, typewritten on this and the preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 1 October 2019, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

..... **G Clark** Legal Member/Chair . **V Clark** Witness

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Property: South Barbeth Cottage, New Abbey, Dumfries DG2 8DB (“the Property”/ “the house”)

Title No: KRK2334 (part)

Chamber Reference: FTS/HPC/RT/19/2313

Mr Scott Wright and Ms Bernadette Ellis, South Barbeth Cottage, New Abbey, Dumfries DG2 8DB (“the Tenant”)

Mr Hope Vere Anderson, Barbeth House, New Abbey, Dumfries DG2 8DB (“the Landlord”)

Dumfries & Galloway Council, Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD (“Third Party Applicant”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/Surveyor)

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) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. By application, received by the Tribunal on 25 July 2019, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, that the installations in the house 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, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. In the application and its supporting documentation, the Third Party Applicant stated that the doors and windows were poorly maintained and were not watertight, the boiler shed gutter was not discharging rainwater to the downpipe, the single electrical socket in the hallway was not working, there was a loose electrical socket in the living room, no Electrical Installation Condition Report had been provided, the central heating boiler and radiators did not function properly, there was poor water pressure and water quality, there were no working smoke or heat detectors and there was no carbon monoxide monitor in the vicinity of the living room fire. The supporting documentation included exchanges of e-mails between the Third Party Applicant and the Landlord on the progress of repair works that had been reported to the Landlord and a Scottish Water Leak Detection Report.
4. On 27 August 2019, 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, gave Notice of Referral and of the date set for an inspection and Hearing.
5. The Tribunal inspected the Property on the morning of 1 October 2019 and was admitted by the Tenant, Mr Wright. The Third Party Applicant was represented by Mr Robert Rome, HMO Licensing & Landlord Registration Office and by Mr Adam Black, HMO Licensing & Private Landlord Registration Manager, Dumfries & Galloway Council. The Landlord was not present or represented at the inspection.
6. The Tribunal comprised George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/surveyor).
7. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

8. Following the inspection, the Tribunal held a Hearing at Lochvale House, Georgetown Road, Dumfries. Mr Rome and Mr Black attended the Hearing. The Landlord was not present or represented.
9. Mr Rome, on behalf of the Third Party Applicant told the Tribunal that there was little to add to the written representations and the evidence the Tribunal had seen for itself at the Inspection. The matter of most concern was the issue of water quality. The Tenant had been drinking bottled water for 6 years and there was clear public health concern. It was not known whether the water supply was public or private, but Scottish Water, in a Leak Detection report to the Landlord, had offered to carry out an assisted repair. No remedial work had as yet been done.
10. Mr Rome and Mr Black then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of fact

11. The Tribunal makes the following findings of fact (references to Photographs are to the Schedule of Photographs taken at the inspection):
 - The Property is a single storey traditionally designed and constructed detached cottage occupying a rural position on the outskirts of the village of New Abbey. Access to the property from the public road is taken via an unsurfaced private road which appears to be shared with neighbouring occupiers.
 - The side and front entry doors to the property (Photographs 2 & 3) are of timber construction and externally the original protective covering on the face of both doors displays signs of some delamination and general wear. The side door in particular would benefit from redecoration and external repair. The defective windows as identified in the application have since been repaired to the satisfaction of the tenant.
 - Immediately behind the front entrance door and within the entrance porch positive moisture readings were identified at two separate locations. Each is adjacent to the door / door frame suggesting penetrating damp at this area. Moisture content readings of around 40% within the plaster / plasterboard walls adjacent to the internal face of the door / frame were obtained (Photographs 4 & 5)
 - The entry door to the boiler house, located to the rear and contiguous with the main structure, is rotten, defective, ill-fitting and has a broken hinge (Photographs 6 & 7).
 - There is a defective cast iron fitting / joint at the boiler shed with the guttering unable to satisfactorily discharge rainwater into the downpipe. (Photographs 8 & 9). Both of the fittings are significantly affected by corrosion.

- The tenant verbally indicated during the inspection that the previously defective single and double electrical power points, located within the hall and living room, had since been repaired (Photographs 10 & 11). No access was available to inspect the hot water tank or immersion heater although the tenant confirmed that hot water to the property was also provided by both the oil fired central heating system and a coal fired back boiler. No Electrical Inspection Condition Report (EICR) was provided and the tenant is unaware if any such report exists.
- A carbon monoxide detector has been installed within the living room (ceiling mounted). Within both the living room and hall there are ceiling mounted smoke detectors and in the kitchen a similarly positioned heat detector. They were tested, found to be inter-linked and have been installed in accordance with the recently revised Scottish Government guidelines. (Photographs 12-14).
- The central heating boiler (Photograph 15) is located in an outhouse. During the inspection the boiler and timer were functioning and all of the radiators were in operation.
- The hot and cold taps at the bath, wash hand basin and kitchen were individually turned on to establish if there was sufficient water pressure. The wall mounted "Mira" electrical shower attachment above the bath was similarly tested. With the exception of the cold water tap on the bath the "flow" from the remainder of the taps and fittings appeared normal. The flow at the cold water bath tap was, by comparison, considerably slower suggesting either a drop in water pressure or a concealed obstruction.
- Documents accompanying the application prepared by Scottish Water, suggest that they have undertaken a survey and identified a leak in the supply, outwith the building and it is understood that the repair remains outstanding. The quality of the water was not tested. Neither the tenant nor the Third Party Applicant could confirm if the water is mains connected or from a private supply. Given the recent involvement with Scottish Water, it is assumed that it is a mains supply unless otherwise established during further investigation.

Reasons for the decision

12. Whilst recognising that the Landlord had attended to a number of the issues raised with him by the Third Party Applicant, the Tribunal is of the view that the Property does not meet the Repairing Standard. The entrance doors and boiler house door are not wind and watertight, the rainwater goods at the boiler house are defective and there are ongoing issues with the water supply which required further investigation and action. Accordingly, the Property fails to meet the repairing standard requirements that the house should be wind and water tight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) should be in a reasonable state of repair and in proper working order and that the

installations in the house for the supply of water are in a reasonable state of repair and in proper working order. The Tribunal is concerned that there are clear health and safety implications in the defects it has identified and determined that the timescale for completing works and providing documentation should be short.

13. The decision of the tribunal was unanimous.

Additional Observations

Cold water continues to flow, at a much-reduced rate, when the cold water bath tap is in the "off" position (Photograph 16). This defect does not form part of the application although if left unrepaired it may form the basis of a fresh application in the future.

Right of Appeal

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.

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Signed: **G Clark** .. Legal Member/Chairperson
Date: 1 October 2019

This is the Schedule of Photographs
referred to in the foregoing
Statement of Decision of 1/10/19
G Clark Licensed Member

South Barbeth Cottage, New Abbey Dumfries DG2 8OB

Schedule of Photographs taken at the inspection on 1st October 2019



1. Front elevation



2. External face side door



3. External face front door



4. Damp internal wall at front door



5. Damp internal wall at front door



6. Defective hinge & rot at boiler house door



7. Rotted boiler-house door



8.



9.

8 & 9 illustrate broken and defective joint at boiler-house door



10. Hall single electrical socket



11. Living room double electrical socket



12.



13



14.

Photographs 12 – 14 illustrate ceiling mounted CO, Heat & Smoke detectors



15. Oil fired "Grant Vortex Eco Utility" boiler (functional) in outhouse



16. Water flow from cold tap when in off position