

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



**First-tier tribunal for Scotland (Housing and Property Chamber)**

**Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Sections 25 and 26 (1) of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/21/2892**

**Property: Marmel, Main Street, Auchtertool, Kirkcaldy KY2 5TH (“the property/house”)**

**Title No: FFE94204 (part)**

**The Parties:-**

**Ms Lisa-Marie Wilson, sometime Marmel, Main Street, Auchtertool, Kirkcaldy KY2 5TH (“the Tenant”)**

**Miss Elspeth Hunter, sometime Marmel, Main Street, Auchtertool, Kirkcaldy KY2 5TH (“the Landlord”)**

**Tribunal Members:**

**George Clark (Legal Member/Chairman) and Geraldine Wooley (Ordinary/surveyor Member)**

### **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, as it appeared that the Property had been sold and the new owners were occupying it as their own home, there was nothing to be achieved by the Tribunal’s considering the application further. The Tribunal also decided to revoke the Repairing Standard Enforcement Order that the Tribunal had made on 4 May 2022.**

### **Background**

By application, dated 17 November 2021, the Tenant 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”).

The application stated that the Tenant 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 structure and exterior of the house (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 meets the tolerable standard. The specific items of complaint are summarised as follows:

1. The toilets are leaking contents onto the floor. They are not suitably secured. Only one of the three toilets can now be used. The toilets with the worst leaks have been out of use for some time and the Property is unsanitary, with foul water inside.
2. The seals on two showers are broken.
3. Inadequate drainage has resulted in water from the shower pouring through the downstairs ceiling, through the smoke detector, which has had to be disconnected as a health and safety hazard.
4. The water also pours into the electric circuit, tripping it.
5. If the shower in the en-suite is used, the water will come through the ceiling directly into the electrical cupboard and fuse box below. It also runs down a bedroom wall and on to the light switch.
6. Of four sinks in the house, only two have drainage.
7. The bath can only be filled from the shower head, as the lever to change the taps from bath to shower is not functional.
8. The dishwasher is not working.

The Tribunal received confirmation from the Tenant that the tenancy of the house had been terminated, and accordingly, under Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 ("The Act"), the Tenant was to be treated as having withdrawn the application under Section 22(1) of the Act. On 24 February 2022, the Tribunal considered whether the application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act. The Tribunal noted that a number of the alleged items of disrepair would, if established, constitute a health and safety risk to any future tenant or occupant of the Property and, accordingly, decided to

continue to determine the application. An Inspection scheduled for 22 March 2022 was postponed at the request of the Landlord.

### **Inspection and Hearing**

The Tribunal arrived to inspect the Property on the morning of 4 May 2022 but was unable to gain access as neither the Landlord nor anyone representing her was present. The Tenant, having vacated the Property, was no longer a Party to the proceedings. The Tribunal noted that the Property appeared to be empty and that a "For Sale" board was erected outside. A Hearing was held by means of a telephone conference call on the same afternoon. The Landlord was neither present nor represented.

Following the attempted Inspection and the Hearing, the Tribunal decided to make a finding that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order ("RSEO") should be made, despite the fact that the Tribunal Members had been unable to inspect the Property for themselves.

The view of the Tribunal was that there was a significant health and safety risk to any new tenant that the Landlord might choose to install in the Property and that, as it did not know the extent, if any, to which any prospective purchaser would be made aware of the defects, that risk extended to any tenant of a new owner.

The Tribunal accepted that it was possible that the Home Report which would have been prepared in connection with the marketing of the Property might contain information indicating that some of the items of disrepair have been dealt with, so decided to include in the Order a requirement to exhibit the Home Report.

The Tribunal considered that a period of six weeks should be allowed for the Landlord to carry out all the works required by the Order it had decided to make. At the end of that period, the Tribunal would re-inspect the Property to determine whether the works required by the RSEO have been satisfactorily carried out and the RSEO can be discharged.

The RSEO required the Landlord to:

1. Exhibit to the Tribunal a recent Electrical Installation Condition Report from a suitably qualified electrical contractor, containing no C1 or C2 items of disrepair, or alternatively, a Minor Installation Certificate stating that the issue of water affecting the electrics in the Property has been resolved.
2. Provide confirmation from a suitably qualified electrician that the system of fire and smoke detection within the Property is in working

order and compliant with current regulations and Government Guidelines.

3. Provide evidence by way of a specification, estimate and receipt from a suitably qualified contractor that works have been carried out to prevent any leaks from the toilets in the Property and to ensure that the seals around the bath and shower are watertight.
4. Provide evidence, satisfactory to the Tribunal, that the water supply and taps to all basins, baths and sinks in the Property are in proper working order. Such evidence should include dated photographs showing each tap running.
5. Provide a satisfactory Portable Appliance Test (PAT test) in respect of the dishwasher in the Property and
6. Provide a copy of the current Home Report in respect of the Property.

### **The Reinspection**

Having given appropriate notice to the Landlord, the Tribunal Members arrived to reinspect the Property on the morning of 20 September 2022 but were unable to gain entry. The “For Sale” sign that had been erected outside the Property at the time of the Inspection on 4 May 2022 was no longer there, and it was evident to the Tribunal that a considerable amount of work was in the process of being undertaken at the Property. Although there was nobody in the Property, from the limited visual inspection that the Tribunal was able to undertake, it appeared that the Property is inhabited. A neighbour advised the Tribunal that the Property has been sold and the new owners are living there and carrying out extensive renovation works.

### **Reasons for Decision**

The Tribunal decided, on the basis of the information provided by a neighbour and its own observation at the Reinspection, that the Property has been sold, is now in owner-occupation and extensive renovation is underway. The Tribunal also confirmed from the Land Register that the new owners registered their title on 16 May 2022. Accordingly, it was not necessary for the Tribunal to further consider the application or to determine whether the Landlord has complied with the RSEO. The Tribunal was disappointed that the Landlord had failed to engage with the process at any stage, had not complied with the Tribunal’s Direction of 4 May 2022, and had not advised the Tribunal of the sale of the Property, but decided, in terms of Section 25 of the 2006 Act that the RSEO should be revoked.

The decision of the Tribunal was unanimous.

### **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.**

Date: 30 September 2022  
George Clark (Legal Member/Chairman)