

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Variation of Repairing Standard Enforcement Order Housing (Scotland) Act
2006 Section 25**

Chamber Ref: FTS/HPC/RT/18/0300

Title no: DMF 26203

West Roucan Farmhouse, Torthorwald, Dumfries, DG1 3QG ("the property")

The Parties: -

John Cunningham-Jardine, Tinwald House, Tinwald, Dumfries, DG1 3PW; John Cunningham-Jardine, G M Thomson and co, 35 Buccleuch Street, Dumfries, DG1 2AB ("the Landlord")

Dumfries and Galloway Council, Community and Customer Services, Council Offices, Buccleugh Street, Dumfries, DG1 2AD ("the Third Party")

Mark Smith, formerly residing at West Roucan Farmhouse, Torthorwald, Dumfries, DG1 3QG ("the former Tenant")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') having determined on 14 November 2018 that the **Repairing Standard Enforcement Order ("RSEO")** relative to the property dated 28 April 2018 should be varied, the said **RSEO** is **hereby varied** with effect from the date of service of this Notice in the following respects: -

1. The period allowed for the completion of the work required by the Order is extended until 30 January 2019

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

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.

In terms of Section 63 of the Act, 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.

In witness whereof these presents typewritten on this and the preceding page are executed by Josephine Bonnar, Solicitor, Legal Member of the Tribunal at Motherwell on 14 November 2018 before this witness:-

G Bonnar

J Bonnar

Witness

Legal Member

Gerard Bonnar

Name in full

1 Carlton Place
Glasgow

Address

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Section 25(1) Housing (Scotland) Act 2006 ("the Act")

Chamber Ref: FTS/HPC/RT/18/0300

Title no: DMF 26203

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The Parties: -

**John Cunningham-Jardine, Tinwald House, Tinwald, Dumfries, DG1 3PW;
John Cunningham-Jardine, G M Thomson and co, 35 Buccleuch Street,
Dumfries, DG1 2AB ("the Landlord")**

**Dumfries and Galloway Council, Community and Customer Services,
Council Offices, Buccleugh Street, Dumfries, DG1 2AD ("the Third Party")**

**Mark Smith, formerly residing at West Roucan Farmhouse, Torthorwald,
Dumfries, DG1 3QG ("the former Tenant")**

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 Repairing Standard Enforcement Order (" RSEO") relative to the property dated 28 April 2018 should be varied in terms of Section 25(1)(a) of the Act, determined that the RSEO should be varied.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Mr Mike Links, Ordinary Member

Background

1. By application received on 8 February 2018 the Third Party applied to the First-tier Tribunal for Scotland (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 stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) 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, (iii) 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, (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (v) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically the Third Party stated that there is dampness visible in the utility room, kitchen, bathroom, mid stair hallway and upper east bedroom, the east gable wall rendering is excessively cracked, the PVC window seals are defective, the window in the mid stair hallway is defective, the east gable chimney stack rendering has fallen off, there are no carbon monoxide detectors in the property, no smoke alarm in the living room, existing smoke detectors are not hardwired and interlinked, no heat detector in the kitchen and no EICR has been exhibited.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, Third Party and Tenant on 15 March 2018. The parties were notified that an inspection and hearing would take place on 17 April 2018.
4. The Tribunal inspected the property on the morning of 17 April 2018. Mr Adam Black and Mr Robert Rome attended on behalf of the Third party. Access to the property was provided by Mrs Judith Ward, a relative of the former Tenant. The Tenant was within the property but not present for the inspection. The Landlord did not attend.

5. Following the inspection of the property the Tribunal held a hearing at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries. Mr Adam Black and Mr Robert Rome attended on behalf of the Third Party. Neither the Tenant nor the Landlord attended.
6. Following the hearing the Tribunal issued an RSEO. In terms of the RSEO the Landlord is required (1) To instruct a suitably qualified timber damp specialist and building contractor to prepare a detailed survey of the property, with specific reference to the east gable wall, to identify the cause and full extent of the dampness and any remedial action. The report should include both the internal and external fabric of the building, specifically around the affected areas. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant re-decoration made good, (2) To instruct a suitably qualified window contractor to inspect the windows in the property and carry out such repairs as are necessary to ensure that the windows are wind and watertight, or to replace the windows, (3) To install hard wired interlinked smoke and heat detectors in the living room and kitchen to comply with the statutory guidance, and (4) To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical condition check of the entire electrical installation of the property and exhibit a copy of the EICR to the Tribunal. The work was to be completed within 6 weeks of the RSEO being issued.
7. On 7 June 2018 the Landlord's agent, Allan McMillan of G.M. Thompson & Co sent an email to the Tribunal advising that the smoke/heat detectors had been upgraded and that "Bryson's have now completed the work to replace the seals to the double glazed units". An up to date EICR dated 1 June 2018 and a report from Richardson and Starling dated 25 May 2018 were attached to the email. The latter indicates that the property was inspected on 24 May 2018 and that Richardson and Starling recommended that no further work be carried out while the property is drying out and that this might take several months.
8. The Ordinary Member attended at the property at 10am on 20 June 2018 to carry out a re-inspection. Mr Rome, representing the Third Party, was in attendance. No access to the property was provided. At 10.15 the Landlord attended and explained that he had arranged for the agent to provide him with a key to allow access, but that the agent had failed to do so. The inspection of the property did not therefore proceed.

9. On 26 June 2018 the Landlord's agent notified the Tribunal that all work had been completed. On 29 June 2018 the Third Party notified the Tribunal that a visual inspection of the outside of the property had been carried out by Mr Black on 15 June 2018. It did not appear that any work had been carried out. The property appeared to be unoccupied. On 9 July 2018 the Landlord's agent sent a copy receipted invoice from J Bryson Ltd in relation to window repairs.
10. The Ordinary Member re-inspected the property on 30 July 2018. It was noted that parts 2,3 and 4 of the RSEO appeared to have been completed. Window repairs had been carried out, hard wired smoke and heat detectors installed and a satisfactory EICR provided. However, the Ordinary Member noted that the damp meter readings taken at the original inspection remained unchanged, with no evidence that work has been carried out or that the property has dried out since the first inspection. A re-inspection report was issued to parties following the reinspection.
11. The Tribunal re-inspected the property on 2 November 2018. Mr McMillan provided access on behalf of the Landlord. Neither the Landlord nor the Third Party attended. Thereafter a hearing took place at Lochvale House, Dumfries. Mr Adam Black and Mr Robert Rome attended on behalf of the Third Party. Mr McMillan attended on behalf of the Landlord.

The Re-inspection

12. At the time of the inspection it was dry and cold. Mr McMillan directed the Tribunal to recent re-plastering carried out to a number of walls within the property, including the kitchen gable wall and bedroom above the kitchen, off the half landing. He advised that Richardson and Starling had recently carried out work at the property to install a damp proof course in these and the walls between kitchen and utility room, and living room and downstairs toilet, where dampness had also been detected by Richardson and Starling. The wall in the upper bedroom above the kitchen had also been treated. A schedule of photographs taken at the inspection are attached to this decision.

The Hearing

13. The Tribunal noted that when the property was re-inspected on 30 July 2018, the Ordinary Member noted that that parts 2, 3 and 4 of

the RSEO had been addressed. Mr Black advised the Tribunal that he had not seen any evidence of the window repairs. The Tribunal noted that neither Mr Black nor Mr Rome had been inside the property since the RSEO was issued. The Ordinary Member of the Tribunal had carried out an inspection of the windows on 30 July 2018 and found these to be in order. Furthermore, a copy receipted invoice for the repairs had been produced.

14. Mr McMillan provided the Tribunal with a copy report and quotation from Richardson and Starling detailing work which they recommended be carried out at the property. He indicated that he had sent a copy of this report to the Tribunal. Neither the Tribunal nor the Third Party had previously seen the report. The Tribunal noted that the report recommends that roof coverings, guttering, downpipes and external pointing be checked and repaired if necessary. Thereafter, the report recommends that plasterboard be removed in the first floor rear bedroom and that a cavity drain membrane be applied to prevent further dampness. Also, that a chemical damp proof course be inserted into a number of walls on the ground floor, identified on a plan, including the kitchen gable wall. Mr McMillan advised the Tribunal that the work recommended in the report has now been completed, the re-plastering just before the Tribunal inspected the property. No guarantee or certificate is yet available, as this will only be issued once the company have issued an invoice and received payment. He confirmed that the treated areas all require to be re-decorated before the property can be re-let but that this could not be undertaken until the plaster has fully dried out, and this might take a number of weeks. He asked the Tribunal to consider issuing a certificate of completion of the RSEO on the basis that the essential work has been completed, and only re-decoration is outstanding. Failing this, an extension of time was sought for the re-decoration.
15. Mr Black and Mr Rome advised the Tribunal that they were satisfied with the report from Richardson and Starling and confirmed that the work identified did seem to address the dampness issues at the property. Indeed, the proposed work appears to go further than the RSEO, since a number of additional rooms are also to benefit from the damp proof course. They advised that they thought it unlikely that the Landlord would not re-decorate, having gone to considerable expense in relation to the repair work, but thought that a certificate of completion should not be issued until this has been completed. They did not oppose a variation of the RSEO to allow additional time for the plaster to dry out and the property to be re-decorated.

Reason for decision

16. The Tribunal considered the condition of the property at both re-inspections and the evidence presented at the hearing.

17. Windows, Smoke and heat detectors, EICR. The Tribunal notes that when the property was re-inspected by the Ordinary Member on 30 July 2018, hard wired interlinked smoke and heat detectors had been installed and that the required repairs had been carried out to the windows. Furthermore, an EICR in satisfactory terms dated 1 June 2018 had been produced to the Tribunal. The Tribunal is therefore satisfied that parts 2, 3 and 4 of the RSEO have been completed.

18. Dampness. The Tribunal noted that the work proposed in the report from Richardson and Starling dated 6 August 2018 addresses part 1 of the RSEO. From the inspection and the evidence presented at the hearing, it appears that the required work has now been carried out, not only to the kitchen and bedroom wall, but other walls in the property. As the re-plastering was only completed just before the Tribunal inspected, the plaster was still wet, and it could not be conclusively established that the dampness has been eradicated. Furthermore, extensive re-decoration to the affected areas is required. In the circumstances, the Tribunal concluded that a variation of the RSEO should be granted to allow time for the remainder of the work to be carried out.

Decision

19. The Tribunal determined that further time should be allowed for the work to be carried out and that the RSEO should be varied by extending the time for completion of the work until 30 January 2019

20. The decision of the Tribunal is unanimous

Right of Appeal.

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.

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J Bonnar

Signed... .. 14 November 2018
Josephine Bonnar, Legal Member