

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 26(1)
Chamber Ref: PRHP/RT/16/0139**

Sasines Description: Property known as ALL and WHOLE the attic or top floor flatted property known as and forming 17A Princes Street, Dundee DD4 6BY, all as more particularly described in the Disposition (by virtue of a power of sale in a Standard Security recorded 6 June 1994) by TSB Bank Scotland PLC in favour of Stobmuir Enterprises Limited dated 2 January 1998 and registered in the General Register of Sasines for the County of Angus on 14 January 1998 (hereinafter referred to as “the property”)

**17A Princes Street, Dundee, DD4 6BY
 (“The Property”)**

The Parties:-

**Mr. Lindsay Watson, Dundee City Council, Private Sector Services Unit,
Dundee House, 50 North Lindsay Street, Dundee, DD1 1NB
 (“the Third Party Applicant”)**

**Mr. Henry Robertson formerly residing at the property
 (“the Tenant”)**

**Stobmuir Enterprises Limited, 14 Albert Street, Dundee, DD4 6NS
 (“the Landlord”)**

The First-tier tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) comprised:-

Patricia Anne Pryce - Chair and Legal Member

Geraldine Wooley - Ordinary Member (Surveyor)

Background

1. On 20 June 2016, the Private Rented Housing Committee (“the Committee”) issued a determination which stated that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). On the same date, the Committee issued a Repairing Standard Enforcement Order (“RSEO”) in respect of the property. The RSEO made by the Committee required the Landlord:-

- (a) To repair or replace the roof to ensure that it is wind and watertight.
- (b) To clean, clear, repair or replace the gutters to ensure that they work effectively.
- (c) To replace the double glazed window unit within the living room.
- (d) To repair or replace the window in the kitchen.
- (e) To obtain an Electrical Installation Condition Report (EICR) by a suitably qualified electrician and to carry out all works identified as required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered electrician confirming that said works have been carried out.
- (f) To produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment supplied by the Landlord and located within the property and to repair or replace any appliance supplied by the landlord and identified by the PAT as defective.
- (g) To produce a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances within the property and to carry out all works identified as required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered Gas Safe engineer confirming that said works have been carried out.
- (h) To produce an Energy Performance Certificate in respect of the property.
- (i) To repair or replace the extractor fan within the bathroom.
- (j) To repair or replace the shower screen within the bathroom.
- (k) To repair or replace the seal located around the top of the bath.
- (l) To secure the wash hand basin to the wall in the bathroom and to repair or replace the seal around the top of the basin.
- (m) To repair or replace the smoke detectors located in the hall and the kitchen.
- (n) To repair or replace the laminate floor throughout the property.
- (o) To provide a heat detector in an appropriate location within the kitchen.
- (p) To provide an appropriately positioned carbon monoxide detector within the property.

The Committee ordered that the works specified in the RSEO were to be carried out and completed within 28 days from the date of service of the RSEO, that is, by 21 July 2016.

The Surveyor Member of the Committee carried out a further inspection on 26 July 2016 and found at that date that items (g) and (p) above were completed. A copy of the Surveyor's re-inspection report dated 2 August 2016 is attached. The Surveyor Member found that none of the other works in terms of the RSEO had been carried out. In response to the re-inspection report, both the Landlord and the Tenant submitted representations to the Committee that they wished to attend a further hearing in relation to this matter.

2. A further inspection and hearing were arranged for 28 October 2016 to take place at 10 am and 11.30 am respectively. Parties were advised of the date and times. On 28 October 2016, the Committee attended at the property for the purposes of inspection. The Landlord, represented by Dr. Mohammed El

Bakary and Mrs. Aileen Taylor, together with the Third Party, represented by Mr. Lindsay Watson, also attended at the property. However, the Tenant was not present at the property and no access could be gained to the property at that time. The Committee knocked several times at the door of the property but there was no reply.

3. The hearing took place at 11.30 am within Caledonian House in Dundee. The Landlord was represented by Dr. El Bakary, Director of the Landlord, and Mrs. Aileen Taylor, Company Secretary of the Landlord. Mr. Watson attended on behalf of the Third Party. The Tenant also attended along with his advocacy worker, Mrs. Sandra Peek of Dundee Independent Advocacy Support. Dr. El Bakary advised that no or very limited access could be obtained to the property as the Tenant would not allow his workmen access to the property. All parties agreed that this was the case due to the Tenant's failing mental health issues. Mrs. Peek advised that the Tenant was suffering from severe short term memory loss which caused him to forget the appointments made for the Landlord's workmen to attend the property to carry out repairs. Mr. Watson advised that he was attempting to liaise with his Social Work Department to see if further support could be obtained for the Tenant. The Committee decided to adjourn the hearing to allow the all parties to liaise with one another to ensure, so far as possible, that agreed access could be arranged for the repairs to be carried out.
4. A further inspection and hearing were arranged for 6 January 2017 at 10 am and 11.30 am respectively. Parties were advised of the new date and times by way of letter dated 24 November 2016. On 1 December 2016, the First-tier Tribunal for Scotland (Housing and Property Chamber) assumed the jurisdiction of the PRHP and the Committee became known as the tribunal. On 30 December 2016, the tribunal received an email from the Landlord advising that the Tenant had moved out of the property. In light of this, the Landlord requested an adjournment of the hearing of 6 January 2017 to allow the Landlord to complete the works in terms of the RSEO. The tribunal granted this request.
5. A further inspection and hearing were arranged for 14 March 2017 at 10 am and 11.30 am respectively. The Landlord and the Third Party were advised of the new date and times by letter dated 6 January 2017. The tribunal, which now comprised the original Legal Chair but a new Ordinary Member, attended at the property for the purposes of inspection to ascertain whether the repairs required by the RSEO had been completed. The Landlord attended at the property by way of Dr. El Bakary and the Third Party by way of Mr. Watson.

There were two workmen instructed by the Landlord within the property at the time of inspection. They were in the process of moving the boiler from the cupboard to the kitchen of the property. There were copper pipes lying around the floor of the property and various floorboards had been removed.

The tribunal entered the bedroom of the property and noted a very high damp reading located in ceiling of the bedroom where it had been located at the time of the original inspection in June 2016. The tribunal noted that the issue

of damp and water ingress from the roof remained a live issue and had not been repaired. Furthermore, the tribunal noted that there was extensive vegetation growing on the slate tiles of the front elevation of the roof, similar but lighter growth to the rear elevation of the roof, and that the concrete pointing of the roof was in a state of deterioration. The tribunal noted that the roof had not been repaired or replaced and was not wind or watertight.

The tribunal also noted that the gutters were full of vegetation and debris and had not been cleaned, cleared, repaired or replaced as required by the RSEO.

The tribunal noted that, although the Landlord stated that the window in the living room had been replaced, there was vegetation growing along the outer edge of the seal of this window. On the balance of probabilities, the tribunal took the view that the unit had not been replaced as required by the RSEO.

The tribunal noted that an EICR had not been provided by the Landlord nor had a PAT. Although a Gas Safe Certificate had been provided by the Landlord, at the time of the inspection, the boiler was being re-located and therefore the Certificate would not encapsulate this. No Energy Performance Certificate had been provided by the Landlord.

The tribunal noted that none of the other works required by the RSEO had been carried out as no repairs had been carried out to the bathroom or the flooring and there was no carbon monoxide detector within the property.

In short, the tribunal noted that only parts (m) and (o) of the RSEO had been completed by the Landlord. All other works required by the RSEO remained outstanding.

6. The hearing took place at 11.30 am on 14 March 2017 within the Kirkton Community Centre, Derwent Avenue, Dundee. The Landlord was represented by Dr. El Bakary and Mrs. Aileen Taylor. The Third Party was represented by Mr. Watson.

Mr. Watson confirmed that the Tenant had left the property in December 2016 and that the Tenant had signed a note on 30 December 2016 confirming that he no longer lived at the property and that he had no belongings there. Mrs. Taylor confirmed that she had received this note which correlates with the Landlord's request for adjournment dated 30 December 2016 in respect of the hearing arranged for 6 January 2017.

Dr. El Bakary confirmed that the Landlord owned three of the five flats in the building where the property is located and that there were two shops on the ground floor with different owners.

The tribunal noted what it had found at the inspection that day. Mrs. Taylor advised that she had instructed a roofer to go out to the property and thought that the work had been done. However, she confirmed that she had never received an invoice for any work to the roof. Dr. El Bakary confirmed that he

agreed with the tribunal that, given the vegetation on the roof and its present state, it was clear that no works had been carried out to the roof.

Dr. El Bakary advised that he could not carry out the works to the roof as there were other owners in the building and he could not do this himself. Dr. El Bakary further submitted that the local authority should use its power in terms of an abatement notice to have the roof works carried out. He submitted that it was the Tenant's fault for not providing access.

Mrs. Taylor and Dr. El Bakary both accepted that the repairs to the roof could have been carried out without a contractor requiring access to the property itself.

They also both accepted that they had not done anything in terms of attempting to exercise their right of entry in terms of the Act and had not made an application to the tribunal to try and gain access to the property for the purposes of carrying out repairs to the property.

Both Dr. El Bakary and Mrs. Taylor accepted that all of the works in terms of the RSEO remained outstanding other than those required by parts (m) and (o) of the RSEO.

Decision

7. The tribunal notes that only the works required by parts (m) and (o) of the RSEO have been completed. All other issues remain outstanding in terms of the RSEO.
8. The tribunal takes the view that the Landlord has had ample time to carry out the remaining works. The tribunal accepts that the former Tenant had not easily provided access, however, the tribunal also noted that in terms of the application itself, the Third Party first wrote to the Landlord about the present repairs issues in 2014. The tribunal also notes that the Landlord did not make any attempt to exercise its right of entry in terms of the Act. Furthermore, the tribunal notes that the Landlord did not even attempt to carry out repairs to the roof, which could have been carried out without access to the property.
9. Accordingly, the tribunal takes the view that the Landlord's failure to implement almost all of the works amounted to a breach of the RSEO. In accordance with the relevant provisions of Section 26 of the 2006 Act, the tribunal required to determine whether a Rent Relief Order should be made. As the original tenancy had come to an end, the tribunal could not make such an order.
10. The tribunal took the view that the works required by the RSEO had been outstanding for almost nine months. Even with the difficulties which the Landlord may have encountered in terms of accessing the property, the Landlord had been made aware of the repairs issues by the Third Party in

2014. Furthermore, the property had been vacant since the end of December 2016 and the works required by the RSEO could have quite easily been completed since then.

11. The tribunal, having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the RSEO in relation to the property, determined that the Landlord has failed to comply with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the property is situated.

12. The decision of the tribunal is unanimous.

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.

P Pryce

Signed

Date 14 March 2017

Patricia Anne Pryce, Chair and Legal Member



17a Princes Street, Dundee DD4 6BY
Inspection 14 March 2017

1) Front elevation: vegetation growing between roof tiles



2) Rear elevation: vegetation in gutters and wall



3) Roof (rear elevation): debris and vegetation to adjoining wall, indicating damage to concrete filet



4) Roof (rear elevation): cracking to chimney and poorly repaired concrete filet



5) Roof (rear elevation): debris and vegetation in gutter



6) Roof (rear elevation): vegetation growing between slates



7) Bedroom: Damp meter reading in ceiling below roof area in photos 3, 4 and 6



8) Living room: double glazing unit with moss growth



9) Kitchen window



10) Electrical installation: light fixture in bedroom



11) Gas fired boiler: being relocated to kitchen (no CO monitor)



12) Bathroom : extractor fan



13) Bathroom : shower screen



14) Bathroom : sink



14) Bathroom : bath seal



15) Smoke detectors: hall



16) Smoke detectors: living room



17) Heat detector: Kitchen



18) Laminate flooring: removed in hall. Damaged sub-floor makes floor unstable





Re-Inspection Report

The Private Rented Housing Committee

Reference Number:- PRHP/RT/16/0139

Re: Property known as ALL and WHOLE the attic or top floor flatted property known as and forming 17A Princes Street, Dundee DD4 6BY, all as more particularly described in the Disposition (by virtue of a power of sale in a Standard Security recorded 6 June 1994) by TSB Bank Scotland PLC in favour of Stobmuir Enterprises Limited dated 2 January 1998 and registered in the General Register of Sasines for the County of Angus on 14 January 1998 (hereinafter referred to as “the property”)

The Parties:-

Mr Henry Robertson (“the Tenant”)

Mr. Lindsay Watson, Dundee City Council, Private Sector Services Unit, Dundee House, 50 North Lindsay Street, Dundee, DD1 1NB (“the Third Party”)

Stobmuir Enterprises Limited, 14 Albert Street, Dundee, DD4 6NS (“the Landlord”)

Re-Inspection : 26th July 2016 at 10:00 hrs, Overcast but dry

Surveyor: Ian H Murning TD FRICS

Present: The Landlord was not present and was not represented.

The Tenant was present.

The Third Party was not present and was not represented.

The Private Rented Housing Committee 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 Private Rented Housing Committee requires the Landlord:-

- (a) To repair or replace the roof to ensure that it is wind and watertight.
- (b) To clean, clear, repair or replace the gutters to ensure that they work effectively.
- (c) To replace the double glazed window unit within the living room.
- (d) To repair or replace the window in the kitchen.
- (e) To obtain an Electrical Installation Condition Report (EICR) by a suitably qualified electrician and to carry out all works identified as required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered electrician confirming that said works have been carried out.
- (f) To produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment supplied by the Landlord and located within the property and to repair or replace any appliance supplied by the landlord and identified by the PAT as defective.
- (g) To produce a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances within the property and to carry out all works identified as required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered Gas Safe engineer confirming that said works have been carried out.
- (h) To produce an Energy Performance Certificate in respect of the property.
- (i) To repair or replace the extractor fan within the bathroom.
- (j) To repair or replace the shower screen within the bathroom.
- (k) To repair or replace the seal located around the top of the bath.
- (l) To secure the wash hand basin to the wall in the bathroom and to repair or replace the seal around the top of the basin.
- (m) To repair or replace the smoke detectors located in the hall and the kitchen.
- (n) To repair or replace the laminate floor throughout the property.
- (o) To provide a heat detector in an appropriate location within the kitchen.
- (p) To provide an appropriately positioned carbon monoxide detector within the property.

The Private Rented Housing Committee order that the works specified in the Order must be carried out and completed by 21st July 2016.

Works in RSEO undertaken:

At the time of the re-inspection:

Item (g) above – A Gas Safety Inspection Record has been obtained and a copy produced by the Tenant at the re-inspection is attached as a photo. The gas boiler is re-connected to an adjacent mains power point in the hall cupboard and was demonstrated by the Tenant to be working.

Item (p) above – an appropriately positioned battery operated 'First Alert' carbon monoxide alarm has been installed.

Works in the RSEO outstanding:

At the time of the re-inspection:

Items (a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o) remain outstanding.

Photographs:

A schedule of photographs taken during the re-inspection is attached.

I Murning

Signed

Date 2nd August 2016

Ian H Murning TD FRICS

17A Princes Street Dundee DD4 6BY

Photos from Re-inspection
PRHP/RT/16/0139
26th July 2016
Surveyor Ian H Murning TD

26/07/2016

1

Front Elevation 1



26/07/2016

2

Front Elevation 2



26/07/2016

3

Entrance Hall Window – Double Glazing Seal failure



26/07/2016

4

Bedroom showing damp staining ceiling/wall



26/07/2016

5

Protimeter Reading –
Red indication on Damp Stain Bedroom Ceiling



26/07/2016

5

Kitchen Window Taped up



26/07/2016

7

Rear Gutter 1 – Weeds, Slipped Slate, Debris



26/07/2016

8

Rear Gutter 2 – Weeds, Debris



26/07/2016

9

View of Rear Roof showing Vegetation



26/07/2016

10

Heat and Smoke Alarm Head Units off ceiling



26/07/2016

11

Base Unit and Wiring for Hall Smoke Alarm



26/07/2016

12

Base Unit and Wiring for Kitchen Heat Alarm



26/07/2016

13

Wash Hand Basin Slack & No Sealant at Back



26/07/2016

14

Bath - Poor Sealant Around Edges



26/07/2016

15

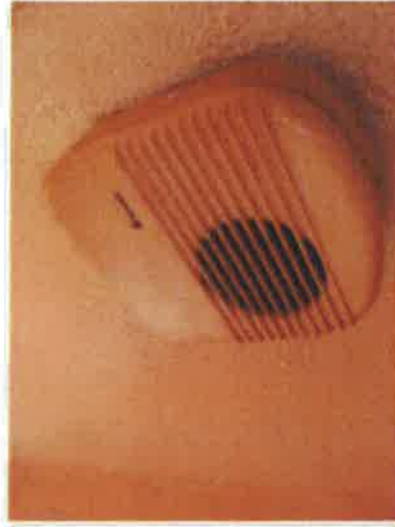
Shower Screen With Parcel Tape Along Bottom



26/07/2016

16

Defective Bathroom Ceiling Extractor Fan



26/07/2016

17

Gas Boiler Reconnected to Mains Electricity



26/07/2016

18

First Alert CO Alarm



26/07/2016

19

Gas Safety Record Dated 22nd June 2016

A 'LANDLORD/HOME OWNER GAS SAFETY RECORD' form is shown. The form is titled 'LANDLORD/HOME OWNER GAS SAFETY RECORD' and includes a reference number 'NO 23100'. It contains several sections for recording gas safety checks, including a table for recording gas safety checks and a section for recording gas safety checks. The form is dated 22nd June 2016. At the bottom of the form, it states 'NEXT GAS SAFETY CHECK MUST BE CARRIED OUT WITHIN 12 MONTHS'.

28/07/2016

20

This inspection is for gas safety purposes only to comply with the Gas Safety (Installation and Use) Regulations. Flues have been inspected visually and checked for satisfactory evacuation of products of combustion. A detailed internal inspection of the flue integrity, construction and lining has NOT been carried out.

REGISTERED BUSINESS DETAILS Reg No: 225051

Gas Engineer: G Ramsay

Gas Safe registered engineer No: 3800636

Company: M/TENS CONTRACTS LTD

Address: UNIT 12 CANYON RD

NETHERTON IND ESTATE WISHLAW

Postcode: ML2 0EG Tel: 01698 37300

INSPECTION/INSTALLATION ADDRESS

Name & Title: _____

Address: 17A FRANCES ST

DUNDEE

Postcode: DD4 6BS Tel: _____

I certify that I carried out inspections on the appliances detailed below.

Signed: _____ Inspection Date: _____

LANDLORD (OR AGENT) NAME & ADDRESS

Name & Title: STOBMUIR ENTERPRISES

Address: 15 ALBERT ST

DUNDEE

Postcode: _____ Tel: _____

APPLIANCE DETAILS

Location	Make and Model	Type	Flue Type	Operating pressure in boiler or heat input (kW/h or Btu/h)	Safety devices connect operation	Spillage test	Smoke pellet flue flow test	Initial combustion analyser reading	Final combustion analyser reading
1. Hall	RAVENTHORN WHITE 500	CHB	BS	9.1m ³	YES	PASS	N/A	N/A	N/A
2									
3									
4									
5									

FLUE TESTS

Satisfactory termination	Flue visual condition	Adequate ventilation	Landlords appliance	Inspected	Appliance serviced	Appliance safe to use
YES	PASS	YES	YES	YES	YES	YES

INSPECTION DETAILS

Satisfactory Gas Tightness Test	Emergency Control Accessible	Testing of CO Alarms Satisfactory	Smoke Alarms Fitted	Equipotential Bonding Satisfactory	WARNING TAG or STICKER FIXED
YES	YES	YES	YES	YES	YES

Gas Installation Pipework: Satisfactory Visual Inspection: Yes No

Emergency Control Accessible: Yes No

Testing of CO Alarms Satisfactory: Yes No

Smoke Alarms Fitted: Yes No

Equipotential Bonding Satisfactory: Yes No

WARNING TAG or STICKER FIXED: Yes No

RECTIFICATION WORK CARRIED OUT

Number of appliances tested:	Approved CO Alarms Fitted:	Are CO Alarms in Date:	Are CO Alarms Fitted:
1	YES	YES	YES
2			
3			
4			
5			

GIVE DETAILS OF ANY FAULTS

Number of appliances tested: _____

Approved CO Alarms Fitted: Yes No N/A

Are CO Alarms in Date: Yes No N/A

Are CO Alarms Fitted: Yes No N/A

Next Gas Safety Check must be carried out within 12 months

This record is issued by: G Ramsay Signed: G Ramsay Date: 22.6.16

Received on behalf of the Landlord/Home Owner: DLA Signed: _____ Date: 22.6.16