

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: RP/16/0351

Sasines Description:

ALL and WHOLE that area of ground upon which the cottage known as Barr Bheag, Taynuilt, Argyll PA35 1HY is erected; which area of ground forms part and portion of ALL and WHOLE that plot or area of ground at Am Barr, Barguilean, by Taynuilt, Argyll extending to one hectare and seven hundredth parts of a hectare or thereby (2.65 acres) and being the area of ground outlined in red on the plan annexed and signed as relative to Disposition by Anthony Robin Marshall in favour of David Arthur Marshall, Mrs Anne Taylor and Kilbride Trustees Limited as Trustees therein mentioned dated Third December Two Thousand and Two and recorded in the division of the General Register of Sasines applicable to the County of Argyll on 10 January Two Thousand and Three

The Parties:-

**Mr Nicholas Charlton, residing at Barr Bheag, by Taynuilt, Argyll PA35 1HY
("the tenant")**

and

**The Josphine Marshall Trust, Barguilean, Taynuilt, Argyll PA35 1HY
("the landlords")**

Whereas in terms of their decision dated 8 March 2017, the First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlords have 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 landlords have failed to ensure that:

- The property is wind and watertight and in all other respects reasonably fit for human habitation;
- 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;
- Any fixtures, fittings and appliances provided by the landlords under the tenancy in a reasonable state of repair and in proper working order;
- The property has satisfactory provision for detecting fires unforgiving warning in the event of fire or suspected fire.

the tribunal now requires the landlords 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 landlords to:-

1. Obtain a specialist report from a suitably qualified surveyor, engineer or architect to address the requirements for a property of this form of construction to make the property wind and watertight and to address the issues of dampness within the property where evident throughout. The report should also address the issue of the roof of the property where it meets the gutters to prevent overspill of rainwater.
2. Carry out such work as is recommended in terms of such a report.
3. Replace or repair the downpipe at the right hand (eastmost) and of the front elevation of the property.
4. Replace the defective double glazed unit in the living room.
5. Repair or replace the front porch.
6. Repair or replace the back doorstep.
7. Replace the floorboards affected by wet rot adjacent to the threshold at the back door.
8. Repair or replace the kitchen external roof trim to ensure that the area is wind and watertight.
9. Repair or replace the fridge.
10. Install a heat detector in the kitchen, interlinked with the smoke detectors throughout and provide the tenant with a satisfactory certificate of operation, all in accordance with the current Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires.

The tribunal orders that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

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.

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 type written on this and the two preceding pages are executed as follows:

D Preston

Chairing Member

M Kane

Witness signature

MEGAN KANE

Witness name

GLASGOW

Place of signing

ROTHWELLHOUSE

Witness address

14 MARCH 2017

Date of signing

CAIRNS PARK

HAMILTON

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF DECISION FOR REPAIRING STANDARD ENFORCEMENT ORDER (RSEO) UNDER SECTION 24 HOUSING (SCOTLAND) ACT 2006.

Chamber Ref: RP/16/0351

THE PROPERTY:

ALL and WHOLE that area of ground upon which the cottage known as Barr Bheag, Taynuilt, Argyll PA35 1HY is erected; which area of ground forms part and portion of ALL and WHOLE that plot or area of ground at Am Barr, Barguilean, by Taynuilt, Argyll extending to one hectare and seven hundredth parts of a hectare or thereby (2.65 acres) and being the area of ground outlined in red on the plan annexed and signed as relative to Disposition by Anthony Robin Marshall in favour of David Arthur Marshall, Mrs Anne Taylor and Kilbride Trustees Limited as Trustees therein mentioned dated Third December Two Thousand and Two and recorded in the division of the General Register of Sasines applicable to the County of Argyll on 10 January Two Thousand and Three

THE PARTIES:

Mr Nicholas Charlton, residing at Barr Bheag, by Taynuilt, Argyll PA35 1HY
("the tenant")

and

The Josphine Marshall Trust, Barguilean, Taynuilt, Argyll PA35 1HY
("the landlords")

THE TRIBUNAL:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC):

David M Preston (Chairman) and Alex Hewton (Surveyor Member)

Decision:

The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlords had complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as

“the Act”) in relation to the property, and taking account of the representations by the tenant:

- a. Determined that the landlords had failed to comply with the said duty; and**
- b. Determined to issue a Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Act.**

Background:

1. By application dated 9 November 2016 the tenant applied to the Private Rented Housing Panel (PRHP) 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. On 1 December 2016 the functions of the PRHP were transferred to the First Tier Tribunal for Scotland; (Housing and Property Chamber) (hereinafter referred to as HPC) in terms of the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016.
3. The application by the tenant stated that he considered that the landlords had failed to comply with their duty to ensure that the house meets the repairing standard at the start of the lease and throughout its duration and in particular that the landlord had failed to ensure that:-

The property is wind and watertight and in all other respects reasonably fit for human habitation.

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.

Any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.

Any furnishings provided by the landlords under the tenancy are capable of being used safely for the purpose for which they are designed.

4. In particular the tenant complained that:
 - a) Exterior iron cladding to walls and roof corroded and have holes needs replaced.
 - b) Walls are not adequately insulated causing damp needs insulated.
 - c) Gutters are badly fitted and overspill in heavy rain replaced.
 - d) Downpipe is cracked and leaking needs replaced.
 - e) Chimney rough cast is cracked and needs repaired.
 - f) Main bedroom interior plasterboard and decoration damp damaged need replaced.
 - g) Second bedroom persistent damp in corner needs curing.
 - h) Bathroom new window surrounds never painted properly after fitting needs painting.
 - i) Bathroom plasterwork never properly finished needs finishing.

- j) Living room window seal broken needs replaced.
 - k) Porch is dilapidated and needs replaced.
 - l) Front door is rotten and has active woodworm.
 - m) Back doorstep is broken and loose need replaced.
 - n) Back door and frame is rotten needs repair/replaced.
 - o) Back atrium floorboards around broken step need replaced.
 - p) Kitchen external roof trim too short needs replaced.
 - q) Damp above cooker peeling paint/inadequately ventilated? Needs extractor.
 - r) Fridge rusted antiquated needs replaced.
 - s) Kitchen radiator rusted needs repaired/replaced
5. By Minute of Decision to Refer Application to Committee dated 22 December 2016, a Convener of HPC having delegated power for the purpose, referred the application under Section 22 (1) of the Act to the tribunal. In terms of the Minute the application paperwork comprises documents received by HPC between 14 November and 16 December 2016.
 6. A Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act was served on both the landlord and the tenant on 18 January 2017.
 7. Following service of the Notice of Referral further written representations were received from the landlord dated 7 February 2017 together with 345 pages of correspondence and documentation. Written representations were received from the tenant dated 8 February 2017 together with 277 pages of correspondence and documentation.

Inspection:

8. The tribunal inspected the property on the morning of 23 February 2017. The tenant, along with his partner Ms Claire de Mortimer-Griffin, was in attendance throughout the inspection. Mr Robin Marshall and Mr Sean Honeyman were also in attendance throughout the inspection on behalf of the landlords.
9. The property is a detached cottage partly of single skin timber framed walls, clad with corrugated iron and partly cavity walls, roughcast finished, situated in Glen Lonan some 3 miles approximately from the village of Taynuilt. The cottage was reported as having originally comprised a corrugated iron house which had been extended to the rear and side with roughcast brick construction. Accommodation comprised: kitchen, living room, two bedrooms and bathroom. Heating was provided by a closed stove in the living room which provided heating throughout the house by radiators
10. In respect of the items complained of the inspection revealed:
 - a. The exterior iron cladding was corroded in parts and holes were evident in various places.
 - b. No internal inspection of the exterior walls was carried out but extensive damp readings were obtained internally which were indicative of penetrating dampness. A "head and shoulders" inspection

- of the roof space was carried out and there was found to be insulation between the joists, estimated by the tenant to be about 270mm deep.
- c. The gutters were reported as being inadequate and shedding water in heavy rain. In particular the gutter in the front (south-east) elevation was seen to be set back under the corrugated roofing which it was considered could cause the problem complained of.
 - d. The downpipe to the front, right was cracked and leaking.
 - e. Chimney roughcast was seen from ground level to be cracked.
 - f. As stated above extensive damp stains were evident and damp readings were obtained in the main bedroom wall.
 - g. Damp stains were evident and damp readings were obtained in the second bedroom.
 - h. The bathroom window surround was found to be unfinished.
 - i. The bathroom plasterwork was found to be unfinished in places and taping to some joints was loose.
 - j. The double glazed unit in one of the windows in the living room was seen to have failed.
 - k. The front porch was dilapidated and areas of wood had rotted away.
 - l. No rot was seen in the front door and it was reported that there was no active woodworm.
 - m. The back doorstep was seen to be split and loose.
 - n. The back door and door frame were seen to be rotten.
 - o. Some floorboards in the back vestibule had been replaced and some areas of wet rot were seen adjacent to the threshold.
 - p. The barge board above the kitchen window was poorly fitted and showed gaps.
 - q. There were areas of flaking paint on the wall and ceiling above the cooker.
 - r. The fridge appeared to be of some age and had signs of rust on the door. No further testing was carried out on the fridge.
 - s. Patches of rust were seen on the kitchen radiator.

11. In addition to the above observations:

- a. The matter of smoke and fire detection had been raised by the tenant, although this was said to have been resolved. The tribunal noted that there were hardwired smoke detectors fitted in the kitchen, the living room and the hall. These were confirmed as having been installed by the landlord
- b. The tenant also pointed out that the cooker hob surface was cracked. The tribunal noted the crack.
- c. A question was raised by the tenant in respect of the quality of the water supply. It was explained that the water supply serving subjects came from a source on the other side of the unclassified road from Kilmore to Taynult. The landlords stated that the supply served three properties and that a UV treatment facility had been installed but there was no filter on the system, at the request of the tenant.

12. A series of photographs were taken throughout the inspection and form the Schedule attached hereto.

Hearing:

13. Following the inspection of the property the tribunal held a hearing at Kilmore & Oban Church of Scotland, Church Centre, Glencruitten Road, Oban PA34 4DN and heard representations from: the tenant and Ms de Mortimer-Griffin; and Mr Marshall and Mr Honeyman on behalf of the landlords.
14. At the start of the hearing the convener confirmed the procedure which it was intended to be followed.
15. The chairman noted that the voluminous correspondence and documentation which had been lodged by the parties related in large part to matters which were extraneous to the subject matter of the application. He pointed out to the parties that this application was in respect of the alleged failures of the landlords to maintain the property to the repairing standard ('repairs application'), which depended upon the condition of the property as at today's hearing. Anything beyond that was out with the jurisdiction of this tribunal. In response to a question from Mr Marshall regarding the landlords' application for assistance to gain access to the property ('access application') the chairman advised that such applications were, as a matter of procedure dealt with entirely separately by a single member of the tribunal whereas the repairs application had been referred to this tribunal. In any event it was noted that the access case had been determined by the member's decision dated 20 February 2017 and was now therefore concluded.

Findings of fact:

16. In reaching its decision the tribunal had regard to:
 - a. The application dated 9 November 2016, including paperwork received during the period 14 November to 16 December 2016.
 - b. Landlords' representations dated 7 February 2017 and documentation so far as relevant to the application.
 - c. Tenant's representations dated 8 February 2017 and documentation so far as relevant to the application.
 - d. The oral representations by the parties at the hearing.
17. The tribunal finds in fact that:
 - a. The tenancy between the parties was constituted by a verbal agreement between the parties dated entered into in about January 2005.
 - b. The tenant had advised the landlord of the issues with the property and of his specific complaints as detailed above.
 - c. The property fails to meet the repairing standard in a number of respects as detailed below.
 - d. The landlords have sought to gain access to the property for the purpose of carrying out repairs as detailed in their email to the tenant dated 18 October 2015.

- e. The tenant has refused to allow access to the landlords or their contractors to carry out any of the repairs mentioned in d above.

Reasons for the decision:

18. From its inspection of the property and having heard the representations from the parties, the tribunal was satisfied that it failed to meet the repairing standard in the following respects:
 - a. The exterior iron cladding to the walls was seen to be in a poor condition with signs of corrosion and holes. It was therefore not in a reasonable state of repair.
 - b. The property was found to be excessively damp as identified by the damp meter readings throughout the property. The tribunal considered that this was likely as a result of inadequate insulation in view of the construction of the property. The property was therefore not wind and watertight.
 - c. The gutters were seen to be fitted under the end of the roof tin which was likely to cause the problem of overspill complained of by the tenant. The gutters were not in proper working order.
 - d. The downpipe at the front right-hand end of the property was seen to be cracked and leaking. It was neither in a reasonable state of repair nor in proper working order.
 - e. The roughcast on the chimney head was seen from ground level to be cracked. It was not in a reasonable state of repair.
 - f. As indicated above, high damp meter readings were detected in the bedroom wall and the plaster was seen to display evidence of dampness. The property was therefore not wind and water tight.
 - g. Dampness was detected in the second bedroom as evidenced by the damp meter readings. The property was therefore not wind and water tight.
 - h. Bathroom window surrounds were seen to be unfinished but the tribunal considered that this is purely decorative and it made no formal finding in this respect.
 - i. Bathroom plasterwork was also unfinished in places and needs some re taping but again the tribunal considered that this is purely decorative and it made no formal finding in this respect.
 - j. The double glazed unit in the living room (west elevation) was seen to be blown. It was not in a reasonable state of repair and in proper working order.
 - k. The porch was seen to be in a dilapidated condition and requires to be repaired or replaced. It was neither in a reasonable state of repair nor in proper working order.
 - l. The front door was neither seen to be rotten nor have active woodworm.
 - m. The back doorstep was seen to be broken and loose. It is not in a reasonable state of repair and in proper working order.

- n. The back door and frame were seen to be rotten and required attention. It is neither in a reasonable state of repair nor in proper working order.
- o. The floor boards adjacent to the threshold at the back door showed signs of wet rot and required attention. They were neither in a reasonable state of repair nor in proper working order.
- p. The kitchen roof trim was not properly fixed and displayed gaps. This was not in a reasonable state of repair and the property was not wind and watertight.
- q. Paintwork above the cooker was seen to be cracked but the tribunal considered that this was purely decorative and it made no formal finding in this respect.
- r. The fridge door showed signs of rust and was therefore not in a reasonable state of repair. The tribunal did not make any finding as to its working order as no complaint had been made in that regard.
- s. The kitchen radiator showed some signs of rust, however the tribunal considered that this was purely decorative and it made no formal finding in this respect.
- t. In respect of the smoke alarms, the tribunal noted that the Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires provides that there should be at least one heat alarm in every kitchen. The property contained a smoke alarm fitted in the kitchen as opposed to a heat alarm. Accordingly the provision for detecting fires and for giving warning in the event of fire or suspected fire was not in accordance with the current guidance and was therefore not satisfactory.
- u. With regard to the matter of the water supply, the tribunal noted that this had not formed part of the original application but determined that it should recommend, without making any formal finding, that the landlord should ensure that the water supply meets all relevant and appropriate regulations and that the necessary certificates should be made available to the tenant.
- v. The tribunal also noted that the cooker hob was damaged and although it did not form part of the application it is recommended that the cooker hob be repaired or replaced.

19. During the hearing the parties sought to establish their positions in relation to the terms of the agreement between them but the tribunal was required to focus on the issue of the repairing standard.

20. The tenant maintained that he had raised some of the issues complained of as long ago as 2005 shortly after he had taken occupation of the property. He referred to the handwritten note at page 1 of the landlord's documentation which had been prepared by him following an inspection which had taken place on 7 January 2005 by himself and Mr Honeyman. He said that nothing had been done at that time or since to address any of the issues detailed therein. In particular he referred to the "paper peeling on east facing wall in the main bedroom which he maintained indicated a problem with that wall. In response. The landlords had taken the view that the note was a record of the condition of the property as at

that time and did not agree that they were obliged to take any action on the strength of it.

21. The tribunal noted that the tenancy had commenced and this note had been prepared prior to the Act coming into force. It was suggested by the landlords at the hearing as well as in the documentation that the terms of the verbal agreement required the tenant to look after the property and, on leaving, return it in the same condition as it was at the start of the agreement. The tenant did not accept that he had any obligation to carry out the repairs. He said that throughout his occupation he had carried out a number of necessary repairs and had submitted invoices to the landlords which had been paid. The landlords agreed that this had been the case.
22. The tribunal considered the position in the light of the provisions of the Act which came into force after the tenancy agreement had been entered into. Section 17 of the Act expressly prohibits parties from contracting out of the provisions of the Act except with the consent of a sheriff in terms of section 18. There was no such consent.
23. The tribunal also considered whether the terms of section 16(1)(a) would apply as an exception to the landlord's duty under section 14(1). That section refers to "any work to be carried out which the tenant is required by the terms of the tenancy to carry out". The tribunal considered that for such a provision to be effective there would require to be an agreement relating to a specific piece of work and that any agreement in the general terms as maintained by the landlords could not fall into this exception. Accordingly the tribunal finds that whatever the position might have been throughout 2005, once the Act came into force it superseded any such agreement and imposed the duty under section 14(1) on the landlords. The tribunal was of the view that it was open to the landlords to have made application to the sheriff for consent under section 18 at that time, but they had not done so.
24. The landlords' position was that whilst they accepted that work was required to be carried out to the property they maintained that they were not in breach of their duty as they had been willing to carry out such work but had been prevented from doing so by the tenant. They referred to the various efforts they had made to engage contractors to carry out the work specified in their email of 18 October 2015 which had followed on a meeting between the tenant and Ms de Mortimer-Griffin, Mr Honeyman and Willie Lewis in June 2015. The contractor had been prepared to commence work but the tenant had intimated a refusal to permit access shortly before the work was to commence. As a result of the tenant's refusal to permit access, the landlords had applied to PRHP for assistance in gaining access to the property for that purpose.
25. The tenant explained that he had refused access as he had sought from the landlords an undertaking that the purpose of such access was properly defined and specified as being to carry out the work under their duty to ensure that the property meets the repairing standard. He referred to the terms of the email from the landlords of 18 October 2015 which stated:

“Now that the previous informal arrangements for your occupation of Barr Bheag (under which you were to take care of the house, subject to major structural matters, and to hand it back in its January 2005 condition on vacating, and in return paid a reduced rent) have come to an end, and the property has been inspected, we are writing to set out new arrangements”

After listing the intended works, the email continued:

“The terms to apply to your occupation will be the same lease terms as applying to Am Barr (with the exception of those terms placing responsibility for the care of the garden with the landlord), paying a monthly rental of £450 from completion of the work in items 1 and 2”.

The tenant maintained that the landlords were not entitled to alter the terms of his tenancy and that the work to be carried out was required in terms of the existing agreement. He had not agreed to any alteration in the terms of his lease and was therefore not prepared to allow access on that basis.

26. The tribunal determined that the landlords' failure to ensure that the property meets the repairing standard applies to the current lease arrangements. Any alteration of the terms of the agreement is not a matter over which the tribunal has any jurisdiction.
27. It was not clear to the tribunal whether the work specified in the landlord's email would have covered the work identified by it as being necessary to restore the property to the repairing standard.
28. The tribunal determined to issue a Repairing Standard Enforcement Order. In coming to its decision, the tribunal had regard to the age, character and prospective life of the property as well as the locality in which it is situated as required by section 13(3) of the Act. In view of the construction and fabric of the building the tribunal considered that specialist reports should be commissioned to ensure that any work carried out to the property was likely to be successful. The landlords, in their written and oral submissions made it clear that they had discussed the situation with a number of contractors. No details were provided of the experience of the contractors in dealing with properties of this type of construction and the tribunal was concerned that any disruption caused to the tenant's enjoyment of the property should be kept to a minimum.

In terms of section 46 of the Tribunals (Scotland) Act, 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.

D Preston Chairman

8 March 2017

Barr Bheag, By Taynuilt, Argyll Pa35 1HY

Schedule of Photographs taken at the inspection on 23rd February 2017

Photo 1 – Exterior of property

Photo 2 – Holes/rust cast iron cladding

Photo 3 – Further holes/rust in cladding

Photo 4 - Defective downpipe

Photo 5 – Chimney

Photo 6 – Kitchen trim (at roof)

Photo 7 – Front porch

Photo 8 – Broken rear step

Photo 9 – Rotted rear door

Photo 10 – Rotted floor rear door

Photo 11 – Rust on radiator

Photo 12 – Damp internally

Photo 13 – Bathroom window

Photo 14 – Loose tape bathroom

Photo 15 – Defective double glazed unit

Photo 16 – Cracked hob

Photo 17 – Rust on Fridge

Glasgow, 8 March 2017

This is the Schedule referred to in the foregoing Decision

D Preston Chairman



Photo 1 - Exterior



Photo 2 – Holes/rust cast iron cladding



Photo 3 – Further holes/rust in cladding



Photo 4 - Defective downpipe



Photo 5 – Chimney



Photo 6 – Kitchen trim (at roof)



Photo 7 – Front porch



Photo 8 – Broken rear step



Photo 9 – Rotted rear door



Photo 10 – Rotted floor rear door



Photo 11 – Rust on radiator



Photo 12 – Damp internally



Photo 13 – Bathroom window



Photo 14 – Loose tape bathroom



Photo 15 – Defective double glazed unit



Photo 16 – Cracked hob



Photo 17 – Rust on Fridge