

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/17/0014

Sasine ref: Ground with Easterknowe House thereon, part of lands and estate of Stobo excepted from subjects referred to and delineated and coloured pink in plan annexed to disposition in favour of Hugh Leopold Seymour and another recorded 4 August 1988 under exception from a larger part of Easterknowe in the Parish of Stobo referred to in disposition in favour of William Jay Ducas and another recorded 12 October 1990

**Property at West Lodge, Stobo, Peebles, EH45 8NY
("The Property")**

The Parties:-

**Miss Carol McMillan, residing at the Property
("the Tenant")**

**Mr Hugh Seymour, Home Farm House, Stobo, Peebles, EH45 8NX
("the Landlord")**

Whereas in terms of their decision dated 18 May 2017, 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") and in particular that the landlord has failed to ensure that:-

- (a) 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 in terms of section 13(1)(b) of Act;

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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:-

- (a) Repair or replace the porch to the Property to ensure that it is wind and water tight, safe and secure with a functioning entrance door, using appropriate modern materials to replace existing and to comply with any necessary building consents;

- (b) Repair or replace the guttering to the Property to ensure that it does not result in water ingress into the porch as referred to in the said decision;
- (c) Re-install the electrical installations in the porch area of the Property and ensure that they are safe and installed in accordance with current safety guidance;
- (d) Unblock the drain to the rear of the Property adjoining the kitchen and carry out such further works as are reasonably necessary to safeguard against further recurrence, whether after obtaining a specialist report and implementing its recommendations or otherwise.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of two calendar months from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 preceding page are executed by Maurice O'Carroll, Advocate, Advocates' Library, Parliament House, Edinburgh, Legal Member and Chair of the Tribunal, at Glasgow on 18 May 2017 before this witness:-

____ Legal Member and Chair

____ witness

Maurice O'Carroll name in full

____ Address

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 24 (1)

Chamber Ref: FTS/HPC/RP/17/0014

**Property at West Lodge, Stobo, Peebles, EH45 8NY
("The Property")**

The Parties:-

**Miss Carol McMillan, residing at the Property
("the Tenant")**

**Mr Hugh Seymour, Home Farm House, Stobo, Peebles, EH45 8NX
("the Landlord")**

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Mr Nick Allan (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) in relation to the Property concerned, and taking account of the evidence led by the Landlord and Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 13 January 2017 the Tenant applied to the 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 by the Tenant stated that she considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that 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 in terms of section 13(1)(b) of Act;

3. Specifically, the Tenant stated on her application form that: there are structural problems in connection with the porch to the property consisting of overflowing guttering, rotten woodwork; and the drain serving the kitchen at the rear of the Property is blocked.
4. The Convenor of the Housing and Property Chamber intimated a decision to refer the application to the Tribunal on 22 February 2017 in terms of section 23(1) of the Act.
5. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
6. Following service of the Notices of Referral the Landlord's agent made further written representations to the Tribunal dated 3 April 2017 setting out the background to the repair issues and questioning the Tribunal's jurisdiction to consider the application.
7. An inspection and hearing was scheduled for 10am on 21 April 2017. At the request of the Landlord's agent, the hearing was postponed to 10 May 2017 in order to allow him to attend.
8. The Tribunal inspected the Property at 10.15 am on 10 May 2017. The Tenant was present, with a companion, Joan Coverley, and her husband, Peter Coverley. The Landlord was not personally present during the inspection but was represented by Mr Michael Ireland of Messrs Walker Scott Ireland, Chartered Surveyors and Land and Estate Agents. The Ordinary Member took photographs of the Property during the inspection.
9. Following the inspection of the Property, the Tribunal held a hearing at Peebles Burgh Hall, High Street, Peebles at 11.30am. All parties present at the inspection were again present at the hearing. The Landlord's agent and Tenant gave evidence and answered questions from the Tribunal, the latter assisted by Mrs Joan Coverley. The Tribunal considered the written representations submitted by the parties as outlined above, together with the evidence and submissions made orally at the hearing.
10. The Tenant gave evidence as follows:-

The issue of water overflowing from the bedroom and roof guttering onto the porch was causing her many headaches in relation to the Property.

The door to the porch will not lock because of the way that the main wall to it leans outwards. There is water ingress to the left-hand side of the porch on exiting where it meets the main wall of the house which she believes is caused by the main electrical cable acting as a conduit for water. This has resulted in the timber frame and window frames becoming completely

rotten. She had placed concrete around the electrical cable but the problem persists. She had at her own expense re-roofed the porch and placed an expanding foam sealant around all the internal joints of the structure approximately 6 or 7 years ago. She had re-painted the woodwork on one occasion at approximately the same time. The Tenant gave clear evidence that she considered the porch to be necessary to the enjoyment and comfort of the Property and that it makes a huge difference in that regard. In particular, it serves an important function of protecting the rear of the Property from prevailing winds, especially in winter time.

As demonstrated during the site inspection, the drain adjoining the kitchen at the rear of the Property is blocked, causing water to back up when the dishwasher and washing machine are used. Both of these problems have been intimated to both the Landlord's agent and the Landlord directly. The drain had been unblocked on 30 January 2017 but that had only lasted a matter of two weeks or so when the blockage issue returned. The Tenant had sent a letter dated 7 March 2017 directly to the Landlord, with the assistance of Mr Dougie Whitson of Scottish Borders Council, notifying him of the recurrence of the blockage. This notification was acknowledged. As seen at the site inspection, the blockage causes drain water to back up and overflow from the site of the drain when the washing machine or dishwasher within the kitchen are operated.

11. The Landlord's agent gave evidence and submissions as follows:-

As set out in his written submission of 3 April 2017, the Property did not have the porch at the time that the original lease was entered into in 1985. It was added approximately two years after the date of entry. Consent was obtained for the addition to the Property and moreover, whilst the Tenant bore the cost of the construction, the materials were paid for by the Landlord.

It was expressly accepted that the porch is not in a suitable state of repair. An offer has been made to share one half of the cost of demolition of the porch and the entire costs of removal of the debris from the Property.

The only dispute the Landlord has is in relation to which party is responsible for the cost of maintenance and repair of the porch. In Mr Ireland's submission, the Tribunal has no jurisdiction to consider the issue of repair and maintenance because the Landlord has no obligation to repair or renew, given that the porch is a tenant improvement. To expand on this, Mr Ireland explained that the addition was part of the fixed property for rent. Ordinarily, such an improvement would have resulted in an adjustment (i.e. increase) in rent. However, since there was no such increase following the addition of the porch, responsibility for its maintenance and repair fell solely onto the Tenant. He provided no legal authority for this submission. It was purely a matter which fell within his understanding and experience of property letting.

In relation to the issues with the porch, the original cast iron downpipe servicing the cottage had been cut and a "dog leg" PVC section of guttering had been inserted which diverted rain water at a 45° angle and discharging directly onto the PVC guttering servicing the porch roof itself. The new section of guttering had created the problem of water ingress into the porch and the rotting of the timbers within the porch, which themselves had not been renewed or re-painted over a considerable period of time. The state of the woodwork demonstrated a lack of maintenance or neglect on the part of the Tenant. Since the guttering alterations were necessary as part of the tenant improvement, it was also subject to the same obligation to repair and renew, which is to say, it fell on the Tenant. The porch structure itself was lightweight and so was a contributing factor to its current state. It has deteriorated more quickly than a sturdier structure would have done.

In relation to the blocked drain, the Property had been inspected on 24 January 2017 and then again on 24 February 2017. The drain had been unblocked in the interim and was functioning as at 30 January 2017. He accepted the Tenant's evidence that the drain had become blocked again within a period of two weeks from that date and that it was blocked at the time of the inspection. Part of the issue appears to be in relation to the communication as Mr Ireland had been unaware that notification had been made directly to the Landlord on 7 March 2017 in relation to this issue, although he did not dispute that this had been done.

Incidentally, the septic tank serving the Property is due to be drained at the end of June 2017. The Property had previously been the subject of a decision in 2013 by the Private Rented Housing Panel (predecessor to the present Tribunal) which had resulted in the issue of a Repairing Standard Enforcement Order ("RSEO"). The RSEO has not been complied with, but Mr Ireland was still involved in dealing with the remaining matters outstanding in relation to it. As a consequence of the failure to comply with the RSEO, a Rent Relief Order is currently in place.

Summary of the issues

12. The issues to be determined are (a) whether the Tribunal has jurisdiction to entertain the application or whether the repair and maintenance of the porch is purely a matter for the Tenant and if so, (b) whether the Landlord has met his obligation to comply with Repairing Standard in respect of the Property as required by section 14(1) of the Act. The particular aspects of this issue to be determined by the Tribunal are as detailed above.

Findings of fact

13. The Tribunal finds the following facts to be established:-

- The tenancy was specifically stated to be a short tenancy in terms of the Rent (Scotland) Act 1984. It commenced on 20 June 1985

for a period of one year but continued by operation of tacit relocation until the present date.

- The original Landlords were stated to be Mr and Mrs Leopold Seymour and Messrs Hugh and Charles Seymour. The original tenants were stated to be Mr and Mrs David Binns.
- Since 1985, the Landlord has become Mr Hugh Seymour as successor to his parents, Mr and Mrs Leopold Seymour, and the Tenant has become Miss Carol McMillan as successor to Mr and Mrs David Binns. The Tenant's previous married name was Binns as confirmed by response to a Direction issued by the Tribunal on 7 April 2017.
- The Tenant has notified the Landlord whether directly, or indirectly through Mr Ireland, of the repair issues affecting the Property.

The inspection of the Property revealed the following:

- The Property is a cottage within the Stobo Estate which has been subject to a number of extensions.
- The porch which is the subject of the application is an infill single storey structure at the front entrance to the Property consisting of single brick thickness wall approximately 36cm high with a single glazed timber frame side under a shallow mono-pitched clear PVC corrugated panel roof. The structure sits on a concrete slab and there is no evidence of a damp proof course.
- The porch adjoins a wall of the house and is directly beneath guttering which has been altered in order to accommodate the new structure as described above.
- At the time of the inspection, the weather was dry and had been so for over a week prior to that date.
- Damp meter readings were obtained using a dual function dampness meter capable of determining levels of moisture below the surface and deeper within building materials. This revealed that the floor slab was almost completely saturated and the internal wall adjoining the main part of the cottage registered below surface readings of between 20-30% indicating penetrating dampness.
- The door serving the porch will not close properly as the wall structure is leaning outwards. The integrity and safety of the porch structure is in doubt.
- There is no threshold plate in the door opening leading into the porch with the result that water ingress is also possible from this source and the underside of the door is also exposed to water damage.
- The pitch of the porch roof is very shallow which has probably also contributed to damp within the porch area. Prevailing winds would be able to drive rain water into the porch between the leading roof edge and the top of the window frame. The porch roof has been mortared into place at its junction with the side wall of the house. This is an ineffective and inappropriate construction method to ensure a waterproof and weatherproof bonding arrangement. The same applies to the electrical conduit.

- The wood frame in the glazed area of the porch and timber framed sections of the door are completely rotten and probably beyond reasonable economic repair.
- The standard of maintenance has been very poor consistent with the evidence led at the hearing.
- The drain to the rear of the property adjoining the kitchen is blocked.
- A septic tank is located approximately 50 metres from the house at the foot of an adjoining sloping field. Removal of the manhole cover at the rear of the Property indicated that drainage may be imminently required.

14. A schedule of photographs taken at the inspection is appended to this decision.

Reasons for the decision

15. In relation to the issue of jurisdiction, the lease between the parties make it clear that the contract between the parties is a private residential tenancy agreement. It is a house let for human habitation in terms of section 12 of the 2006 Act. In terms of section 194(1)(b)(ii) of the Act, the term "house" includes "any yard, garden, garage, out-house or other area or structure which is, or which is capable of being occupied or enjoyed together with the living accommodation."
16. The tenant gave evidence that she enjoyed use of the porch in conjunction with the main living accommodation comprising the cottage. No authority was provided to the Tribunal to support the contention that the porch, being a tenant improvement with no associated adjustment in rent, rendered the porch as being solely the Tenant's responsibility to maintain and repair. Nor could the Tribunal independently find any such authority. Such a proposition might have had some foundation at common law in the case of an improvement which was capable of being removed from the Property at the end of the lease. However, the evidence demonstrated that this is not the position in relation to the present application.
17. The porch became part of the structure of the Property when it was created in or about 1987 and is part of the subjects which were let in terms of the Act. It is therefore subject to the Repairing Standard and the landlord's obligation in terms of sections 13 and 14 of the Act respectively. The challenge to the Tribunal's jurisdiction is accordingly rejected. The obligation to repair and maintain the porch falls to the Landlord.
18. In relation to the substantive issues: it is a matter of agreement that the porch is not in a satisfactory state of repair; it is also a matter of agreement that the drain to the rear of the Property adjoining the kitchen is blocked. The Tribunal further finds that in relation to these two matters, the Property does not meet the Repairing Standard in terms of section 13(1)(b) of the Act.

Decision

19. The Tribunal accordingly determined (a) that the Tribunal has jurisdiction to consider the application and (b) that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act in respect of sections 13(1)(b) of the Act. It is therefore obliged in terms of section 24(2) of the Act to issue a RSEO.
20. The decision of the Tribunal was unanimous.

Right of Appeal

21. **A landlord or tenant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

22. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

M O'Carroll

Signed

Date: 19 May 2017

Legal Member and Chair

This is the schedule referred to in the foregoing decision. - Chair

Housing and Property Chamber
First-tier Tribunal for Scotland



Schedule of Photographs

West Lodge, Stobo, Peebles, EH45 8NX

Case Reference:	FTS/HPC/RP/17/0014
Surveyor:	Nick Allan (Ordinary member)
Date of inspection:	10/05/2017
Time of inspection:	10.00 am
Weather conditions:	Clear and bright



Photo 1 – The approach to the cottage from the Castle grounds



Photo 2 – The rear porch



Photo 3 – Rainwater pipe repairs



Photo 4 – Water damage/staining



Photo 5 – Rainwater drain



Photo 6 – Supporting wall and doorway



Photo 7 – Internal roof detail



Photo 8 – Pipe and conduit detail



Photo 9 – Mortared roof joint



Photo 10 – Vulnerable roof finish



Photo 11 – Overflowing drain

Nick Allan FRICS
 Surveyor – Ordinary Member
 First-tier Tribunal (Housing and Property Chamber)
 19th May 2017

