

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

**Chamber Ref: FTS/HP/RP/17/0165**

**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 4<sup>th</sup> August 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:-

- i. 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 the Act;

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

- a) To repair or replace the picket fence bordering the garden of the property to ensure that it functions as a secure boundary fence to the property;

The tribunal order that the works specified in this Order must be carried out and completed within the period of **six weeks** 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 preceding page(s) are executed by Mary-Claire Kelly, solicitor, Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE, chairperson of the tribunal at Edinburgh on 4/8/2017 before this witness:-

Mary-Claire Kelly

\_\_\_\_\_ witness

chairperson

LESLIE ANNE LEITCH name in full

THISTLE HOUSE, Address

91 HAYMARKET TERRACE,

EDINBURGH, EH12 5HE

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**The Parties:-**

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

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (the "Act") in relation to the property concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The tribunal consisted of:-

Mary-Claire Kelly, Chairing and Legal Member

Greig Adam, Ordinary Member

## Background

1. By application received on 25 April 2017, the Tenant applied to the First-tier Tribunal (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.
2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraph of section 13 (1) of the Act:  
*(b) 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;*
3. The Tenant specified in the application that the said failure was established due to a failure to clear a blocked kitchen drain and structural problems in connection with the porch to the property including overflowing guttering.
4. The Tenant also submitted as part of the application various documents and correspondence including:
  - Various emails between the Tenant and Douglas Whitson, Scottish Borders Council from March 2017
  - Email from Michael Ireland, Walker Scott Ireland to the Tenant dated 10 April 2017
  - Typed statement from the Tenant dated 25 April 2017
  - Letter from the Tenant to the Landlord dated 25 April 2017
  - Email from the Tenant to the tribunal dated 2 June 2017
  - Various photographs of the property.
5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 21<sup>st</sup> June 2017 following a decision to refer made by the Convener of the First-tier Tribunal on 6<sup>th</sup> June 2017.

**Preliminary matter: The scope of the Hearing**

6. Two previous applications had been submitted by the Tenant in respect of the Property. An application dated 11 May 2013 to the Private Rented Housing Panel (ref: PRHP/RP/13/0019) specified a number of complaints. On 1st December 2016 the functions of the Private Rented Housing Panel transferred to the First-tier Tribunal (Housing and Property Chamber) as part of the changes introduced by the Tribunals (Scotland) Act 2014. A Repairing Standard Enforcement Order ("RSEO") was issued in respect of that application on 28 October 2013. The RSEO required the Landlord to carry out a number of repairs including *inter alia* a requirement to provide a supply of water of sufficient quality and quantity for normal domestic use. The RSEO required the Landlord to make good any damage caused by the carrying out of the work in terms of the Order. Following a re-inspection of the property on 24 February 2017 a Certificate of Completion was issued as the works required in terms of the RSEO had been completed.
7. A second application was submitted to the tribunal on 13 January 2017 (ref: FTS/HPC/RP/17/0014). The application form in respect of that application was identical to the application form submitted in the present case. An RSEO was issued in respect of that application on 18 May 2017. The RSEO required 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 RSEO also required the Landlord to make good any damage caused by the carrying out of the work in terms of the Order.

8. By email dated 22 June 2017 the Landlord's agent requested clarification of the scope of the present application given the similarity with the previous application. Taking the present application to consist of the application form together with the letter of notification of concerns and various other documents received from the Tenant the tribunal identified that the Tenant had raised two additional repairs which had not been the subject of the earlier applications. Specifically, in the letter of notification of concerns the Tenant had notified the Landlord of a "wooden fence garden repair" and "replacement of paving." The tribunal cannot determine matters which are before another tribunal. The tribunal cannot determine matters which have previously been adjudicated upon by another tribunal, when a reasonable period of time has not passed since that adjudication. Accordingly, the parties were advised on or around 3 July 2017 that the scope of the present hearing would be limited to the complaints in respect of repairs to the paving and repairs to the wooden garden fence.

### **Inspection**

9. The tribunal inspected the property at 10.30 am on Monday 24 June 2017. The Tenant was present at the inspection. The Landlord and his wife, Georgina Seymour were also present. Photographs were taken by the tribunal during the Inspection. Copies of the photographs are attached as a schedule to this Statement of Decision.

### **Hearing**

10. Following the inspection the tribunal held a hearing at Peebles Burgh Hall, High Street, Peebles EH45 8AG at noon on the same day. The Landlord and his wife Georgina Seymour attended the hearing. The Tenant was not present.

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

The Landlord is the sole owner of the property. The Tenant resides alone in the property. She has resided in the property since 1985. She had originally occupied the property as a joint tenant with David Binns. At that time the Tenant was known as Carol Binns. She subsequently changed her name to Carol McMillan.

Michael Ireland from Walker Scott Ireland acts as the Landlord's agent in respect of the tenancy. A letter dated 21 July 2017 from Michael Ireland to the tribunal is an accurate summary of the Landlord's position in relation to the repairs.

The Landlord had previously agreed to carry out repairs to replace the paving where it had been dug up to carry out the works necessary to replace the water supply and also to repair the drain to the kitchen. The area of repair was limited to an area surrounding the drain to the rear of the kitchen. The Tenant had told Michael Ireland that she would obtain a quote to carry out the works to the paving. No quote had been provided and the Landlord had taken no steps to carry out the repair. The Landlord thought that the paving in its present condition was in keeping with the paving around the property in general and paving found at similar country properties.

The Landlord's agent had begun the process of repairing the area of picket fence bordering the property's garden. A number of fence posts had been erected. The Tenant had placed netting between the posts. The Landlord had asked, through his agents that the netting be taken down by the Tenant as the Landlord was concerned that the Tenant would be unhappy if the netting was removed without her consent. The Landlord was unable to complete the work of erecting the fence without the netting being removed.

The Landlord could make arrangements for the fence to be repaired without access to the property as it would be possible to repair the fence from the lane which bordered the property.

Relations between the Landlord and the Tenant were difficult. The Tenant would not allow any tradespeople to carry out repairs unless she had been given 48 hours notice. The Landlord accepts that repairs to the fence and the area of paving require to be carried out however the problems have arisen due to issues regarding the practicalities of accessing the property and carrying out the works.

### **Summary of the issues**

12. The issues to be determined are (a) the extent to which the tribunal can completely consider the application in light of the two previous applications in respect of the property and (b) whether the property meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Act, in respect of those parts of the application which the tribunal can competently determine. The focus of the tribunal's investigation related to the complaints as specified at paragraph 8 above.

### **Findings of fact**

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

- a) The tenancy purports to be a short tenancy in terms of the Rent (Scotland) Act 1984. The initial term of the tenancy was from 20 June 1985 to 19 June 1986. Thereafter the tenancy continued by tacit relocation.
- b) 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.
- c) Hugh Seymour is the present Landlord as successor to the original Landlords. Carol McMillan, formerly known as Carol Binns became the sole tenant after David Binns moved out of the property.



- d) The property is a cottage within the grounds of Stobo Estate.
- e) An area of paving located next to the kitchen drain was removed to allow repairs to be carried out. The area was first disturbed to allow for repairs to the water supply in the property as required by an RSEO issued on 11 May 2013 under tribunal reference prhp/rp/13/0019
- f) The same area of paving was subsequently disturbed to allow for repairs to be carried out to the kitchen drain as required in terms of the RSEO issued on 18 May 2017 under tribunal reference fts/hpc/rp/17/0014.
- g) The area of picket fence bordering the garden to the property is in a poor state of repair. The wood was rotten and the fence was starting to fall down.
- h) A number of wooden posts have been erected alongside the existing picket fence. Netting has been placed between the posts.

#### **Reasons for the decision**

14. The tribunal found that the complaint in relation to repairs to an area of paving set out in the application concerned the making good of damage caused to the paving as a result of works carried out to replace the water supply in terms of the RSEO issued on 28 October 2013 and works to unblock the drain to the rear of the property in terms of the RSEO issued on 18 May 2017. A completion certificate had been issued in respect of the earlier RSEO on 24 February 2017. The tribunal determined that the complaint regarding paving was therefore the subject of previous applications. The issue of damage caused to the paving by the replacement of the water supply had already been adjudicated by a previous tribunal. The issue of damage caused to the paving during the course of repairs to the kitchen drain was currently before another tribunal. The tribunal could not therefore competently determine the complaint relating to paving repairs.
15. The tribunal noted that it was accepted by the Landlord that the area of picket fence bordering the garden area was in a poor state of repair. The Landlord had erected several fence posts. This did not constitute an adequate repair. Accordingly the tribunal considered that there was a breach of the repairing

standard in respect of section 13(1)(b) of the Act. The tribunal considered that there were no difficulties with access to carry out repairs to the fence as the Landlord accepted that the repairs could be carried out from the land adjacent to the property which was also owned by him.

### **Decision**

16. The tribunal determines that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.
17. The tribunal proceeded to make a repairing Standard Enforcement Order as required by section 24(1) of the Act.

### **Right of Appeal**

18. **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.**
19. 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.

Signed:

Mary-Claire Kelly, Chair and Legal Member, 4<sup>th</sup> August 2017



**PROPERTY AT WEST LODGE,  
STOBO PEEBLES, EH45 8NY  
("THE PROPERTY")**

Chamber Ref: FTS/HP/RP/17/0165

# **SCHEDULE OF PHOTOGRAPHS**



1. General view of property.



2. View of bulk storage bags over paving.



3. Close view of paving.



4. Close view of paving.



5. View of paving below bulk bags.



6. View of timber fencing at boundary.





7. Close view of defective timber fencing and decay.



8. 5Close view of defective timber fencing.



9. Retrospective timber post installation.