

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 60(5) of the Housing (Scotland) Act 2006

CHAMBER REF:PRHP/RT/16/0254

Property at Addiewell, Glasgow Road, Sanquhar, DG4 6BZ being the subjects registered in the Land Register of Scotland under Title Number DMF 17696 ('the Property')

Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ('the Third Party Applicant')

Michael John Monk and Susan Anne Monk residing at 174 Liverpool Road, Hutton, Preston, PR4 5SL represented by Ober Estates, Knockburnie Farm, Dalleagles, New Cumnock, KA18 4QP ('the Landlords')

Ms Linda Frances Hurle residing at Addiewell, Glasgow Road, Sanquhar, DG4 6BZ ('the Tenant')

First-tier tribunal for Scotland (Housing and Property Chamber) ('The Tribunal') comprising: Jacqui Taylor (Legal Member) and Andrew Taylor (Ordinary Member), replacing Mike Links (Ordinary member) on 6th July 2017.

1. The Tribunal, formerly the Private Rented Housing Committee, issued a Repairing Standard Enforcement Order dated 12th September 2016 ('RSEO') in respect of the Property which required the Landlords to :-

'1. Repair or replace the defective roof covering of the garden shed.

2. Exhibit to the PRHP Administration current and compliant EICR and PAT certificates confirming that the electrical installations in the Property and the electric fire in the Property is safe and in proper working order and that the smoke and heat detectors are in proper working order and comply with the repairing standard.

3. Exhibit to the PRHP Administration a current and compliant gas safety certificate for the Property.'

2. The Tribunal ordered that the works specified in the RSEO were to be carried out and completed by 15th October 2016.

3. On 26th October 2016 Mike Links an Ordinary Member of the Tribunal carried out an inspection of the Property to determine if the required works had been carried out. His reinspection report has been previously produced to the parties with the

Tribunal's decision dated 12th January 2017. His report stated that item 3 of the RSEO had been complied with but items 1 and 2 of the RSEO were outstanding.

5. On 10th January 2017 the Tribunal held a hearing in Sanquhar Town Hall to determine if the terms of the RSEO had been complied with and if they had not been complied with whether a Rent Relief Order should be made. They determined that item 3 of the RSEO had been complied with and items 1 and 2 of the RSEO had not been complied with and proceeded to make a Rent Relief Order in terms of section 27 of the Act. They reduced the rent payable under the tenancy by 75%. They also served a notice of the failure on the Local Authority.

6. On 27th January 2017 Robert Laurie, the Landlords' agent sent the Tribunal in date copies of the Gas Safety Certificate, EICR certificate and PAT testing certificate.

7. On 28th May 2017, Mike Links, an Ordinary Member of the Tribunal, carried out an inspection of the Property to determine if the outstanding works had been carried out. His reinspection report has been previously produced to the parties with the Tribunal's decision dated 10th July 2017. His report stated:

7.1 In relation to item 1 of the RSEO the garden hut had been removed.

7.2 In relation to item 2 of the RSEO an EICR, PAT certificate and Fire Detection and Fire Alarm Installation Certificate (Dwellings) had been produced. The Tenant commented on the fact that the PAT certificate did not include the Electric Fire located in the living room. The Landlord checked the PAT certificate and stated that the electric fire was not portable and did not need to be PAT tested and it was covered by the EICR certificate. The Ordinary member stated that the electric fire is fixed into the fireplace and is therefore not portable.

7.3 In relation to item 3 of the RSEO, he stated that the Gas Safety Certificate had been previously produced.

8. The Tribunal administration sent the parties a copy of the reinspection report dated 28th May 2017. The Tenant replied by letter dated 13th June 2017 advising that the replacement garden hut leaks water like a sieve. She sent a further letter to the Tribunal administration dated 21st June 2017 which stated that at the time of the inspection on 26th May 2017 Mike Links had advised that the replacement shed would need to be on a like for like basis. She explained that the original shed had been almost 8 by 6 feet and the new shed isn't even 6 by 4 feet in size.

9. On 5th July 2017 Mike Links, the original Ordinary Member of the Tribunal, recused himself and Andrew Taylor was appointed as the replacement Ordinary Member of the Tribunal.

10. On 6th July 2017 Jacqui Taylor (the Legal Member of the Tribunal) and Andrew Taylor (the Ordinary Member of the Tribunal) held an inspection at the Property. The

Tenant and Robert Laurie, the Landlords' representative, attended the inspection. The Third party did not attend and was not represented. The Tribunal inspected the replacement garden shed. The shed is a metal shed with a wooden base. It measures 1 metre by 1.82 metres. Andrew Taylor placed portable ladders at the side of the garden shed and asked the Tenant to fill his watering can with water explaining that he wished to pour water on the roof of the garden shed to determine if it is watertight.

Andrew Taylor then poured water on the roof of the garden shed. Water dripped through the roof onto the wooden base of the shed. The Tribunal then inspected the inside of the shed. The shed was empty. They saw that there were gaps at both floor and eaves level through which daylight could be seen.

Photographs were taken during the inspection and have been previously produced to the parties with the Tribunal's decision dated 10th July 2017.

11. Following the inspection and hearing on 6th July 2017 the Tribunal determined that the RSEO should be varied as follows.

First, the following works had been satisfactorily completed (the original numbering of the RSEO was used):

2. Exhibit to the PRHP Administration current and compliant EICR and PAT certificates confirming that the electrical installations in the Property and the electric fire in the Property is safe and in proper working order and that the smoke and heat detectors are in proper working order and comply with the repairing standard.

3. Exhibit to the PRHP Administration a current and compliant gas safety certificate for the Property.'

The Tribunal accepted that the EICR, PAT certificate and Fire Detection and Fire Alarm Installation Certificate (Dwellings) produced were compliant. They also accepted that the condition of the electric fire was covered by the EICR certificate. They also accepted that the Gas Safety Certificate produced to Mike Links, the original Ordinary Member of the Tribunal, on 26th October 2016 was at that time current and compliant.

Second, in relation to item (1) of the RSEO the Tribunal determined that this item was varied as follows:

*1. The Landlord is required to replace the garden shed with a garden shed that is wind and watertight and complies with the repairing standard.
The Tribunal order that the works must be carried out and completed by 30th August 2017.*

12. On 11th November 2017 Andrew Taylor an Ordinary Member of the Tribunal carried out a reinspection of the Property to determine if the replacement garden shed was wind and watertight. His reinspection report dated 11th October 2017 is

annexed and executed as relative hereto. His report concluded that the garden shed was wind and water tight.

13. The Tribunal administration sent the parties a copy of the reinspection report dated 11th October 2017.

13.1 The Tenant provided written representations which stated:

'The shed leaks and it is open to the elements. It is not windproof. It does not meet the repairing standard. The panel joints have not been sealed as the Ordinary member claims in his report.'

13.2 The Third party provided written representations which stated *inter alia*:

'The shed in the garden is a 6ft by 4 ft, Deuba make, galvanised steel, garden tool shed with sliding doors sitting on a wooden base. It is sited perpendicular to the shed it replaced on the same site and appears considerably smaller. Whilst there appears to be no sign of defective installation the underside of the roof was extremely wet and the floor below was wet as a result of water falling from the underside of the roof.'

Conclusion

In its current condition if personal possessions were placed in the tool shed they would be damaged due to water penetration as a result of water dripping from the underside of the roof. The shed does not appear to have been replaced on a like for like basis and the replacement too shed is not fit for purpose.'

14. On 1st February 2018 Jacqui Taylor (the Legal Member of the Tribunal) and Andrew Taylor (the Ordinary Member of the Tribunal) held an inspection of the garden shed at the Property. The Landlord attended the inspection. The Tenant was in the Property but chose not to attend the inspection. The Third party did not attend the inspection. Andrew Taylor placed portable ladders at the side of the garden shed and filled a watering can with water. He then poured water on the roof of the garden shed. Water did not drip through the roof. The Tribunal then inspected the inside of the shed. The shed was empty. They saw that there was condensation droplets on the underside of the tin roof but no water had entered the shed as a result of pouring water on to the roof of the shed. Photographs taken during the inspection are annexed and executed as relative hereto.

15. Following the inspection the Tribunal held a hearing in Sanquhar Town Hall to determine if the garden shed is wind and watertight and if it complies with the Repairing Standard.

The Landlords attended the hearing. The Third party did not attend the hearing and were not represented. Linda Hurle, the Tenant did not attend the hearing. Following the inspection of the Property the chairperson of the Tribunal spoke to the Tenant and asked if she would be attending the hearing. She advised that she was not sure if she would be attending. Thereafter the police arrived at the Property and spoke to

the Tribunal members. The chairperson of the Tribunal obtained an assurance from the police officer that she would advise the Tenant that she was entitled to attend the hearing. Due to this assurance the Tribunal proceeded with the hearing, notwithstanding the absence of the Tenant.

The chairperson of the Tribunal asked the Landlords to make representations as to whether or not they considered that the garden shed was wind and water tight and complied with the Repairing Standard, as required by the RSEO.

Mr Monk advised the Tribunal that a new shed had been installed. Condensation on the underside of a tin shed roof is natural. Any tools placed in the shed would be adequately protected. The shed is not a house and a lower standard will be appropriate. He advised that he considered the shed to comply with the Repairing Standard.

Decision and Reasons

16. The Tribunal being satisfied that (First) no water entered the garden shed following the watering can test carried out at the inspection and (Second) the condensation on the underside of the tin roof did not prevent the garden shed from being wind and watertight determined that the RSEO and rent Relief Order should be discharged as the following works had been **satisfactorily completed**:

'The Landlord is required to replace the garden shed with a garden shed that is wind and watertight and complies with the repairing standard.'

Right of Appeal

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.

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

J Taylor

Signed
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Chairperson 

Date 6th February 2018



Addiewell, Glasgow Road, Sanquhar, GG4 6BZ
PRHP/RT/16/0254
Schedule of Photographs - Inspection Date 1st February 2018
Weather – Frosty, dry and sunny.

J Taylor



1. The property.



2. Replacement shed – front elevation



3. Roof joints



4. Roof - condensation



5. Condensation on floor



6. Condensation on floor