

Housing and Property Chamber
First-tier Tribunal for Scotland



Variation of the Repairing Standard Enforcement Order
Ordered by the First-tier Tribunal for Scotland
(Housing and Property Chamber)
In terms of Section 25 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')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Andrew Taylor (Ordinary Member).

NOTICE TO

The said 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 Tribunal in their decision dated 10th July 2017 have determined to vary the Repairing Standard Enforcement Order dated 12th September 2016.

Consequently the said **Repairing Standard Enforcement Order is VARIED as follows:**

First, the following items of the RSEO should be revoked as these items have been satisfactorily completed:

Item 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.

Item 3. Exhibit to the PRHP Administration a current and compliant Gas Safety Certificate for the Property.

Second. Item 1 of the RSEO is varied as follows:

'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.'

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

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 and landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement 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 typewritten on this and the preceding page are subscribed at Irvine on 10th July 2017 by Jacqui Taylor, Chairperson of the Tribunal in the presence of the witness KEIRSTEN BYRNE, 65 High Street, Irvine.

J Taylor

Signed.....
Chairperson
.....
Irvine

..... Date 10th July 2017

.....witness: KEIRSTEN BYRNE, 65, High Street,

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of the Decision of the Tribunal under sections 25 and 26(1) 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.

Background

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 re-inspection 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 Sanguhar 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. These certificates are annexed and executed as relative hereto.

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 re-inspection report is annexed and executed as relative hereto. 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 re-inspection 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 sectional 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.

Robert Laurie asked Andrew Taylor if he had a health and safety risk assessment for his proposed inspection and stated that if there was an accident during this inspection the Landlord would not be liable. Andrew Taylor explained that the health and safety assessment was held in the Tribunal office and acknowledged that the inspection was carried out at the Tribunal's risk.

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 floor level eaves level and between roof sections through which daylight could be seen.

Photographs were taken during the inspection and are attached as a Schedule to this decision.

11. Following the inspection the Tribunal held a hearing in Sanquhar Town Hall to determine if the terms of the RSEO had been complied and if the RSEO should be varied.

Linda Hurle, the Tenant attended. Robert Laurie, the Landlords' representative attended. The Third Party did not attend and was not represented.

Jacqui Taylor, the chairperson of the Tribunal, explained to the parties that in terms of section 25(1) of the Housing (Scotland) Act 2006 The Tribunal may vary the RSEO in such manner as they consider reasonable. As the Landlord had removed the original garden shed they advised the parties that they intended to amend the terms of clause 1 of the RSEO as follows:

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

She invited the parties present to make representations regarding the proposed variation.

Linda Hurle, the Tenant, explained that she was not happy with this variation. She considered that the garden shed should be like for like with the original shed.

Robert Laurie explained that there is no requirement in the regulations for the replacement shed to be a like for like shed.

The Tenant explained that she had usually stored garden materials and plants in the shed. She advised that she did not have a lawn mower as there is no grass at the Property. She had to store the items that she had kept in the garden shed in a friend's shed since the original shed had been removed. When asked how many items she had stored in the shed she did not give a specific answer. She also explained that the Landlord had previously stored his own items in the shed as well.

Robert Laurie advised that whenever he inspected the original shed the Landlord's golf clubs were in the shed. He had inspected the shed perhaps three times during the Tenancy.

Linda Hurle, the Tenant, advised that she had not been aware of these inspections taking place.

The Tribunal adjourned while they considered the parties submissions. Jacqui Taylor, chairperson of the Tribunal, advised the parties that on a balance of reasonableness the new shed is a reasonable replacement for the original garden shed, provided that it is rendered wind and watertight.

She advised the parties that they determined that Clause 1 of the RSEO was varied to state:

'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 invited the parties to advise if they considered the replacement garden shed to be wind and water tight.

Linda Hurle, the Tenant made no comment.

Robert Laurie, the Landlord's representative explained that he had asked his maintenance man to repair the garden shed that morning.

The Tribunal then invited the parties to make representations as to whether clause 2 of the RSEO had been complied with.

Linda Hurle, the Tenant explained that she was not happy with the original wording of the RSEO in relation to the electric fire. Jacqui Taylor, the chairperson of the Tribunal explained that as she had not lodged an appeal at the time she was sent the RSEO the Tribunal were not able to consider this point.

Robert Laurie, the Landlords' agent, explained that the required certificates had been produced to the Tribunal. He emphasised that the electric fire is hardwired into the system and consequently there is no requirement for a PAT certificate for the electric fire. He also explained that the Property is only 10 years old.

Jacqui Taylor, the chairperson of the Tribunal, then provided Linda Hurl, the Tenant, a copy of the email that the Landlord's agents had sent to the Tribunal administration dated 4th July 2017. The other parties had been sent a copy by email. However the Tribunal administration did not have an email address for her she had not been provided with a copy prior to the hearing. She commented that the gas safety certificate is now out of date and a new one had not been provided. The email partly concerned matters relating to access. Jacqui Taylor explained that the Tribunal could not discuss this further. A valid gas safety certificate had previously been provided.

12. The parties made no representations in relation to the Rent Relief Order.

Decision and Reasons

13. 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 is 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 safety and 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.*

In making this variation the Tribunal had taken account of the fact that the Tenant had not had exclusive use of the original garden shed and therefore considered the fact that the new shed was smaller to be reasonable.

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.

Signed
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Chairperson

Date 10th July 2017



Addiewell, Glasgow Road, Sanquhar, GG4 6BZ
PRHP/RT/16/0254
Schedule of Photographs - Inspection Date 6th July 2017
Weather – Dry and overcast.



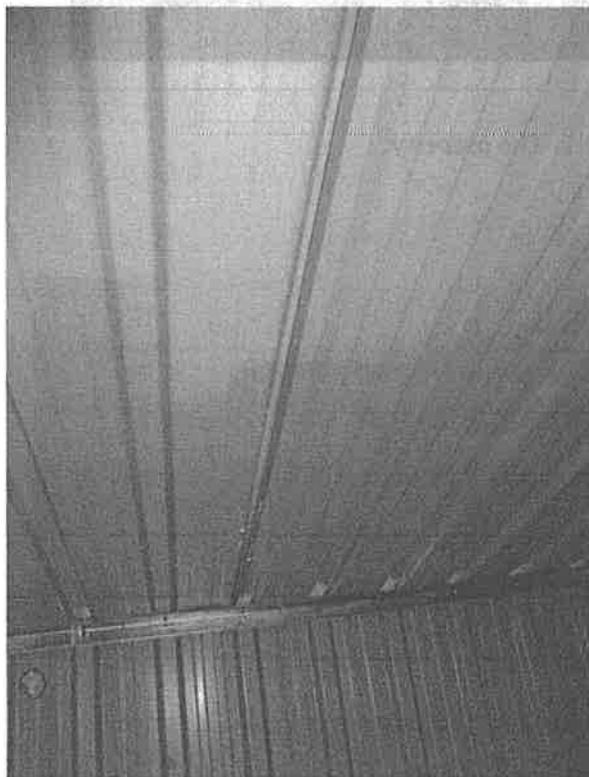
1. The property.



2. Replacement shed – front elevation



3. Replacement shed – side elevation



4. Replacement shed – gaps at panel joints



5. Replacement shed – gaps at panel joints



6. Replacement shed – gaps at floor junction and water puddling on floor