

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION of the Housing and Property Tribunal under  
Section 26 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/17/0045**

**Ground Floor Left, 87 Dens Road, Dundee, DD3 7HU  
("the Property")**

**The Parties:-**

**Miss Danielle Mackay, formerly residing at the Property  
(hereinafter referred to as "the Tenant")**

**Mr Paul Paterson, 51 Park Avenue, Enfield, EN1 2HH  
("the Landlord")**

**Tribunal Members:-**

**Graham Harding (Legal Member)  
Geraldine Wooley (Ordinary Member)  
("the tribunal")**

### **DECISION**

The tribunal having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order ("RSEO") dated 25 April 2017 in terms of Section 26 (1) of the Housing (Scotland) Act 2006 ("the Act") and the subsequent variation of the RSEO determined by the tribunal on 31 August 2017 and taking account all of the available evidence determines that the Landlord has failed to comply with the RSEO. The tribunal determined that a notice of that failure should be served on the local authority in whose area the house is situated in terms of Section 26 (2) (a) of the Act. The decision of the tribunal is unanimous.

### **BACKGROUND**

1. By application dated 06 February 2017 the Tenant applied to the tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act. An inspection and hearing took place on 05 April 2017 following which the tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Landlord did not attend but was represented at this hearing by Mr Afzel Mohammed of A & S Properties (Dundee). As the Landlord had failed to ensure that the

house met the repairing standard in terms of Section 13 (1) (a) of the Act the tribunal then imposed an RSEO. The property was thereafter the subject of a re-inspection and further hearing on 31 August 2017 attended by the Landlord. Following the hearing the tribunal determined that the RSEO should be varied to allow the landlord to complete the works still required on the property to meet the repairing standard. Reference is made to the decisions of the tribunal and RSEO and variation thereof dated 25 April 2017 and 31 August 2017.

2. The RSEO required the Landlord to undertake works as were necessary for the purposes of ensuring that the house concerned met the repairing standard and that any damage caused by the carrying out of work in terms of the said Order was made good. Following the variation of the RSEO the tribunal required the Landlord to:-
  - (a) Carry out such repointing to the brick work at the rear of the property as may be required to put it in a reasonable state of repair;
  - (b) To carry out such further repairs to the brick work at the rear of the property as may be required to prevent the ingress of moisture to the bedroom.

The tribunal ordered that the works specified in the Order be carried out and completed by 31 October 2017.

## **RE-INSPECTION AND REASONS FOR DECISION**

3. A re-inspection of the property took place on 06 December 2017 attended by the Ordinary Member of the tribunal. The Landlord did not attend this inspection. A copy of the re-inspection report was issued to the Landlord on 16 January 2018 with responses required by 31 January 2018 and is attached.
  - (a) The re-inspection revealed that no further remedial pointing to the rear external wall had been carried out but parts of the damaged brick work had been treated with a waterproof coating. The work was of a poor standard and inadequate to remedy the damp problems.
  - (b) Although the problems of damp in the kitchen had appeared to be resolved at the inspection on 31 August 2017 there was a reoccurrence of damp in the kitchen ceiling and walls at the further inspection.
  - (c) Some work had been carried out to the rear bedroom with part of the old damp plasterwork hacked off and replaced by wallboard with an aluminium vapor barrier lining. No decoration had taken place and the wall remains significantly damp. The property was unheated so the high damp meter readings may

have indicated unusually slow drying out. However, given that the damp meter readings in the wallboard were higher than in the plaster work at the previous inspection, it was possible that the external damp treatment and the internal wall board lining have trapped moisture within the wall and extenuated the effect of condensation in the cold external wall.

4. By response dated 29 January 2018 the Landlord suggested that the damp meter readings indicated that the wall was drying. The landlord said that he had been assured by Mr Shaun Connell who had carried out the remedial works that they had been carried out to a good standard. As a result the Landlord had assumed that everything was in order. However it was evident that the Landlord had not inspected the works himself.
5. The period within which the varied RSEO required the work to be completed ended without the property being brought up to the repairing standard. It was the Landlord's duty to ensure that any tradesmen instructed by him carried out the remedial works to the standard required. In the tribunal's view, the reasons given by the Landlord in his response dated 29 January 2018 did not justify affording the Landlord further time and opportunity to comply fully with the RSEO. Accordingly the tribunal determined that the Notice of Failure be served upon the local authority in whose area the property is situated.
6. Whilst the Tenant has vacated the property, the tribunal were aware that the Landlord had allowed Mr Shaun Connell to reside in the property having been told that Mr Connell was not paying any rent. The tribunal were subsequently advised that the property is no longer occupied. The Landlord is reminded that the property must not re-let whilst the RSEO remains in force.
7. The tribunal proceeded to serve a notice on the local authority.
8. The tribunal draws the Landlord's attention to Section 28 (1) of the Act which states that a Landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence.

## **FINDINGS OF FACT**

9. The Landlord has failed to comply with the varied RSEO of 31 August 2017.

## **RIGHTS OF APPEAL**

10. In terms of Section 46 of The Tribunal (Scotland) Act 2014 a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal of 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 and where the Appeal is abandoned or finally determined by upholding 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.

G Harding

Signed .....

Graham Harding, Legal Member

Date ..... 16th February 2018 .....

# Housing and Property Chamber First-tier Tribunal for Scotland



## Re-inspection report

**Property:** Ground floor left 87 Dens Rd Dundee DD3 7HU  
**Ref no:** prhp/rp/17/0045  
**Surveyor:** Geraldine Wooley MRICS  
**Access:** 6/12/17 at 10am  
Weather – overcast and cold  
**Attendees:** Sean Connell

**General comments:** some work has been carried out at the property but to a poor standard and inadequate to address the issues raised in the RSEO. Problems of damp/water penetration have reoccurred in the kitchen.

### RSEO: works required

- (a) To carry out such repointing to the brick work at the rear of the property as may be required to put it in a reasonable state of repair;
- (b) To repair or replace the plaster work in the kitchen and decorate thereafter;
- (c) Redecorate the kitchen and rear bedroom to remove signs of damp;
- (d) Carry out such further works as may be required to prevent as far as possible access to the property by rodents;
- (e) Repair or replace the rear bedroom window so that it operates properly and is wind and water tight and to inspect the other windows in the property to ensure that they are in reasonable condition and carry out any necessary repairs or replace if required.

### Works in RSEO undertaken:

As reported at the reinspection of 31/0817, the following items in the RSEO have been addressed:

- d) There was no significant evidence of rodent infestation
- e) The rear bedroom window was found to be in good working order and operating satisfactorily.

### Works in the RSEO outstanding:

- a) No further remedial pointing to the rear external wall has been carried out, but parts of the damaged brickwork have been treated with a waterproof coating. But the work is of a poor standard and inadequate to remedy the damp problems (see photo sheet 1).
- b) Although the problems of damp in the kitchen appeared to be resolved in the inspection of 31/08/17, there was a reoccurrence of damp in the kitchen ceiling and walls at this inspection. Mr Connell indicated that this may be due to a leak from the flat above, but nevertheless this item in the RSEO remains outstanding (see photo sheet 3).

c) Some work has been carried out to the rear bedroom (see photo sheet 2), with part of the old damp plasterwork hacked off and replaced by wall board with an aluminium vapour barrier lining. No decoration has taken place, and the wall remains significantly damp. The flat is unheated so the high damp meter readings may indicate unusually slow drying out. However, given that the damp meter readings in the wall board are higher than in the plasterwork at the previous inspection, it is possible that the external damp treatment and the internal wall board lining have trapped moisture within the wall and accentuated the effect of condensation in the cold external wall.

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G/L 87 Dens Rd Dundee DD3 7HU

Reinspection 6 December 2017

## 1) External causes of damp: condition of kitchen/bedroom wall



As at 31/04/17 – some repointing carried out, but the standard and extent of the work is poor



As at 6/12/17 – parts of the damaged brickwork has been treated with a waterproof coating, but the work is of a poor standard



## 2) Damp in bedroom wall



As at 31/08/17: high damp meter readings were found in the rear bedroom wall to the right of the window



As at 6/12/17: plaster stripped and replaced by new aluminium lined wall board. The plasterwork is still drying out, but high damp meter readings were also found in the new wall board.

### 3) Damp in kitchen ceiling



As at 31/08/17 – no evidence of damp, and some repainting has taken place



As at 6/12/17 – evidence of damp has returned with further damage to the ceiling and decorations (may be due to a leak from the flat above).