

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



**Decision of the Housing and Property Chamber of the First Tier Tribunal for  
Scotland  
under Section 24 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Housing and Property Chamber of the First  
Tier Tribunal for Scotland

(Hereinafter referred to as “the Tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: FTS/HPC/RP/18/0339

**Re : 2 Gallowhill, Crieff PH7 3HF (also known as “Dunottar”, King Street, Crieff  
PH7 3RR) (“the Property”)**

**Title No: PTH9014**

**The Parties:-**

**Mr Arran Davies and Mrs Nicole Davies, 2 Gallowhill, Crieff PH7 3HF (“the  
Tenants”)**

**Nina Smirnoff and Fiona Anderson , 34 Campbell Drive, Larbert, Stirlingshire  
FK5 4PR (“the Landlords”) represented by Next Home Perthshire, 63 – 65  
George Street, Perth PH1 5LB**

**The Tribunal comprised:-**

Mr David Bartos	- Legal member and Chairperson
Ms Sara Hesp	- Ordinary member (Surveyor)

**Decision**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlords has complied with the duty imposed by Section 14 (1)(b) in relation to the Property concerned, and taking account of the evidence before it, determined that the Landlords had not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

The decision is unanimous.

**Background:-**

1. By application received on or about 14 February 2018, the First Tenant, acting for both Tenants, applied to the Tribunal for a determination that the Landlords had failed to comply with their duty under section 14 of the Housing (Scotland) Act 2006 to ensure that the Property met the repairing standard set out in section 13 of the Act.
2. In their application the Tenants complained that the Property failed to meet the repairing standard in that it was not in a watertight condition or in all other respects not reasonably fit for human habitation (section 13 (1)(a) of the 2006 Act). Their complaint was that the Property was not water-tight due to :
  - 1) Bathroom window not closing
  - 2) Other windows opening and closing only with difficulty
  - 3) Both bedrooms having mould growing on the carpets
  - 4) Inordinate condensation at the windows
  - 5) Crumbling of material around flue leading from wood stove

The application related to the matters which had been raised in the various written communications from the Tenants to the Landlords' agents listed below.

3. Patricia A. Pryce, a member of the Private Rented Housing Panel with delegated powers under section 21(8A) of the 2006 Act decided under section 23 of that Act to refer the application to the Tribunal. That decision was intimated to the Tenants, the Landlords and the Landlords' letting agents Next Home by letter of the Tribunal's Casework Officer dated 22 March 2018 and entitled "Notice of Referral, Inspection and Hearing". The Tribunal comprised the persons stated above. The intimation of the Notice of Referral to the Landlords and their agents included a copy of the Tenants' application to the Tribunal.
5. The date and time of the inspection of the Property and the date, time and place of the hearing was intimated to the Landlords, their agents and the First Tenant. An inspection of the Property and hearing at the Algo Business Centre, Glenearn Road, Perth PH2 0NJ was fixed for 25 April 2018 at 10.00 a.m. and 1.30 p.m. respectively.
6. The Tribunal issued a direction to the parties dated 16 April 2018 in response to which the Landlords produced at Land Certificate evidencing their ownership of the Property at the hearing. The Landlords had not been able to obtain this in time to comply with the time limit in the direction and the Tribunal allowed it to be admitted as evidence.

7. Following intimation of the Notice of Referral, the First Tenant sent an e-mail to the Tribunal stating that a window had been repaired but that there were still large amounts of condensation although an (unspecified) independent specialist had advised them that this was due to poor ventilation. The First Tenant stated that he did not wish to continue with the application unless there was a "security/health risk" at the Property. Given that the Tribunal could not give such assurance, and that the Tenants did not wish to remove their condition for withdrawal, the application continued. There was no written representation from the Landlords or their agents.

### **The Inspection**

8. The Tribunal inspected the Property on the date and time fixed. The First Tenant was present. Neither the Landlords nor their agents were present. The weather was overcast and wet. The inspection revealed that the Property is a semi-detached bungalow. The Tribunal carefully inspected the matters which were the subject of complaint.

### **The Evidence**

9. The evidence before the Tribunal consisted of:-
- The application form
  - Copy Short Assured Tenancy Agreement between the Tenants and the Landlords dated 31 August 2017
  - General Register of Sasines Search Sheet for the County of Perth applicable to 3 Gallowhill, Crieff (and also covering 2 Gallowhill, Crieff)
  - Land Certificate for Land Register title PH9014
  - Copy written messages from the Tenants to the Landlords' agents dated 28 November and 16 December both 2017 and 2 January 2018
  - Copy e-mails from the Tenants to the Landlords' agents dated 6, 9, 15 January and 9 February all 2018,
  - Copy e-mails from the Landlords' agents to the Tenants dated 18 December 2017, 4, 8, 22 January and 9 February all 2018,
  - Copy e-mails from the Tenants to the Tribunal dated 26 March and 24 April 2018
  - Invoice from Cherry Joinery to Rent Locally dated 20 December 2017
  - Survey Report & Proposal from Alliance Preservation Scotland Ltd dated 12 April 2018
  - Copy letter from Alliance Preservation Scotland Ltd to the Landlords' agents dated 13 April 2018
  - The oral evidence of the First Tenant
  - The oral evidence of the First Landlord.

### **The Hearing**

10. The Tribunal held a hearing within the Algo Centre, Perth at the time fixed for it. The First Tenant appeared. The First Landlord appeared on behalf of herself and the Second Landlord.
11. The First Tenant spoke about his wife complaining about the windows in January 2018 to the Landlords' agents. At that time it had not been possible to close the bathroom window and this was visible from the outside. This caused a security risk as well as leaving a draught. This was repaired in March after which he had contacted the Tribunal's office with the conditional withdrawal request.
12. He had seen dark growths on the carpet surfaces in both bedrooms which he had not been able to remove. He also stated that despite having the vents on the windows open, large amounts of water accumulated on the sill in the front bedroom. He had never seen such a large amount of condensation. He had run a dehumidifier machine. It had filled a tank of water in a single day. He had used the washing line outside for drying when possible other than for socks or underwear. The First Tenant accepted that plaster-board had been fitted to the external walls in the bedrooms by the Landlords following the initial complaints. However the condensation had become worse since then.
13. With regard to wood stove in the living room fireplace, one morning he had noticed that little chunks of chalky "stone" and white powder had fallen onto the stove surface. Part of the "ceiling" in the chimney which blocked it off apart from the metal flue from the stove, was hanging down. He had asked for it to be attended to. Only the previous Monday (23 April) had chimney services attended and swept the chimney and re-sealed the area around the stove flue.
14. The First Landlord indicated to the Tribunal that she had been made aware of the window issue by her agents only on 9 January 2018. Her agents had been given authority to carry out the repairs. She had not heard about the carrying out of the repairs until March 2018 when she received an invoice for the work. She was astonished at her agents' delay on this.
15. With regard to the complaints of mould and condensation, she confirmed that the Landlords had sought to deal with the matter following the first complaint in November 2017. Hence they had instructed joiners to recommend works which had been carried out. She then read from an e-mail to her from the Landlords' agents dated 29 March 2018 which stated that there was no sign of damp or poor ventilation. Nevertheless given the complaint following their earlier work, they had through their agents instructed a report on dampness which she had not yet received. The inspection had taken place the previous week, she understood.
16. With regard to the wood stove matter, they had been informed by their agents of the work on or about 29 March. The cost of the work was such

that their agents had been authorised to instruct the work but had not done so. Hence the work had been authorised on 17 April and then carried out.

17. The First Landlord added that she had been under the impression from her agents that following the repair to the windows in March that the Tenants had withdrawn their application to the Tribunal. Only following receipt of the direction less than a week before the Tribunal hearing, did they realise that the application was still live.
18. The Tribunal found both the First Tenant and the First Landlord credible in their oral evidence.
19. Following the hearing the Tribunal directed that the Landlords produce the report on dampness which they were awaiting. This report, from Alliance Preservation Scotland Ltd from an inspection dated 12 April 2018 was produced to the Tribunal by the Landlords subsequent to the hearing. It was copied to the Tenants. No comments have been received by the Tribunal on the report.

### **Findings of Fact**

20. Having considered all the evidence, including its inspection, the Tribunal found the following facts to be established:-
  - (a) On 31 August 2017 the Tenants entered into a lease of the Property from the Landlords. They took entry on 6 September 2017. The lease was for an initial duration of 6 months with a month to month continuation thereafter unless terminated. It has not been terminated. As at the inspection the Tenants continued in occupation.
  - (b) The Property is a semi-detached bungalow in Crieff. The house is built adjacent to Market Park. The front door enters into a corridor from which there is access to the living room, a front master bedroom and a rear bedroom and the bathroom. The kitchen is accessed from the living room and has a door to the back garden. At inspection the Property was in the condition set out in paragraphs (c) to (e) and (h) below.
  - (c) The windows in the Property are all double-glazed with wooden units. The window in the bathroom opens and closes freely. The left-hand window in the rear bedroom has a slight jamming but can be opened with two hands. The right-hand window in the rear bedroom and the windows in the front bedroom and living room have a little stiffness but can be opened with gentle force. There is no difficulty with the kitchen or living room windows.
  - (d) In the rear bedroom there was no mould on the carpet. On the outside wall adjacent to the former chimney breast there was some wallpaper peeling off. Investigations with a damp meter showed no damp in the

rear bedroom except for at the foot of the former chimney breast. This damp had been caused by a little water ingress through the chimney flue.

- (e) In the front bedroom there was a stain on the carpet near the front window. It was not mould and was dry. The internal window sill showed signs of extensive water staining albeit this was now dry. Investigations with a damp meter showed no damp in the front bedroom.
- (f) The internal walls in the front and rear bedrooms comprise 62mm insulation-backed plasterboard which is attached to the outer walls. These were installed in December 2017 together with the other works set out in the Cherry Joinery invoice dated 20 December 2017. Following these works condensation continued to occur in the front bedroom as described by the First Tenant.
- (g) As at 12 April 2018 dampness was found to be present in the Property as noted in the Survey Report from Alliance Preservation Scotland Ltd.
- (h) Work has been carried at the flue to the wood stove to repair the seal between it and the board blocking the chimney flue as spoken to by the First Tenant.

### **Reasons for Decision**

- 21. The Tribunal required to decide whether in respect of the complaints the Property failed to meet any aspect of the repairing standard in section 13 of the Act.
- 22. Complaints (1) and (2) related to the bathroom window not closing and the other windows opening and closing only with difficulty. The allegation was that the Property was not wind and watertight (2006 Act, s.13(1)(a)). The Tribunal found that the windows were in satisfactory working order. The position was as set out in the Tribunal's findings of fact. The First Tenant indicated at the hearing that he was satisfied with the condition of the windows. The Tribunal concluded that the property was wind and watertight in respect of the windows. There was no failure to meet the repairing standard in section 13(1)(a) of the 2006 Act.
- 23. Complaint (3) related to mould growing on the carpets in the two bedrooms. The Tribunal found that while one of the carpets was stained, there was no mould present. Accordingly there was no breach of the requirement that the Property be reasonably fit for human habitation (s.13(1)(a) of the 2006 Act).
- 24. Complaint (4) related to inordinate condensation, particularly in relation to the windows in the front bedroom. The allegation was that this inordinate condensation and resulting damp rendered the Property not reasonably fit for human habitation. In order for a dwellinghouse to be reasonably fit for human habitation it must be fit to be used in safety and with reasonable comfort.

25. The findings of the Tribunal on its inspection of the Property disclosed damp only at the base of the former chimney breast in the rear bedroom. The Tribunal did observe, however, that the Property was not rendered externally down to ground level and that there was scope for dampness arising which was exacerbated by the installation of the plaster-board in December 2017. This could account for the evidence of increased condensation from the First Tenant which the Tribunal accepted. For those reasons the Tribunal directed production of the report prepared Alliance Preservation Scotland, the damp and timber specialists instructed by the Landlords. That report, based on the specialists' survey on 12 April 2018, indicated the presence of damp in areas of the kitchen and living room as well as confirming the damp at the chimney breast in the rear bedroom.
26. In the light of this report the Tribunal took the view that the dampness and condensation which occurred in the Property meant that it was not in a state to allow it to be used in safety with reasonable comfort. For these reasons the Tribunal concluded that the Property was not reasonably fit for human habitation and that the repairing standard in section 13(1)(a) was not being met.
27. Complaint (5) related to the sealing of the flue leading from the wood burner stove into the chimney in the living room. This work has now been carried out. There was nothing in this complaint which made the Property breach the repairing standard in section 13(1)(a) (wind and watertight and reasonably fit for human habitation).

### **Decision**

28. The Tribunal determined that the Landlords had failed to comply with the duty imposed by section 14 (1) (b), of the 2006 Act in relation to the Property meeting the repairing standard as stated above in relation to complaint (4) in the respects set out above but not otherwise.
29. The Tribunal therefore proceeded to make a Repairing Standard Enforcement Order. The Tribunal took the view that the work in the Order would be sufficient to allow the Property to be used with reasonable comfort and safety. The Tribunal considered the time limit for the works. The Tribunal also took account of the extensive nature of the remedial works. In the circumstances balancing the interests of the Tenants and the Landlords the Tribunal concluded that a time limit of 4 months was appropriate.
30. The decision of the Tribunal was unanimous.

### **Re-letting prohibition**

31. The Landlords are reminded that they commit a criminal offence if:  
(a) they fail to comply with the Order without a reasonable excuse; or

(b) they re-let the Property (or enters into any occupancy arrangement for it) at any time during which the Order has effect.

- 32. It is possible that they may be disentitled to any rent from any re-letting or occupancy agreement which is a criminal offence.

**Rights of Appeal & Effect of Section 63 of the 2006 Act**

- 33. A landlord or tenant aggrieved by this decision may seek permission from the Tribunal to appeal on a point of law against this decision to the Upper Tribunal and that within 30 days beginning with the date when this decision was sent to the party seeking permission.
- 34. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Tribunal which made the decision.
- 35. Where such an appeal is made, the effect of this decision is suspended until the appeal is abandoned or finally determined.
- 36. Where the appeal is abandoned or finally determined by confirming the decision, the decision is to be treated as having effect from the day on which the appeal is abandoned or so determined.

D Bartos

Signed ..... Date: 22 May 2018.....

David Bartos, Chairperson  
T Whitelaw

Signature of Witness.

.....Date.. 22/5/18

Name of witness: TRACY WHITELAW

Address: PARLIAMENT HOUSE  
EDINBURGH  
EH1 1RF

Occupation of witness: DEPUTY CLERK.

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



**Repairing Standard Enforcement Order (RSEO)**

of the Housing and Property Chamber of the First Tier Tribunal for Scotland

(Hereinafter referred to as "the Tribunal")

Under Section 24(2) of the Housing (Scotland) Act 2006

Case Reference Number: FTS/HPC/RP/18/0339

**Re : 2 Gallowhill, Crieff PH7 3HF (also known as "Dunottar", King Street, Crieff PH7 3RR) ("the Property")**

**Title No: PTH9014**

**The Parties:-**

**Mr Arran Davies and Mrs Nicole Davies, 2 Gallowhill, Crieff PH7 3HF ("the Tenants")**

**Nina Smirnoff and Fiona Anderson , 34 Campbell Drive, Larbert, Stirlingshire FK5 4PR ("the Landlords") represented by Next Home Perthshire, 63 – 65 George Street, Perth PH1 5LB**

**The Tribunal comprised:-**

Mr David Bartos	- Legal member and Chairperson
Ms Sara Hesp	- Ordinary member (Surveyor)

**NOTICE TO Nina Smirnoff and Fiona Anderson ("the Landlords")**

Whereas in terms of their decision dated 21 May 2018, the Tribunal determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlords have failed to ensure that the Property meets the repairing standard under section 13(1)(a) in that :-

dampness throughout the Property renders the Property not reasonably fit for human habitation

the Tribunal now requires the Landlords 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 Landlords to ensure that the Property is watertight and free from damp by: -

1. installing a damp proof course to the affected areas of the kitchen and living room;
2. ensuring that there is proper ventilation in the vicinity of the chimney breast in the rear bedroom and installing a damp proof membrane to the base of the chimney;
3. raising the level of the rendering to the external walls from ground level to 150mm above ground level (or reducing ground level all round by 150mm);

and to carry out such subsequent works to make good all internal and external finishes so that they are in a reasonable state of repair and decorative order.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of four months 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 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.

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 typewritten on this and the preceding page(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Tribunal at Edinburgh on 22 May 2018 before this witness:-

D Bartos

T Whitelaw

\_\_\_\_\_ witness  
chairperson

TRACY WHITELAN name in full

PARLIAMENT HOUSE Address

EDINBURGH

EH1 1RF

DEPUTY CLERK. Occupation