

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO):**

**Housing (Scotland) Act 2006 Section 24**

**Chamber Ref: FTS/HPC/RP/17/0095**

**Re: Property at Keeper's Cottage, Borthwickbrae. Hawick, Scottish Borders TD9 7NA ("the Property/the house")**

**Title No: ROX12810 (part)**

## **The Parties:-**

**Mr Max Arthur and Mrs Debi Arthur, both residing at Keeper's Cottage, Borthwickbrae, Hawick, Scottish Borders TD9 7NA ("the Tenant")**

**Mr Richard White and Ms Katherine Clark, both residing at Borthwickbrae House, Borthwickbrae, Hawick, Scottish Borders TD9 7NA (represented by Mr Guy Sampson of Savills, 18-20 Glendale Road, Wooler, Northumberland NE71 6DW) ("the Landlord")**

**Tribunal Members: George Clark (Legal Member/Chairperson) and Andrew Taylor (Ordinary Member)**

Whereas in terms of their decision dated 9 May 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"), the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house 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 to:

(1) Instruct an RICS registered and qualified building surveyor to carry out a survey and report on the condition of the following: -

- Slate roof covering, chimneys, associated flashings, eaves, soffits, sarking, roof timbers, rainwater goods including downpipes and connections to underground drainage.
- External walls and render.

- Penetrating damp to external walls throughout the property with particular reference to the living room, dining room and kitchen.
- Rising damp throughout the property with particular reference to the living room timber floor and associated joists

The Landlord must then carry out and complete any and all repairs to the property identified and recommended by the said report and provide a copy of the said report to the Tribunal.

(2) Engage a suitably qualified drainage professional to examine, test and report on the condition and operation of the external drainage installation and septic tank, to provide a copy of the said report to the Tribunal, and to carry out any recommendations highlighted in that report and leave the complete soil and rainwater system in proper working order.

(3) Provide a supply of water to the property which is of sufficient quality and quantity for domestic use and compliant with the Private Water Supplies (Scotland) Regulations 2006, to include connections to the tenant's existing filtration system: on completion of the works obtain a report by a suitably qualified, independent person as to the sufficiency of the quality and quantity of the water supply for domestic use to the property; and provide a copy of the said report to the Tribunal.

(4) Repair or replace all sash and case and casement windows to the property to render them wind and watertight, secure, in proper working order and capable of opening for proper ventilation.

(5) Carry out such works as are required to make safe the dangerous masonry boundary walls adjacent to the byre and

(6) Carry out all making good and decoration associated with the completion of the foregoing works.

The tribunal order that the reports specified in this Order must be obtained within the period of 2 months from the date of service of this Order and all remedial works carried out and completed within the period of six months thereafter.

### **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.**

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 typewritten on this and the two preceding pages are executed by George Barrie Clark, solicitor, Chairperson of the tribunal at Lasswade on 9 May 2017 before this witness, Valerie Elizabeth Jane Clark, Droman House, Lasswade, Midlothian:-

G Clark

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V Clark

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\_\_\_\_\_ Legal Member/Chair person

\_\_\_\_\_ Witness

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### Statement of Decision of the Housing and Property Chamber of the First-tier tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

**Chamber Ref: FTS/HPC/RP/17/0095**

**Re: Property at Keeper's Cottage, Borthwickbrae. Hawick, Scottish Borders TD9 7NA ("the Property/the house")**

**Title No: ROX12810 (part)**

#### **The Parties:-**

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**Mr Richard White and Ms Katherine Clark, both residing at Borthwickbrae House, Borthwickbrae, Hawick, Scottish Borders TD9 7NA (represented by Mr Guy Sampson of Savills, 18-20 Glendale Road, Wooler, Northumberland NE71 6DW) ("the Landlord")**

**Tribunal Members: George Clark (Legal Member/Chairman) and Andrew Taylor (Ordinary Member)**

#### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the Property, and having heard from both the Tenant and the Landlord at a hearing on 9 May 2017, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.**

#### **Background**

1. By application received on 13 March 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 Housing (Scotland) Act 2006 ("the Act").

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
  - (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, and
  - (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
3. The Tenant stated that the problems with the Property which led the Tenant to consider that the Landlord had failed to meet the repairing standard were dampness throughout the Property, rotten floor joists, missing roof slates, broken gutters, blocked drains and collapsed/unsafe exterior walls, cracks in chimney stacks, rotten windows, exterior render and lead in the water supply.
4. By letter dated 29 March 2017 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a Tribunal.
5. The Tribunal inspected the Property on the morning of 9 May 2017. The Tenant and the Landlord's representative were present during the inspection and both were present at the hearing, along with the Landlord, Mr White. The weather at the time of the inspection was warm and sunny, after a prolonged dry spell.
6. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.
7. Following the inspection of the Property the Tribunal held a hearing at Heart of Hawick Tower Mill, Kirkstyle, Hawick, Scottish Borders TD9 0AE and heard from both the Tenant and the Landlord's representative.
8. The Tenant enclosed with the application a covering letter, stating that at the time of the sale to the Landlord, no internal survey of the Property had been carried out, despite notification by the Tenant to the previous Landlord, the Landlord and the Landlord's solicitors of a number of outstanding maintenance and repair issues. These included missing roof slates and problems with pin sickness, broken and bent guttering, blocked drainage, dampness in the living room, dining room and kitchen, dangerous and partly collapsed external walls, water supply which had failed for lead content, cracked chimneys, considered a high risk by Scottish Power, and rotten windows.
9. In written representations, sent to the Tribunal by the Landlord's solicitors on 19 April 2017, it was stated that the Landlord had purchased the Property on 23 March 2015. The Tenant had resided in the Property since 1993, but there was no written tenancy agreement. At the time of purchase, the Landlord was aware from correspondence that repairs were required to the Property, but understood that they were not urgent and were not the result of a failure to comply with the repairing standard. The Landlord had inspected the Property in January 2016 and a number of defects were noted. The Landlord had advised that he would instruct repairs to be carried out in due course. The Landlord had accepted that urgent repairs were required to the roof of the byre, but it did not form part of the habitable area of the Property, so did not require to meet the repairing standard. There had been references by the Landlord to financial viability, but the condition of the Property and the fact that it was tenanted were known to the Landlord at the point of purchase. A series of commitments given by the Landlord for work to be

undertaken remained outstanding at the date of the application, the last being a commencement date of 13 February 2017.

10. Given the time of year, repairs to the roof could not be effected, but in or around March 2016, the Landlord had arranged for the roof of the byre to be replaced and for remedial works to the Property to be carried out, following storm damage sustained subsequent to the January inspection. The repair works were carried out to the byre roof.
11. The Landlord had arranged for another contractor to inspect further storm damage caused to the Property, to inspect the drainage and to consider what further remedial work would be required to the Property. The contractor advised the Landlord that the drains were clear. The Landlord also asked the contractor to take steps to divert field run-off away from the Property and this work was done. The Landlord had agreed to instruct remedial works to be carried out, asked the contractor for a quote and asked him to commence the work.
12. The contractor, for reasons unknown to the Landlord, had been unable to attend to the remedial works. The Landlord had chased the contractor to confirm a start date and was finally advised in December 2016 that the works would be completed in early 2017. On 9 February 2017, the contractor had contacted the Landlord to say he was unable to proceed with the work, having spoken to the Tenant to arrange access. The contractor had been concerned that the Tenant had made various enquiries of him, including asking about his insurance and the protection of the Tenant's personal belongings. The contractor was concerned that the Tenant would sue him after the work was completed and did not want to expose himself to this risk.
13. As the Property was located in a relatively remote area of countryside, the Landlord had experienced some difficulties in securing other contractors to carry out the works. On 3 April 2017, he had identified alternative contractors, Clamp and Pringle, who had confirmed that they were willing to carry out the work. Prior to commencing work, they require to inspect the Property to confirm the extent of the work required and to provide a quote, but they have been unable to agree with the Tenant a date to access the Property. They have been in touch with the Tenant, but the Tenant has declined to meet them and has not responded to a request by the Landlord to allow the contractors access to the Property.
14. The Landlord's solicitors stated that the Landlord believed that, at least to some extent, the repairs required to the roof of the Property were the result of storm damage. The Landlord requires to determine the cause of the damp and intends to instruct a surveyor to assess the extent and cause of the damage to the roof and damp within the Property. The Landlord requires access for the surveyor. The Landlord accepted that he was responsible for ensuring the Property meets the repairing standard, but had been unable to instruct the works as a result of the Tenant's dealings with the first contractor and refusal or at least delay to allow access to the new contractor. The Tenant had not, however, provided the Landlord with an indication as to what repairs are required to meet the repairing standard and understood that the Tenant was seeking more works than were necessary, such as the addition of insulation. No insulation was present at the start of the tenancy and none was required in order to meet the repairing standard.
15. The Landlord's solicitors concluded by saying that, in terms of Section 13(3) of the Act, the Tribunal must have regard to "the age, character and prospective life of the house and the locality in which the house is situated." This was an old property and the Tenant had been in occupation since 1993. The Landlord had also experienced difficulty in sourcing appropriate contractors due to the location of the Property.
16. The Tenant made further written submissions, which were received by e-mail on 4 April 2017. They included a letter from Scottish Borders Council dated 29 November 2016, following upon a housing inspection carried out by the Council's Environmental Health Officers on 14 November, recommending further inspections by competent professionals to determine the full extent of necessary remedial works to guttering and chimney breasts

and in respect of high moisture content and mould growth on internal walls. The Tenant also attached Relevant Person(s) Notification from Scottish Borders Council dated 21 November 2016, following a review of the private water supply to the Property carried out on 16 November. The Council's investigations had identified lead content in the water supply at 24.9 microgrammes per litre, the legal maximum level being 10 microgrammes per litre.

### **The Hearing**

17. The Chairman advised the Parties that they could assume the Tribunal members had read and were completely familiar with the Parties' written submission. He then invited the Parties to address the Tribunal.
18. The Tenant, Mr Arthur, told the Tribunal that the slates on the roof of the Property were "pin-sick" and there were slates missing. Some remedial work had been done by the Landlord's roofer in March 2016, but there was an ongoing problem of the sarking board not taking nails and the roof continued to lose slates. There were 3 chimney stacks, 2 of which were in use. Both of them had cracks running through them and the Tenant was concerned that they might fall down. The chimney pots rocked in windy weather. Scottish Power had refused to go on to the roof to carry out work on the strapping for a new power cable. This would have involved strapping it to the eastmost chimney head of the Property, to which the existing cable was attached. Their refusal to go on the roof was due to the condition of the chimney breast and it meant that the installation of a new power supply cable had been left incomplete.
19. The Landlord's representative told the Tribunal that the condition of the roof of the Property had been brought to the Landlord's attention in January 2016 in the context of a much larger job, namely the storm damage to the roof of the adjoining byre. The byre roof had been replaced at that time, as it appeared to be the more urgent job. The issues with house roofs could be managed by replacing slipped slates until it reached the point when the owner would have to decide whether it was time for the roof to be replaced. In this case, the view of the Landlord was that repairs should be managed.
20. The Tenant added that he had notified the Landlord and his solicitors, at the time of his purchase in February 2015, that the Property was in need of substantial repair.
21. The Landlord's representative responded that the Landlord had tried to do the right thing. Faced with a litany of problems, he had dealt with the most urgent ones, namely repairing the holes in the roof and cleaning out drains. His present intention was to carry out more works. He accepted that he had not had a building survey of the Property carried out at the time of his purchase.
22. The Tenant continued that there had been a meeting with the Landlord in April 2016, when it had been verbally agreed that the Parties would look at a phased programme of work, but nothing had happened after that. The Landlord's representative agreed that it was right to carry out a phased programme of works and to take a holistic view of repairs. The Landlord had instructed builders to carry out a large part of the necessary works. Following a meeting in early 2016, the byre roof had been replaced and repairs had been carried out to the house roof. The external drainage situation had been improved, so that rainwater no longer flooded down the drive and collected at the house. The builder was to remove the external walls as soon as possible thereafter. The Landlord had chased the builder about the walls in August 2016. At that point, the Landlord had reminded the builder about the dampness and the floor joists and he had chased it up again the following month. In October 2016, the builder had inspected the dampness problem and the issues with the windows and the Landlord had accepted the builder's estimate in October 2016 for remediation of dampness in the sitting room, including dampness in the floor and the replacement of most of the windows. He had chased the builder again in December 2016, but had been told that they could not carry out the work until the New Year. Meantime, the tone of correspondence with the Tenant had deteriorated and had

got in the way of progress. In February 2017, both the builder and the joiner had told the Landlord that they were not prepared to work on the Property, citing their discomfort with the Tenant. An alternative contractor had been found in April 2017 and, at the time of the Tenant's application to the Tribunal, the Landlord was awaiting a meeting with the replacement builder on-site to go through the outstanding items and try to get the works instructed.

23. The Tenant told the Committee that he did not accept the excuses being offered by the Landlord. All of the so-called steps had been taken by the Landlord only as a result of the Tenant's e-mails to him. These would produce a flurry of action, then nothing until the Tenant sent a further e-mail reminder to the Landlord. No qualified assessment of the Property had been carried out. The Tenant had been asked twice for access, but on both occasions it had been at very short notice and the Tenant had been unable to grant it. Mrs Arthur told the Tribunal that she had spoken to Mr Clamp of Clamp and Pringle, when he had called to ask about inspecting the house. He wanted to call one hour later, but Mrs Arthur was going out, so could not accommodate that request. She had suggested alternative dates, but had heard nothing further. On the second occasion, the request had related to the Landlord's chartered surveyor calling to review the interior of the Property, but, due to the Tenant's work commitments, that had not been possible to arrange for the following afternoon, as the Landlord had asked, although again, alternative dates had been offered by the Tenant. The Tenant provided the Tribunal and the Landlord with copies of e-mails dated 4 and 18 April and 7 May 2017, which set out the facts as the Tenant had explained them. Mrs Arthur also told the Tribunal that she had told the roofer that he could call at any time, as he did not require access to the interior of the house. She and her husband had never refused access on being given reasonable notice and asked why they would, given that they were desperate to have the works carried out as soon as possible and that they were having to use bottled water for drinking and were unable to use their living room as it was so damp.
24. The Landlord's representative stressed to the Tribunal that the problem lay with the execution of the works, not with the Landlord's intent. It was a matter of regret that relations had deteriorated to the extent that they had and the Landlord would like to see relations improve. He said again that the original contractors had been uncomfortable with the attitude of the Tenant, but the Tenant responded that it was not unreasonable to ask what would happen to their furniture when the work was being carried out and what insurance cover did the contractors have. The Landlord's representative agreed that these were issues that had to be dealt with, but the appropriate time for it would be in the run-up to the commencement of internal works.
25. The Parties then turned to the specific repairs issues set out in the application to the Tribunal. The Tenant told the Tribunal that the gutters were broken at most of the joints and were uneven, so rainwater came directly out of them rather than being carried to the downpipes. The gutters were made of plastic that had become very brittle. The downpipes were broken and in one place did not extend down to the drain. The Landlord's representative observed that the plastic rainwater goods were in need of overhaul and some would need to be replaced. He accepted that the defective rainwater goods were probably the main cause of both the penetrating damp within the Property and the problems with external drainage. The defective rendering was probably a symptom rather than a cause of the penetrating damp, with water getting behind the outer leaf, causing boss plaster to the render. The state of the render probably had little effect on the dampness. Dampness was usually a problem-solving exercise and the first line of approach would be to sort out the gutters and drains. The Tenant at this point referred the Tribunal to the Environmental Health Report and stated that there was dampness in the living room, dining room, kitchen and rear hallway and that the plaster was boss in virtually every room. The Tenant had been unable to use the living room since July 2016 and still had to use a dehumidifier for 2 hours every day. When it rained, the water ran down the living room wall and pooled on the floor.
26. The Landlord's representative suggested that it was necessary to carry out a close inspection of the chimneys and the roof eaves, to determine the extent of the repairs

required and accepted that problems with the windows were self-evident. Some were worse than others. The majority required at least joinery work and painting and the pragmatic approach was probably to replace a number of them.

27. The Tenant then referred to the drains. The lateral drain to the main run was blocked, as was the lateral drain situated between the living room and the bedroom. Both lateral drains required to be unblocked and any necessary repairs carried out. The Tenant had understood after a discussion in April 2016 that there was to be a pressure jetting of the drains and the septic tank. He had eventually rodded the outfall from the septic tank himself, but had been unable to clear the other drains. The Landlord's representative pointed out that the septic tank was not included in the application to the Tribunal, but that it was, hopefully, an organic system. The Landlord's builder had not considered it necessary to dredge the septic tank.
28. In relation to the water supply, the Tenant told the Tribunal that the section of supply pipe inside the house might be made of lead. The Tenant had put in a filter at the overflow intermediate holding tank and an ultra violet light filter had been fitted. The water was biologically acceptable, but that did not deal with the issue of lead contamination. There was also a section of metal pipe in the tank in the neighbouring field before the plastic pipe which carried water from the tank to the Property.
29. The Tenant then alluded to the question of Energy Rating for the Property, saying that if any works were carried out, consideration should be given to energy efficiency, such as the installation of insulation.

#### **Closing Remarks**

30. The Landlord's representative urged the Tribunal to have regard to the Landlord's best intentions. The Landlord had been trying to organise repairs to an occupied cottage. It was situated in a remote area and contractors preferred to give priority to "easy win" jobs. There was, he said, very little between the Parties as to what required to be done, but the process would take time.
31. The Tenant said that one of the biggest issues was getting a commitment from the Landlord to some sort of time scale and as to the quality of the work that would be carried out.
32. The Parties then left the hearing and the Tribunal members considered all the written representations and documentation before them, together with the evidence led at the Hearing.

#### **Summary of the issues**

33. The issues to be determined were whether the Landlord had complied with the duty set out in Section 14(1)(b) of the Act and whether a Repairing Standard Enforcement Order should be made in respect of the Property..

#### **Findings of fact**

34. The Tribunal finds the following facts to be established:-
  - The Property is a detached stone cottage, in excess of 100 years old, with a pitched, tiled, roof. It is situated in a remote location in the Scottish Borders.
  - The Property is served by a private water supply from a spring via a tank situated in an adjacent field, that supply being led by alkathene pipe to an intermediate holding tank in the grounds of the Property, then by alkathene pipe to the Property itself. The portion of supply pipe to which it is connected within the Property appears to be made of lead.

- The Tribunal obtained evidence from use of a moisture meter at the inspection of a high level of moisture content in the walls of the living room, dining room and kitchen, where they form the east gable walls of the Property and in the floor of the living room.
- The Tribunal also found evidence of mould at floor level in the living room and at high level in the kitchen,
- There are missing and slipped slates on the roof at all elevations, the situation being particularly bad on the south elevation.
- The gutters of the Property are uneven and broken at the joints, with a number of gaps. They are in need of complete overhaul. The downpipes may be inadequate to take away the volume of rainwater that might be anticipated and some of them do not reach the drains.
- The nature of the problem with blocked drains was not obvious to the Tribunal at the time of the inspection, but the Tribunal was satisfied it required a specialist report on the condition of the drains and the outfall from the septic tank.
- There are cracks in the render of all 3 chimneys of the Property.
- The windows throughout are old and of sash and case design. All of the windows are in a state of disrepair.
- The Tribunal accepted the findings of the private water supply investigation report from Scottish Borders Council, but was unable to determine the cause of the lead contamination in the water supply. There was lead piping evident where the mains water pipe entered the Property, but this might not be the only source of lead in the water.
- The masonry boundary walls adjacent to the byre are partially collapsed and in danger of further collapse.

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

35. The Tribunal did not accept the contention of the Landlord in his written representations that the Tenant had not provided him with an indication as to what repairs the Tenant considered were required to meet the repairing standard. The view of the Tribunal was that the Landlord had ample notice, both from Tenant's letter of 13 March 2017 which accompanied the application and from the e-mail exchanges which preceded it, of the problems and repairs issues with which the Tenant was concerned. It was for the Landlord to carry out such investigations and obtain such reports as were required in order to identify the causes of the repairs issues and to take the necessary steps to have the recommended remedial works carried out to ensure the Property met the repairing standard. The Landlord had obtained estimates for work, and could not argue that it was for the Tenant to know what repair works were necessary to solve the problems that he had reported to the Landlord.
36. The Tribunal noted the comments made by the Landlord that it had to have regard to the age, character and prospective life of the Property and the locality in which it is situated, but was of the view that this did not relieve the Landlord of his responsibility under the Act to ensure that the Property met the repairing standard. The Landlord had been made aware by the Tenant at the time of purchase that there were serious repairs issues with the Property, but he had not taken the opportunity to have a detailed building survey carried out. It was an old cottage, with visible defects in the roof, guttering, render, chimneys and windows and it should have been clear to the Landlord at the outset even from an external inspection that there were problems which required investigation and, in all likelihood, considerable remedial work.
37. The Tribunal preferred the evidence of the Tenant that the Landlord had delayed in organising and carrying out remedial works to the evidence given on behalf of the Landlord that the problem lay more with the difficulty in having works executed, a difficulty contributed to in part by the contractors not being comfortable with the Tenant and with the Tenant refusing or delaying providing access to contractors.

38. The Tribunal was of the view that, as the remedial works to repair the damage caused by dampness in the Property would be intrusive and might be prolonged, it was perfectly reasonable for the Tenant to be concerned at the initial stage about contractors' insurance in the event of any damage being caused to the Tenant's furniture and belongings.
39. The Tribunal did not find any evidence that the e-mail communications from the Tenant indicated that the Tenant was being in any way obstructive and was not persuaded that the Tenant's inability to provide access at very short notice to a contractor or to the Landlord's chartered surveyor was unreasonable. In his written representations, the Landlord had said that he required to determine the cause of the damp and intended to instruct a surveyor to assess the extent and cause of the damage to the roof and damp within the Property. The Landlord's representative had also told the Tribunal that it would be necessary to obtain a close inspection report on the chimneys and roof eaves, but the view of the Tribunal was that the Landlord had owned the Property for more than 2 years and that, being aware from the outset of the concerns of the Tenant, reports of this nature could and should have been instructed many months earlier. Delay in commissioning such reports and carrying out recommended works had resulted in Scottish Power erecting a pole to carry a new power line to the Property but being unable to lead it into the Property because of the condition of the chimneys.
40. The Tribunal is in no doubt that the condition of the guttering has at least contributed to the high moisture content within the walls and the living room floor of the Property and that it may be the major contributing factor, but is unable, in the absence of suitable specialists' reports, to determine that it is the only cause.
41. The Tribunal is unable on the basis of the evidence before it to express a view as to the extent, if any, to which the cracked render in the external walls of the Property has contributed to the dampness problems within.
42. The Tribunal is unable, without a report from a suitable specialist, to determine the issue of whether the drains from the Property to the septic tank are blocked, but the Landlord did not seek at the hearing to challenge the assertion of the Tenant that they are blocked.
43. The Tribunal accepted that the repairing standard does not require a landlord to upgrade the energy efficiency of a property by such means as installing insulation, but noted that the Landlord had not provided the Tenant with an Energy Performance Certificate.

#### **Decision**

44. The Tribunal accordingly determined that the Landlord had failed to ensure that the Property met the repairing standard as required by Section 14(1)(b) of the Act and that it was, therefore, required by Section 24(2) of the Act to make a Repairing Standard Enforcement Order.
45. The decision of the Committee was unanimous.

#### **Observations**

46. During the course of the inspection it was observed that the provision for fire detection in the Property is not in accordance with current standards. It is recommended that the Landlord should provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.
47. It was also observed that there was no provision for the detection of carbon monoxide. It is recommended that the Landlord supplies and fits Carbon Monoxide detectors compliant with the Scottish Government Statutory Guidance for the provision of carbon

monoxide alarms in private rented housing.

48. The Landlord should also be aware that an Energy Performance Certificate should be provided for the property and made available to the Tenant.

#### **Right of Appeal**

49. **In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.**
50. **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.**

G Clark

Signed .....  
Legal Chair

..... Date: 9 May 2017



File of photography  
referred to in the  
foregoing Statement of  
Decision dated 9 May 2017  
G Clark

✓ Layzell/Tenby/Chair

Keepers Cottage, Borthwickbrae, Hawick TD9 7NA  
FTS/HPC/RP/17/0095  
Schedule of Photographs - Inspection Date 9<sup>th</sup> May 2017  
Weather – Bright and sunny.



1. The property



2. Water supply – tank in field



3. Water supply – tenant's "filter"



4. Water supply – intermediate holding tank



5. Water supply – copper/lead joint in kitchen at entry



6. Roof slates – north east elevation



7. Roof/chimneys –north east elevation



8. Cracked chimney –north east elevation



9. Roof slates – north west elevation



10. Roof slates – south west elevation



11. Roof slates – in detail



12. Eaves soffit boarding



13. Gutters /Roof/Chimney



14. Damaged gutter– in detail



15. Damaged gutter-- in detail



16. Broken rainwater downpipe



17. Blocked drain grating



18. Downpipe and blocked drain grating



19. Septic tank



20. Septic tank outfall



21, Sash and case window



22. Sash and case window



23. Render damage – north east elevation



24. Render damage - detail



25. Boundary wall at byre



26. Boundary wall at byre



27. Wet wall in sitting room



28. Wet floor/joists in sitting room



29. Multi fuel stove/back boiler (Tenants)



30. Plaster patch at hall (roof leak)



31. Battery operated smoke detector