

Housing and Property Chamber

First-tier Tribunal for Scotland



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:-

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/Chairman) and Andrew Taylor (Ordinary (surveyor) Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having inspected the Property and having heard from both Parties at a hearing on 6 November 2017, determined that no Variation should be made to the Repairing Standard Enforcement Order in respect of the Property made following the hearing on 9 May 2017.

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.
6. 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.
7. Following the inspection and hearing, the Tribunal made a Repairing Standard Enforcement Order in respect of the Property. The Order required 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.

8. The tribunal ordered that the reports specified in the Order must be obtained within the period of 2 months from the date of service of the Order and all remedial works carried out and completed within the period of six months thereafter.
9. On 1 August 2017, the Landlord's agent provided the Tribunal with a Specific Defect Report, extending to 29 pages, prepared for the Landlord's agents by Jonathan Watson, BSc(Hons) MRICS, Building Surveyor, on the condition of the Property. The Report was dated 31 July 2017. The Landlord's agent also provided the Tribunal with a letter from Hutchinson

Environmental Solutions, dated 21 July 2017, containing Initial Recommendations in relation to the soil and rainwater drainage system at the Property.

10. Having received the reports and noting that they recommended extensive works which would be very disruptive to the Tenant in occupation, the Tribunal decided to hold another inspection and a hearing, the purpose of which would be to consider the reports provided by the Landlord's agent, to hear from the Landlord's agent as to timescales for carrying out the works required by the Order and to have the Tenant's views on the proposed timing, to enable the Tribunal to consider whether a variation to the Order should be made, extending the timescale for completion of the works.
11. A reinspection of the Property and a further hearing were scheduled for 9 October 2017, but were postponed at the request of the Landlord.
12. The Tribunal reinspected the Property on 6 November 2017. The Tenant was present at the reinspection and the subsequent hearing. The Landlord's representative, Mr Guy Sampson, was also present at the reinspection and the subsequent hearing.
13. A file of photographs, taken at the reinspection, is annexed to and forms part of this Statement of Decision.
14. The Tribunal noted at the reinspection that works to the Property were currently under way. The north elevation of the roof of the major portion of the Property was being reslated. All of the windows, apart from the pantry window, had been replaced. The replacement window in the living room had been temporarily fixed into place. One of the chimneys at the Property had been taken down. Work on the eastmost chimney had not begun. The external lead piping had been replaced with plastic piping. The living room wall had been stripped back to the stonework. No work had been done to the walls in the dining room or kitchen.
15. Following the reinspection, a hearing took place at Heart of Hawick Tower Mill, Kirkstyle, Hawick, Scottish Borders TD9 0AE and heard from the Tenant and the Landlord's agent.
16. The Tribunal was advised that by the Landlord's agent that the work had started on 16 October and that the contractors were working within the time frame set out in the Repairing Standard Enforcement Order. Scottish Power had still not indicated when they would be able to disconnect the live electric wires attached to the chimney. This had to be done before the chimney work could begin. The new supply cable would come in to the attic of the Property, then drop to a new consumer unit in the kitchen. The Landlord was looking to rewire the entire Property whilst all the work was going on anyway. The living room window had not been permanently fitted, so that it could be removed when concrete was introduced through the window opening in connection with constructing the living room floor.

One of the chimneys was redundant and had been taken down. The roofing work was under way and it was the Landlord's intention to reslate rather than repair the south elevation of the main part of the Property and to repair rather than reslate the eastmost section of the roof above the kitchen, as the former area was in a poorer condition at present.

17. The Tenant expressed concern about what had been the middle chimney before the one to the east of it was taken down, as he thought there was a crack running through it and also did not want to be left in the position of having to report slipped slates on a regular basis, if repair in preference to reslating work was done. The Landlord's agent advised the Tribunal that he would ask his colleague to check his inspection notes regarding the condition of the chimney.
18. The Landlord's agent then told the Tribunal that the joists in the living room floor had been found to be rotten and, rather than replace them and the timber flooring, the intention was to lay a concrete floor on top of a damp proof membrane, with the concrete being poured through the window. For that reason, the replacement window had merely been temporarily fixed at present. The stud partitioning would be put up on the presently exposed gable wall after the concrete floor was laid, to ensure a good fit. The furniture in the living room would have to be removed to enable this work to be carried out.
19. The Tenant told the Tribunal that arrangements had been made with the Clerk of Works for the furniture to be taken to the house of a relative of the Tenant in Denholm and stored there until the work was completed. The Landlord's agent stated that he was unaware of such an arrangement and that the Landlord was unwilling to pay the transportation costs, but was happy to store the furniture in Borthwickbrae House, which was only 100 yards away from the Property. The Tenant told the Tribunal that such an arrangement was completely unacceptable.
20. The Tenant advised the Tribunal that it was essential that the Tenant be given reasonable notice of elements of the work starting. The Tenant had been given a schedule of works, but it had no dates attached to any of the items. The Tribunal reminded the Landlord's agent of the Construction (Design and Management) Regulations 2015, which required any developer to take care of the health, safety and welfare of workers and others affected by the work. The Landlord's agent confirmed that he was aware of the obligations under the Regulations and confirmed that the Tenant was entitled to know how the Landlord was going to look after the Tenant's welfare during the building operations. The Tenant replied that it was understood that there would be disruption and all that was required was more effective communication. The Tenant had not, for example, been given any notice of the removal of the plaster from the gable wall of the living room, so had not had time to find coverings for the furniture before the tradesmen arrived.

21. The Landlord's agent then confirmed to the Tribunal that the water supply to the Property had to be re-tested and arrangements were in hand for that to be done. The drainage work had still to be undertaken and the render was going to be removed from the exterior of the west gable wall of the Property. He asked whether it was necessary to request a Variation to the Order in respect of the proposed roof works differing from those recommended in the Report and the Tribunal advised that a Variation was not necessary.
22. The Tenant expressed concern that it would not be possible to use the chimneys while the work to them was being carried out.
23. The Landlord's agent then confirmed to the Tribunal that the water supply to the Property had to be re-tested and arrangements were in hand for that to be done. The drainage work had still to be undertaken and the render was going to be removed from the exterior of the west gable wall of the Property. He asked whether it was necessary to request a Variation to the Order in respect of the proposed roof works differing from those recommended in the Report and the Tribunal advised that a Variation was not necessary.
24. The Tenant requested a copy of the Energy Performance Certificate that had been issued in respect of the Property and the Landlord's agent agreed to provide a copy.
25. The Landlord's agent advised the Tribunal that it was anticipated that the works would be completed within the timescale set by the Repairing Standard Enforcement Order and that, accordingly, he would not be seeking a Variation to extend that timescale.

Summary of the issues

26. The issue to be determined were whether the Repairing Standard Enforcement Order in respect of the Property should be varied.

Findings of fact

27. The Tribunal finds the following facts to be established:-
 - The Landlord has provided the Tribunal with the reports required by the Order.
 - The works recommended in the reports have commenced.
 - The water supply to the Property has been improved by the replacement of lead piping, but the supply has not yet passed the relevant test as to establish that it is compliant with the Public Water Supplies (Scotland) Regulations 2006.
 - The repair and replacement work to the windows has been completed, although the living room window will have to be

permanently fitted when the concrete floor of the room has been laid.

- No work has yet been done to make safe the dangerous masonry boundary walls adjacent to the byre.
- The making good and decoration works have not been carried out as the works required by the Order are still ongoing.

Reasons for the decision

28. The Tribunal had been concerned that the extent of the recommended works disclosed by the reports was such that it would be unrealistic to expect them to be completed within the 6 months' time limit stated in the Order, particularly as much of the work would require to be done during the winter months. The Landlord's agent, however, had reassured the Tribunal that the works could be completed in time and the Tribunal accepted that reassurance. Accordingly, it was not necessary to vary the Order.
29. The Tribunal is mindful that the works are causing and will cause very considerable disruption to the Tenant, but the Tenant told the Tribunal that this is acceptable, provided reasonable notice is given before the various elements of the work commence. The Tribunal would strongly urge the Landlord's agent to ensure that a schedule of works with timings attached is provided to the Tenant. At the very least, the Tenant should be given reasonable notice of start dates for significant internal work items.
30. The Tribunal understands that the Landlord cannot control the timing of the removal of the live electric cable from the eastmost chimney of the Property and the commissioning of the new supply, but urges the Landlord's agent to take all possible steps to apply pressure on Scottish Power to carry out this work.
31. Whilst recognising that the Tenant had serious misgivings about it, the Tribunal was of the view that the Landlord's offer to store furniture free of charge in the nearby Borthwickbrae House was reasonable.

Decision

32. The Tribunal determined that the Repairing Standard Enforcement Order in respect of the Property should not be varied.
33. The decision of the Committee was unanimous.

Right of Appeal

34. 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.

35. 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: 6 November 2017



This is the Schedule of
photographs referring
to in the foregoing
Statement of Deeds

G Clark

(Legal Clerk)

6 Nov 2017

Keepers Cottage, Borthwickbrae, Hawick TD9 7NA
FTS/HPC/RP/17/0095
Schedule of Photographs - Inspection Date 6th November 2017
Weather – Dry with light cloud.



1. The property



2. On-going work – north west
elevation



3. UPVC Replacement window - vestibule



4. UPVC Replacement window



5. Water supply – lead replaced with alkathene



6. North east elevation



7. Replacement UPVC window



8. Chimney removed



9. Wall at byre



10. Replacement window internally at sitting room



11. Window finishing internally



12. Wall stripped back at sitting room



13. Cracking and water damage to chimney in roof space



14. Cracking and water damage to chimney in roof space