

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



**Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006**

**Property: 7 Townend Road, Kilmarnock KA1 4TD (“the Property”)**

**Land Certificate No; AYR49908**

**Chamber Reference: FTS/HPC/RP/18/0391**

**Suzanne Stirrat, residing at 7 Townend Road, Kilmarnock KA1 4TD (“the Tenant”)**

**Maconachies of Kilmarnock Limited, incorporated in Scotland under the Companies Acts (SCO32179) and having their Registered Office at 22-26 Campbell Street, Kilmarnock KA1 4HW (“the Landlord”)**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Robert Buchan (Ordinary Member/Surveyor)**

Whereas in terms of their decision dated 10 June 2018, 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:

(1) to carry out such repairs as are necessary to make the windows throughout the Property wind and water tight;

(2) to carry out such repairs to the small top-hung windows in the upstairs bedrooms as are necessary to render them wind and water tight and in proper working order; and

(3) to carry out such repairs as are required to the rear entrance door and its surround to render it wind and water tight and in proper working order.

The Tribunal order that the works required by this Order must be carried out within the period of 4 weeks from the date of service of this Order.

## **Right of Appeal**

**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.**

**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, Chairperson of the Tribunal, at Lasswade, on 10 June 2018, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

...Legal Member/Chairperson ..

V Clark

....Witness

# 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**

**Property: 7 Townend Road, Kilmarnock KA1 4TD (“the Property”)**

**Chamber Reference: FTS/HPC/RP/18/0391**

**Suzanne Stirrat, residing at 7 Townend Road, Kilmarnock KA1 4TD (“the Tenant”)**

**Maconachies of Kilmarnock Limited, incorporated in Scotland under the Companies Acts (SCO32179) and having their Registered Office at 22-26 Campbell Street, Kilmarnock KA1 4HW (“the Landlord”)**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Robert Buchan (Ordinary Member/Surveyor)**

### **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) of the Housing (Scotland) Act 2006 (“the Act”), 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 23 February 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard.

In particular, the Tenant stated that the Landlord had failed to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation.

3. In her application and its supporting documentation, the Tenant stated that the Landlord had, on several occasions, replaced the draught excluder material on the windows of the Property. The windows were single-glazed and dated to no later than the late 1980's or early 1990's. They needed to be renewed. The back door of the property was wooden and had a draught coming through it. She had provided the Landlord with a Home Energy Improvements Report which showed that all of the windows and the back door were in need of upgrading, but the Landlord had stated in a letter of 7 February 2018 and in an e-mail of 12 February, that the Property had been upgraded prior to the Tenant moving in and that the Landlord would not be replacing the windows or the back door. There was a maintenance programme each year in respect of the Landlord's portfolio of properties, but at the present time, Townend Road was not on it.
4. On 14 March 2018, 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 served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties.
6. On 19 March 2018, the Tenant made a further written representation to the Tribunal, to which she attached copies of text messages to the Landlord which indicated that she had first raised the issue of the windows in August 2016. Each time she complained, the joiner came round and fitted draught excluders, but they kept coming off and having to be replaced.
7. On 28 March 2018, the Landlord made written representations to the Tribunal. The Landlord was of the view that the windows were serviceable, although they were single-glazed. They were wind and water tight and met the standard required, The Home Energy Improvements Report showed heat loss, but that was not part of the repairing standard. The Landlord's joiner's report, submitted following his carrying out a window repair and included with the Landlord's written representations, said that the windows were adequate and were wind and water tight. There was, he said, no requirement to change them at present as they were serviceable. The Landlord also provided the Tribunal with copies of invoices in respect of previous window repairs. The complaint regarding the back door was only recently made and would be reviewed. The Landlord had not received any complaints regarding the windows from any of the previous tenants going back to 2006.

8. The tribunal inspected the Property on the morning of 29 May 2018. The Tenant was present at the inspection and the subsequent hearing. The Landlord was represented at the inspection and the subsequent hearing by their Property Manager, Marilyn Conway.
9. The tribunal comprised George Clark (Legal Member/Chairperson) and Robert Buchan (Ordinary Member/surveyor).
10. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

### **The Hearing**

11. Following the inspection, the tribunal held a hearing at North West Kilmarnock Area Centre, Western Road, Kilmarnock KA3 1NQ. The Tenant and the Landlord's representative were both present at the hearing.
12. The Tenant told the Tribunal she was a former owner of the Property and that the back door was the same door as had been in place in 1993, when she had become a Council tenant of the Property. She had purchased the Property from East Ayrshire Council in 2003. Daylight could be seen through the door frame. The Landlord told the Tribunal that this was, so far as the Landlord was aware, a new problem and pointed out that there were draught-proof strips fitted to the door.
13. In relation to the windows, the Tenant stated that all the Landlord's joiner did was to fit white foam rubber to try and seal them. The Landlord told the Tribunal that the joiner had said that the windows were not in great condition, but that they were wind and water proof.

### **Findings of fact**

14. The tribunal makes the following findings of fact:
  - The Property is a semi-detached, two-storey house, formerly belonging to East Ayrshire Council, as successors to Kilmarnock and Loudon District Council.
  - The Tenant is joint-tenant of the Property, along with her husband, Andrew Stirrat, in terms of A Short Assured Tenancy which commenced on 22 July 2016.
  - The windows of the Property are single-glazed.
  - The Tenant does not have a key to open a number of the windows.
  - There is evidence of sealant having been applied to the windows throughout the Property, but a number of the seals are in poor condition. This is particularly evident in the top hung windows of the upstairs bedrooms.

- The small top hung window in one of the upstairs rear bedrooms can only be opened with great difficulty.
- Daylight is visible between the frame of the rear entrance door and the masonry to which it is attached.
- The Tribunal has seen a Home Energy Improvements Report dated 1 November 2017 and a portion of an undated Energy Performance Certificate in respect of the Property. The current rating in the Certificate is Band D.

### **Reasons for the decision**

15. The general impression of the Tribunal was that there were poor seals around the openings in several of the windows in the Property and that the work to put in/replace sealants was only a relatively temporary solution.
16. The rear entrance door was clearly not wind and water tight. There were draughtproofing seals on the door, but the doorstep was not tight to the frame, with a resultant gap through which daylight could be seen.
17. The Decision of the Tribunal was, therefore, that the Property was not wind and water tight, so did not meet the Repairing Standard.
18. The decision of the tribunal was unanimous.
19. The Tribunal observed that it was disappointing to find single-glazed windows nowadays. The Band D rating in the Energy Performance Certificate was, however, within the limits of acceptability at the present time.
20. The Tenant had pointed out at the inspection that she did not have a key to open several of the windows. Had this matter been included in her application, the Tribunal would have upheld the complaint, but it was not in the application, so could not be determined by the Tribunal. The Tribunal noted, however, that the Landlord's representative undertook at the inspection that she would provide the necessary key.

### **Right of Appeal**

**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.**

**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.**

Signed ..... G Clark  
Date: 10 June 2018 ..... Legal Member/Chairperson

This is the Schedule of Photographs  
referred to in the foregoing  
Statement of Dates dated 10 June 2018  
by [Signature]  
by [Signature]

Photographs taken during the inspection of  
7 Townend Road, Kilmarnock, KA1 4TD



Front



Rear



Photographs taken during the inspection of  
7 Townend Road, Kilmarnock, KA1 4TD



Silicone seal around the opening



Detail showing gap in frame

Photographs taken during the inspection of  
7 Townend Road, Kilmarnock, KA1 4TD



Back door