

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/18/2233

Sasine Description: to be confirmed

5 Cocklaw Farm Cottages, Ayton, Eyemouth, TD14 5RJ (“The Property”)

The Parties:-

MICHAEL CURRY residing at 5 Cocklaw Farm Cottages, Ayton, Eyemouth, TD14 5RJ (“the Tenant”)

NORMAN IAIN STEEL residing at Cocklaw Farm, Ayton, Eyemouth (“the Landlord”)

Whereas in terms of their decision dated 15 January 2019, 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”) and in particular that the Landlord has failed to ensure that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) The installations in the Property 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;
- (d) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;

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:-

- (a) To carry out redecoration works to the water damaged areas in the upstairs bedroom and bathroom
- (b) To repair or replace the fireplace and back boiler system in the Property or otherwise to install an appropriate central heating system compliant with the repairing standard.
- (c) To carry out appropriate pointing works to the exterior and chimney of the Property sufficient to render it compliant with the repairing standard.
- (d) To replace the kitchen sink and surrounding unit to a standard compliant with the repairing standard.
- (e) To clear the external drain to ensure it is in proper working order and compliant with the repairing standard.
- (f) To replace the cracked paving slabs to the side of the Property.
- (g) To carry out repairs to the potholes at the end of the driveway leading to the Property sufficient to render it compliant with the repairing standard.
- (h) To repair the holes in the wall and floor surrounding the existing fireplace.
- (i) To repoint the steps at the side door of the Property and to render it secure.
- (j) In the event of a new fire/back boiler being installed at the Property to ensure that the cold water tank overflow pipe is not blocked.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

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 type written on this and the preceding page(s) are executed by Ewan K Miller, Chairman, Solicitor, Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Tribunal at Dundee on 15 January 2019 before this witness:-

E Miller

_____ Chairperson

L Johnston

_____ (witness)


Lindsay Johnston
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/18/2233

5 Cocklaw Farm Cottages, Ayton, Eyemouth, TD14 5RJ (“The Property”)

The Parties:-

MICHAEL CURRY residing at 5 Cocklaw Farm Cottages, Ayton, Eyemouth, TD14 5RJ (“the Tenant”)

NORMAN IAIN STEEL residing at Cocklaw Farm, Ayton, Eyemouth (“the Landlord”)

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 house concerned, and taking account of the evidence led by both the Landlord and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application received on 31 August 2018 the Tenant applied to the Housing and Property Chamber 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 he considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

- (c) The installations in the Property 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;
 - (d) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (e) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;
3. By letter dated 15 October 2018, the President of the Housing and Property Chamber intimated by way of letter incorporating a Notice of Referral that the matter was to be referred to a Tribunal for determination.
 4. Following service of the Notice of Referral the Landlord made written representations by email dated 5 November 2018.
 5. The Tribunal comprising Mr E K Miller, Chairman and Legal Member and Mr D Adams, Ordinary Member inspected the Property on the morning of 27 November 2018. The Tenant was present and was accompanied by one of his neighbours Mr Garry Crom. The Landlord was present.
 6. Following the inspection of the Property the Tribunal held a Hearing at Dunbar Town House, High Street, Dunbar, EH42 1ER. The Tenant was again present and accompanied by Mr Crom. The Landlord was present and accompanied by his wife.
 7. The Tenant's written verbal submissions were that there were extensive defects in the Property which the Landlord had failed to rectify. He had submitted a list of 22 items. These were varied in nature and included various defects to the roof and walls of the Property, several electrical failures, a failure in the heating system, particularly the fireplace in the lounge, defects in the kitchen, drains, the paths leading to and around the Property, asbestos and various other matters.
 8. The Landlord's submission was that he accepted that there were some defects in the Property but complained that he had difficulty accessing the Property to carry out the works. He claimed that there had been a systematic campaign of harassment against him by the Tenant, who had complained about him to numerous regulatory bodies.

Summary of the issues

9. The Tribunal noted that there were 22 areas of complaint notified by the Tenant to the Landlord. These were as follows:-
 - (1) The roof was leaking at the Property causing water damage to an upstairs bedroom and the bathroom.

- (2) There had been no heating in the Property for 6 months.
- (3) There was no electrical installation condition report.
- (4) That the smoke and heat detectors were not on their own circuit in the consumer unit but instead were wired into a lighting circuit.
- (5) The electrical consumer unit needed upgraded.
- (6) There was no earth bonding from the consumer unit to the water pipes.
- (7) Water had got into the cavity wall insulation due to cracks and poor pointing on exterior walls.
- (8) There was generally poor pointing to the exterior of the Property.
- (9) The Property was not windproof, carpets were lifting with wind coming through the floor.
- (10) The kitchen sink was not in a serviceable condition.
- (11) The external drains were blocked.
- (12) The path around the side door had sunk and was a trip hazard.
- (13) The drive leading to the Property was in poor condition and drained inadequately.
- (14) The Tenant could not use the immersion heater.
- (15) There were holes in the wall and floor around the fireplace in the lounge.
- (16) The steps at the side door were insecure and were a health risk.
- (17) There was exposed asbestos along the roofline.
- (18) The cold water tank overflow was blocked.
- (19) The mains power cable into the house was insecure and was a health and safety risk.
- (20) There were large cracks in the chimney and it looked unsafe.
- (21) There were broken and cracked roof tiles.
- (22) There were loose ridge tiles.

Findings of fact

10. The Tribunal found the following facts to be established:-

- (1) There was no current roof leak. The water damage to the bedroom and bathroom was historic.
- (2) The fireplace and back boiler in the lounge were defective and required to be repaired or replaced.
- (3) There was an electrical installation condition report for the Property in satisfactory terms.
- (4) Whilst it was preferable to have smoke and heat detectors wired on their own circuit this was not required and not highlighted in the EICR as a legal requirement.
- (5) Whilst the consumer unit was dated it met the repairing standard.
- (6) Whilst the earth bonding from the consumer unit to the water pipes was preferable nonetheless this was not a requirement of the repairing standard.
- (7) There was some pointing on the exterior walls that required repair, however there was no evidence that water had got into the cavity insulation.
- (8) As highlighted in number 7 above there was some exterior pointing repair works required.
- (9) The Property, given its age, character and location, was sufficiently windproof.
- (10) The kitchen sink and unit surrounding it was not of a serviceable condition and breached the repairing standard.
- (11) The outside drain was blocked and did not meet the repairing standard.
- (12) There were some slabs around the path at the side door that were a trip hazard and breached the repairing standard.
- (13) Generally the drive, given the age, character and location of the Property, did meet the repairing standard. However there were some areas that were below the repairing standard at the end of the drive.
- (14) The immersion heater was safe to use and there was no breach of the repairing standard.

- (15) The holes in the wall and floor around the fireplace were a breach of the repairing standard.
- (16) The steps at the side door of the Property did require repair work and did not meet the repairing standard.
- (17) The asbestos exposed at the side of the Property was in the open air and did not represent a risk to human health and accordingly there was no breach of the repairing standard.
- (18) The cold water tank overflow was blocked by the facings surrounding it. If a replacement fireplace was installed then this would require to be repaired as part of the repairing standard. If a new oil fired central heating system was installed then this work would not be required to be carried out.
- (19) The mains power cable into the Property did not breach the repairing standard.
- (20) There were some minor pointing works required to the chimney.
- (21) The roof met the repairing standard.
- (22) The ridge tiles met the repairing standard.

Reasons for the decision

11. The Tribunal based its decision primarily on the evidence obtained during the course of the inspection of the Property.

The Tribunal noted that there was water damage to the ceilings to an upstairs bedroom and the bathroom. However damp meter tests of these areas proved to show that there was no current moisture. The Tribunal was satisfied that this was historic water damage. These areas would require to be made good and redecorated by the Landlord but no other works were required. From an exterior visual inspection, the roof appeared to be in reasonable condition. The Landlord advised that works had been carried out in the past to address a leak.

The Tribunal inspected the fireplace in the lounge. The Tenant submitted that smoke had started to come out of the brickwork and floor surrounding this one day. The Fire Brigade had been called and they had had to take certain steps which resulted in there being holes in the wall and floor around the fireplace. The fireplace had been rendered unusable and the back boiler that provided heating had been removed. The Tribunal accepted that that back boiler had been removed/was no longer working and that the fireplace itself was defective. There were holes in the flooring and walls around the fireplace. The Landlord alleged that he had some concerns about exactly how this issue had arisen and how and why the

Fire Brigade had been called out. However, the Tribunal could only base its decision on the evidence before it on the day. It was apparent that the fireplace had been damaged and the back boiler removed. It was apparent that there were holes around the wall and floor of the fireplace. The Landlord indicated that he wished to install a new oil fired central heating, as he had in the neighbouring cottages that he owned. The Tribunal was satisfied that it was appropriate for the Landlord either to install a new oil fired central heating, which would render the need for the fireplace and back boiler redundant. The Tenant indicated he would be happy with this being done. Alternatively, the Landlord could repair/replace the fireplace and back boiler. Which option was taken was a matter for the Landlord.

The Landlord produced at the Hearing an electrical installation condition report dated 30 April 2018 from a suitably qualified electrician. This showed the electrical system within the Property was safe. There were a number of items that were marked "C3". Repairs are only required to items that are marked "C1" or "C2". Items that are "C3" are only recommendations. The Tribunal was satisfied that there was no need for the consumer unit to be upgraded, it was acceptable that the smoke and heat detectors were wired into the lighting circuit and that there was no earth bonding from the consumer unit to the water pipes.

The Tribunal noted the Tenant's assertion that water had penetrated into the cavity insulation in the wall. However there was no evidence to this effect. There evidence of some defective pointing repairs that had been carried out previously to the exterior of the Property and a couple of other minor cracks on the end elevation of the Property. These were relatively minor in nature but would benefit from being attended to and any defective areas re-done.

The Tribunal inspected the kitchen sink at the Property. It was apparent from a test on the day that this was not draining correctly. The Tribunal also noted that the inside of the sink unit was in very poor condition and that there were a number of missing doors. Overall the Tribunal was of the view that the sink unit needed to be replaced and a new sink and unit installed.

The Tribunal carried out an inspection of the external drain. From lifting the drain cover and inspecting this visually it was apparent that this was at least partially blocked. The Landlord would require to clear this.

The Tribunal inspected the path at the side door of the Property. Whilst it was a little uneven generally it was still within acceptable parameters. However there were two or three cracked slabs that were a trip hazard. The Tribunal was of the view that the Landlord would require to replace these in order to meet the repairing standard.

The Tribunal assessed the driveway leading down to the Property. This was a rough unsurfaced track, typical of what one would expect to find in a remote rural location. The Tenant provided some video evidence that this

had been flooded at some point in the recent past. There was some debate as to the date the video had been taken. In any event the Tribunal was of the view that it would not be uncommon for there to be flooding on occasion in a rural location of an undrained road. It was unrealistic to expect the Landlord to carry out any material drainage works taking into account the age, character and location of the Property. There was however an area at the end of the drive that had a number of larger ruts and potholes. These were beyond what might be reasonably expected to be tolerated and the Landlord would require to carry out some repairs to improve this area.

The Tenant had indicated he had not been using the immersion heater as he had concerns regarding the electrics. In light of the fact that there was a clear electrical installation condition report, the Tribunal did not see that there was any reason why the immersion heater should not be used.

The Tenant alleged that the steps at the side door were insecure. The Tribunal did note that there were several areas of cement pointing that had come out. This left some larger gaps that water could penetrate into and cause damage to the Property. The Tribunal was satisfied that it would be appropriate for the Landlord to carry out repairs to the pointing to ensure that water could not penetrate and that the steps were stable.

The Tribunal did note that there was some areas of asbestos sheeting at the edge of the roof. This was relatively common in Scotland. The asbestos was in the open air and therefore did not represent a risk to human health. The Tribunal was satisfied that there was no breach to the repairing standard in this regard.

The Tribunal noted that the cold water tank overflow was partially blocked due to gutter facings that had been installed. It was noted that if a new oil fired heating system was installed the cold water tank would be redundant. If this was the option that was taken then the Landlord would not require to carry out any further works in this regard. If, however, it was the case that the fireplace and back boiler were reinstated then the facings would need to be adjusted to ensure that the cold water tank overflow was properly exposed.

The Tribunal noted that the main power cable into the Property had some sag on it. However the Tribunal did not view this as excessive and was satisfied this met the repairing standard.

The Tribunal inspected visually the chimney. There was some minor pointing repairs required that the Landlord should carry out but otherwise the chimney looked to be to an acceptable standard.

The Tribunal could not see any evidence of broken and cracked roof tiles. It was apparent that some repairs had been done in the past and the Tribunal was satisfied that the repairing standard had been met.

The Tribunal noted that there were one or two roof tiles that were in slightly poorer a condition but were satisfied, overall, that these did meet the repairing standard.

The Tribunal considered how long the Landlord would require to carry out the various works. The installation or replacement of the heating system was the most significant job and may take some time to organise in a rural area. On that basis the Tribunal was satisfied that 3 months was an appropriate period.

Photographs taken during the course of the inspection are annexed to this Decision for information.

Decision

12. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
13. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
14. The decision of the tribunal was unanimous .

Right of Appeal

15. 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.

Effect of section 63

16. 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.

E Miller

Signed

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Date

15/1/2019

Chairperson

*This is the schedule of photographs referred to in the foregoing decision
dated 15/1/19*

E Miller

Housing and Property Chamber
First-tier Tribunal for Scotland



**5 COCKLAW FARM
COTTAGES, AYTON,
EYEMOUTH, TD14 5RJ
("THE PROPERTY")**

Chamber Ref: FTS/HPC/RP/18/2233

SCHEDULE OF PHOTOGRAPHS



1 Entrance elevation.



2 Temporary protection at fireplace.



3 Fireplace.



4 Damage within fireplace.



5 Fireplace.



6 Temporary protection at hearth.



7 Damage adjacent to fireplace.



8 Socket outlet adjoining fireplace.



9 Kitchen sink.



10 Pipework below sink.



11 Blocked drainage at sink.



12 Water shut-off valve.



13 Incoming electrics.



14 Consumer unit with rewirable fuses.



15 Earthing.



16 Test labels.



17 Cable entry and grommet.



18 Drainage blockage.



19 Missing components of kitchen base unit.



20 Water damage within bathroom.



21 Water run off marks within Bathroom.



22 Roof covering viewed from dormer.



23 Roof covering viewed from dormer.



24 Roof covering viewed from dormer.



25 Water damage within Bedroom.



26 Water damage within Bedroom.



27 Smoke detector.



28 Gap at underside of skirting – unsealed.



29 Defective pointing.



30 Possible asbestos cement at verge.



31 Possible asbestos cement at verge.



32 Cracking to pointing.



33 Defective concrete paving slabs.



34 Defective concrete paving slabs.



35 Entrance steps.



36 Cracking to pointing.



37 Cable clipped at gable.



38 Open junctions with gable steps.



39 Open junctions with gable steps.



40 Close view of gap at gable steps.



41 Patch pointing works.



42 Elevation.



43 Chimneystack.



44 Roof.



45 Cracking to pointing.



46 Open gaps at sills.



47 Elevation.



48 Elevation.



49 Elevation.



50 Elevation.



51 Chimneystack.



52 Roof.



53 Roof.



54 Roof.



55 Roof



56 Overflow at fascia.



57 Elevation.



58 Inspection chamber.



59 Impairment of drainage flow.



60 Gable elevation.



61 Gable verge.



62 Entrance door.



63 Dormer.



64 Access track.



65 Potholing and water ponding.



66 Potholing and water ponding



67 Access track.



68 Potholing.