

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 25

Chamber Ref: FTS/HPC/RT/20/0910

**Property at Woodhill House & Bothy, Lumphanan, Banchory, Aberdeenshire, AB31 4PS
("the Property")**

The Parties:-

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, Ab51
3WA
("The Third Party")
(Represented by Mrs Emma Bain, Aberdeenshire Council)**

**Mr Matthew Tough and Mrs Alison Tough, Woodhill House & Bothy, Lumphanan,
Banchory, Aberdeenshire, AB31 4PS
("the Tenants")**

**Mr Paul Dolan & Mrs Ella Dolan, 14735 Bramblewood Drive, Houston, Texas, 77079,
United States of America
("the Landlords")**

Tribunal Members:

Gillian Buchanan (Chair) and Robert Buchan (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 Landlords had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that the Landlords should be given an extension of 3 months to the period allowed for completion of the works required all in terms of Section 25(1) of the Housing (Scotland) Act 2006 ("the Act").

Background

1. Reference is made to the determination of the tribunal dated 21 September 2021 which determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that they had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 1. *In the vestibule of the main house forming part of the Property ("the vestibule") to repair or replace the window and window frame to ensure that the window opens, closes and locks correctly, is wind and watertight, in a reasonable state of repair and in proper working order.*

2. (i) *To engage a suitably qualified contractor to investigate the extent and cause of dampness on the internal wall behind the exterior door of the vestibule and to provide to the tribunal for approval a report detailing the cause of and any works required to eradicate the dampness to ensure the vestibule is wind and watertight and in a reasonable state of repair and, following approval of the report and works stated to be required, to execute any repairs identified as being necessary.*
- (ii) *On completion of the works referred to in 2(i) above to provide to the tribunal written confirmation that the source of the dampness has been eradicated.*
3. *In the utility room of the main house ("the utility room"):-*
- (i) *To engage a suitably qualified contractor to investigate the extent and cause of draughts and any dampness within the cupboard beneath the window and sink, and to provide to the tribunal for approval a report detailing the cause of and any works required to eradicate the draughts/dampness to ensure the utility room is wind and watertight and in a reasonable state of repair and, following approval of the report and works stated to be required, to execute any repairs identified as being necessary.*
- (ii) *On completion of the works referred to in 3(i) above to provide to the tribunal written confirmation that the source of the draughts/dampness has been eradicated.*
4. *In the sitting room of the main house ("the sitting room"):-*
- (i) *To engage a suitably qualified contractor to investigate the extent and cause of draughts and any dampness beneath the windows, and to provide to the tribunal for approval a report detailing the cause of and any works required to eradicate the draughts/dampness to ensure the sitting room is wind and watertight and in a reasonable state of repair and, following approval of the report and works stated to be required, to execute any repairs identified as being necessary.*
- (ii) *On completion of the works referred to in 4(i) above to provide to the tribunal written confirmation that the source of the draughts/dampness has been eradicated.*
5. *To repair or replace the skylight window above the stairwell in the main house of the Property to ensure that the window opens, closes and locks correctly, is wind and watertight, in a reasonable state of repair and in proper working order.*
6. *To engage a suitably qualified contractor to install insulation in the attic and eaves of the main house of the Property in those areas where no insulation presently exists.*
7. *In the master bedroom of the main house of the Property, to repair or replace all windows and window frames, including the Velux style windows, to ensure that the windows open, close and lock correctly, are wind and watertight, in a reasonable state of repair and in proper working order.*
8. *To repair or replace the exterior front door, door frame, transom and glazed panels above the door, of the main house of the Property to ensure that the door opens, closes and locks correctly, is wind and watertight, in a reasonable state of repair and in proper working order.*
9. *In the kitchen of the main house of the Property:-*

- (i) To engage a suitably qualified contractor to investigate the extent and cause of any dampness on the ceiling of the kitchen and to provide to the tribunal for approval a report detailing the cause of and any works required to eradicate the dampness to ensure the kitchen ceiling is wind and watertight and in a reasonable state of repair and, following approval of the report and works stated to be required, to execute any repairs identified by the contractor as being necessary.*
- (ii) On completion of the works referred to in 9(i) above to provide to the tribunal written confirmation that the source of the dampness has been eradicated.*

10. In the Bothy:-

- (i) To engage a suitably qualified contractor to investigate the extent and cause of dampness within the Bothy to include in particular the arrangement of gutters, downpipes and any drains, and to provide to the tribunal for approval a report detailing the cause of and any works required to eradicate the dampness to ensure the Bothy is wind and watertight, reasonably fit for human habitation and in a reasonable state of repair and, following approval of the report and works stated to be required, to execute any repairs identified by the contractor as being necessary.*
- (ii) On completion of the works referred to in 10(i) above to provide to the tribunal written confirmation that the source of the dampness has been eradicated.*
- (iii) To repair or replace the bathroom window to ensure that the window opens, closes and locks correctly, is wind and watertight, in a reasonable state of repair and in proper working order.*

In terms of the RSEO the tribunal ordered that the works specified in paragraphs 1, 5-8 and 10(iii) of the RSEO must be carried out within a period of 3 months from the date of service thereof.

Further, in relation to paragraphs 2(i), 3(i), 4(i), 9(i) and 10(i) of the RSEO the tribunal ordered that the specialist reports required in terms thereof must be delivered to the tribunal for consideration and approval within a period of 3 months from the date of service of the RSEO.

Previous Notice of a Decision to Vary the RSEO

2. By Notice of a Decision to Vary dated 17 March 2022 the tribunal allowed the Landlords an additional period of 6 months from the date of service thereof to complete the works required by the RSEO.
3. By a Decision of the tribunal dated 17 March 2022 the tribunal also approved the specialist report of Ray Brown & Co Limited relative to paragraphs 2(i), 3(i), 4(i), 9(i) and 10(i) of the RSEO.

Re-inspection

4. Prior to the re-inspection the tribunal received from the Tenants representations dated 16 September 2022.

5. The tribunal also received from the Landlords representations dated 21 September and 20 October 2022.
6. On 1 November 2022 the Ordinary member of the tribunal carried out an inspection of the Property. The Ordinary Member of the tribunal prepared a Re-inspection Report.
7. Following intimation of the Re-inspection Report the Tribunal received written representations from the Landlords dated 16 November 2022.
8. The tribunal carefully considered how to proceed in light of the parties' representations.

Decision

9. The Tribunal carefully considered the Re-inspection Report and the parties' various representations including all additional documentation produced.
10. In determining how to proceed, the tribunal took into account the following factors:-
 - i. That the works required in terms of the RSEO are substantial;
 - ii. That the Landlords have undertaken significant works in terms of and to comply with the RSEO.
 - iii. That steps are ongoing to achieve compliance with the RSEO;
 - iv. The Landlords have demonstrated a clear commitment to complete the required works and it is therefore appropriate to give a further period of time to allow the Landlords to complete the remaining outstanding works required by the RSEO.
11. The outstanding works are:-
 - i. The door frame of the vestibule has been sealed but the seal has since split and dampness is still noted.
 - ii. The windows in the main bedroom have been repaired but further adjustment is still required to one of the skylight windows which is not draught free and the main windows are not capable of being locked.
 - iii. In the Bothy dampness continues to be noted in the exposed stonework in the kitchen.
12. The tribunal is of the view that an additional period of 3 months to complete the works required by the RSEO would be sufficient. The tribunal expects the required works to be completed within that period.
13. The decision of the tribunal was unanimous.

Right of Appeal

- 14. 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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**
- 15. 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 Buchanan

Signed

Date 8 December 2022

Legal Member and Chairperson