

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 6 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.

Landlords' representations

2. By email dated 13 December 2021 the tribunal received from the Landlords written representations comprising:–
 - i. A letter to the tribunal dated 13 December 2021;
 - ii. Various tables entitled "Cost summary with invoices/receipts";
 - iii. Various invoices from Mark macdonald joinery dated 13 October, 22 November and 8 December 2021 together with an exchange of emails between the Mark MacDonald and Mr Paul Dolan dated 27 and 28 November 2021.
3. By further email dated 17 December 2021 the Landlords forwarded to the tribunal further documentation being: –

- i. A letter from the Landlords to the tribunal dated 17 December 2021;
 - ii. Damp Inspection Report of Ray Brown & Co Limited;
 - iii. A document entitled "Landlord's observations, site visit to Woodhill House November 11th, 2021".
4. On 8 February 2022 the Landlords forwarded to the tribunal an additional email with a letter dated 7 February 2022 attached.

Tenants further representations

5. The Tenants subsequently made further written representations to the tribunal comprising:-
 - i. An email dated 3 January 2022;
 - ii. An email dated 18 January 2022 with attachments being documents entitled:-
 - "Woodhill house non tribunal works happening 17/01/2022";
 - "Woodhill house update on RSEO 17/01/2022";
 - "Tenants' response to the Damp and draught report 17/01/2022";
 - "Tenant's response to the Landlords observations. 11:25 16/01/2022".
6. The tribunal carefully considered how to proceed in light of the parties' representations.

Decision

7. The tribunal's role is solely to consider whether or not the works required by the RSEO have been undertaken. No extraneous matters are relevant.
8. The tribunal considered whether there would be merit in undertaking a further inspection of the Property at this time and decided that an inspection would serve no useful purpose. In particular, it is clear from both parties' representations that the works required in terms of the RSEO are incomplete.
9. In terms of the RSEO at paragraphs 2(i), 3(i), 4(i), 9(i) and 10(i) the tribunal ordered that specialist reports be delivered to the tribunal for consideration and approval. In that regard the Landlords have provided to the Tribunal the Damp Inspection Report of Ray Brown & Co Limited prepared following a site visit on 12 November 2021.
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 certain works required to the Property cannot be undertaken by the Landlords until the tribunal has seen and approved specialist reports and a specialist report of Ray Brown & Co Limited has been timeously provided;
 - iii. That steps are ongoing to achieve compliance with the RSEO;
 - iv. That against the backdrop of the COVID19 pandemic subsequent to the grant of the RSEO and which remains prevalent, engaging contractors is difficult and most are extremely busy with backlogs of work;
 - v. In respect that the organisation of works required to achieve compliance with the RSEO is ongoing and taking into account the Landlords' commitment to complete the

required works, it is appropriate to give an extension to allow the Landlords to undertake the works required by the Repairing Standard Enforcement Order.

11. The tribunal therefore 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 and approves the list of works detailed in Attachment A to the Landlords' letter to the Tribunal dated 7 February 2022 (attached) with one change in paragraph 3(i)(b) thereof where the proposed works to insulate the walls around service openings require to eliminate (rather than reduce) the draughts from the cupboards beneath the window and sink in the utility room.
12. The tribunal is of the view that an additional period of 6 months to complete the outstanding 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

Legal member

Date 17 March 2022

Legal Member and Chairperson

Attachment A:

Proposed work to address the extent and cause of dampness:

- 2 (i) Vestibule:
 - a) Reduce ground level at side entrance, excavate to perimeter junctions, install membrane and stone chips (providing soakaway to improve drainage and eliminate the source of dampness).

- 3(i) Utility Room:
 - a) Reduce ground level at side, excavate to perimeter junctions, install membrane and stone chips, (providing soakaway to improve drainage and eliminate the source of dampness).
 - b) Insulate walls around service openings to reduce draughts from cupboards beneath window and sink.
 - c) Strip out/replace wall linings where necessary

- 4(i) Sitting Room/Ground Floor Bedroom (2 rooms)
 - a) Check external pointing around windows, front vestibule, make good where necessary
 - b) Ensure external gutters, downpipes and drains are all in working order
 - c) Insulate walls below windows (x3) and window cupboard.
 - d) Strip out and replace wall linings where necessary.

- 9 (i) Kitchen window ceiling:
 - a) Check external pointing above window, make good where necessary. (Window above kitchen has already been caulked/sealed.)
 - b) Strip out and replace compromised sheetrock and make good.

- 10 (i) Bothy
 - a) Clear and reduce ground levels at rear and side of bothy
 - b) Excavate to perimeter junctions, install membrane and stone chips (providing soakaway to improve drainage and eliminate the source of dampness).
 - c) Install below ground drainage outlets for downpipes and create local soakaway.
 - d) Ensure gutters, downpipes and drains are all in working order
 - e) Where necessary strip /reinstate internal wall linings where compromised
 - f) Install fixed heating (electrical radiators)