

# Housing and Property Chamber First-tier Tribunal for Scotland



## REPAIRING STANDARD ENFORCEMENT ORDER

Ordered by the First-tier Tribunal for Scotland Housing and Property Chamber

Chamber Reference number: FTS/HPC/RT/19/1673

Re: Property at Mid Hangingshaw Farm, Near Coulter, Near Bigger ML12 6HN being the subjects registered in the Land Register for Scotland under Title Number LAN 220011 (hereinafter referred to as "the house")

### The Parties:

- South Lanarkshire Council ("Applicant")
- Mrs Sina Graham ("Tenant")
- Kingsbeck Limited SC499747 ("Landlord")

### NOTICE TO KINGSBECK LIMITED ("the Landlord")

Whereas in terms of their decision dated 25 August 2019, the First-tier Tribunal for Scotland ("tribunal") determined that the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to ensure that the house meets the repairing standard in Section 13 of the 2006 Act in that:-

- (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;
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

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 reinstate the electricity supply and in so doing ensure that the electrical installation for the supply of electricity is repaired (or as necessary replaced) to ensure that the installation (which includes the associated electrical fixtures forming part of the installation) are in a reasonable state of repair and in proper working order. Following this work an up to date electrical inspection condition report in respect of the house (which includes the outbuilding) from a competent person in terms of the statutory guidance should be provided to the tribunal. Following receipt of this report and any further tribunal inspection, the tribunal will decide if further evidence is required before deciding if the electrical installation meets the repairing standard.*
- (b) To reinstate the water supply to the house and to ensure that there is an adequate supply of wholesome water to the house (which includes the outbuilding) to ensure that the installation for the supply of water to the house is in a reasonable state of repair and in proper working order. All plumbing fittings within the house must be capable of operation to ensure that the Tenant is capable of being supplied with water within the dwelling house. The tribunal will require an expert report to be supplied from the Landlord on the water quality to the house following completion of works (It is hoped that the Applicant's environmental health department will be able to assist the Landlord with identifying an expert on water quality or obtaining an expert report). Following receipt of this report and any further tribunal inspection, the tribunal will decide if further evidence is required before deciding if the installation for the supply of water meets the repairing standard.*
- (c) To install satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire within the dwellinghouse. In carrying out the installation the Landlord should have regard to the statutory guidance issued by Scottish Government on electrical installations and appliances in private rented property.*
- (d) To install satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health within the dwellinghouse. In carrying out the installation the Landlord should have regard to the statutory guidance issued by Scottish Government on provision of carbon monoxide alarms in private rented housing.*

The tribunal orders that the works specified in this Order (which includes the submission of the specified reports to the tribunal) must be carried out and completed within the period of 8 weeks from the date of service of this Notice.

## APPEAL PROVISIONS

A Landlord 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.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Aileen Devanny, Chairing Legal Member, at Glasgow on Twenty seventh day of August, Two Thousand and nineteen in the presence of the undernoted witness:-

H Butler

A Devanny

WITNESS. ....

..... HELEN BUTLER .....

..... 20 York Street .....

..... Glasgow .....

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

### **STATEMENT OF DECISION UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Chamber Reference number: FTS/HPC/RT/19/1673**

**Re: Property at Mid Hangingshaw Farm, Near Coulter, Near Bigger ML12 6HN  
("the house")**

#### **The Parties:**

- **South Lanarkshire Council ("Applicant")**
- **Mrs Sina Graham ("Tenant")**
- **Kingsbeck Limited SC499747 ("Landlord")**

**Tribunal members: Mrs Aileen Devanny (legal chairperson); Mr Mike Links  
(ordinary member (surveyor))**

#### **DECISION**

The First tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act").

#### **BACKGROUND**

1. By application made on 31 May 2019, the Applicant applied to the First-tier Tribunal for Scotland (hereinafter referred to as "FTT") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.

2. The application by the Applicant stated that the local authority considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure

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compliance with Section 13(1) (c), (f) and (g) of the Act which states that "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; the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health".

The complaints of the Applicant relate to (1) ensuring that the electricity supply and private water supply are reconnected and in proper working order and compliant with current legislation; and (2) ensuring that there are in place provisions for detection of fires and for detection of carbon monoxide. The application submitted to the FTT included evidence of notification of required works on the Landlord by (1) letter from the Applicant's dated 5 April 2019 (with evidence of the Landlord's receipt of that letter on 13 April) and (2) by written correspondence from the Tenant to the Landlord spanning the period 26 March 2006 to 30 November 2018. The application included background details about the local authority's involvement in checking the property and the authority's interaction with Landlord and Tenant and information provided by them. The application also provided information about the tenancy received from the Tenant. Photographs of the property were attached to the application.

3. By letter dated 19 June 2019, the FTT gave intimation to the parties that a legal member, with delegated powers of the Chamber President, had made a decision to accept the application for determination.

The application was referred to a Tribunal for determination. That Tribunal comprised the following members:

Mrs. Aileen Devanny, Chairperson  
Mr. Mike Links, Surveyor Member

4. The FTT served Notice of Referral, under and in terms of Schedule 2 Paragraph 1 of the Act and under Rule 9 of the First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (as amended), upon the Applicant, Landlord and the Tenant. With this notice is served a copy of the application paperwork. A date of 10 July 2019 was specified in the notice as the date by which the parties required to provide written representations on the application or state an intention to make oral representations at the hearing. Enclosed with each notice was a guidance leaflet explaining the repairing standard and tribunal procedure.

Following service of the notice of referral, the Tenant submitted written representations two days late with an explanation for the delay. The Applicant stated that it would not be providing any further representations beyond that contained in the application. The Landlord provided no written representations. A check by the tribunal administration revealed that the notice of referral and application paperwork was received by the Landlord on 20 June 2019. The written representations from the Tenant were circulated to the other parties.

The Tenant indicated that she wished to attend the inspection and hearing. The Applicant stated that it would not be sending a representative to the inspection and hearing. No response was received from the Landlord until an e-mail received on 1 August 2019, when Mr Jon McCosh, representing the Landlord, stated that he had recently found the archive file from the previous estate management and wished to bring this and correspondence with the Tenant to the attention of the Tribunal. He asked for a postponement of the hearing and inspection scheduled to take place on 6 August due to the volume of material which he would need to send in multiple e-mails or by post. In response to this request for postponement, the Tenant indicated that she was due to commence medical treatment and, if a postponement of 5 weeks was granted as the Landlord had requested, she would be unfit to participate in proceedings for a period of 18 weeks until the end of that treatment.

The postponement request was refused by the FTT. The Tribunal, mindful of the overriding objective of fairness and of avoiding delay, considered that insufficient reason had been provided by the Landlord to support a postponement of the inspection and hearing. The Landlord could seek to have the documents lodged late in accordance with Rule 22 of the First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (as amended). This was an issue which the Tribunal would consider at the hearing. The Tribunal was mindful that the Landlord had waited until five days (three working days) before the inspection and hearing to alert the Tribunal to his wish to participate in proceedings and request a postponement. The Landlord had not provided written representations on the issues under consideration.

5. The only written representations following issue of the notice of referral were received from the Tenant. In these representations, she explained that the two day delay in meeting the time limit for submission of written representations was due to having no access to the internet at home because of the lack of electricity. Her written representations gave background to the required repairs. She stated that Kingsbeck took over from the previous landlord, McCosh Bros, in the early 2000s. Following the change of landlord her dealings had been with Mr Jon McCosh, who indicated that works would be carried out. However, that had not occurred. She believed that the reason for the reluctance of workmen to undertake works was due to the reputation of McCosh Bros for not paying invoices. Maintenance works she stated were at one stage carried out every 5 years but no external maintenance has been undertaken at the property since August 2005. She complained that access to the house was being hindered by the padlocking of a gate at the foot of the hill.

## **INSPECTION AND HEARING**

6. The Tribunal inspected the house on the morning of 6 August 2019. Mr Jon McCosh, a director of the Landlord, and the Tenant were present throughout the inspection. Also attending the inspection were the Tribunal members and the hearing clerk. In advance of the inspection, the parties were advised that it was proposed that an observer from Scottish Government would be in attendance to observe the inspection but take no part in the decision making process. Mr McCosh and the Tenant confirmed that they had no objections to the observer's attendance at the inspection. The observer, Ms Agnes Meany, attended the inspection. Photographs

were taken during the inspection by the surveyor member with the consent of the Tenant and these are included in the attached Schedule to this Statement of Decision.

7. Following the inspection of the house by the Tribunal, a hearing took place at Moffat Town Hall. The Tenant and Mr Jon McCosh, representing the Landlord, were present. Ms Agnes Meany observed the hearing as a member of the public.

8. At the hearing the chairperson explained the purpose of the hearing and procedure relating to applications to the Tribunal relating to repairing standard complaints. The chairperson explained that the Tribunal would consider only the complaints specified within the application paperwork.

9. Mr McCosh had not submitted any document since his request for a postponement and the chairperson asked if he wished to lodge documents for the Tribunal's consideration and, if so, he would need to address the Tribunal on the reasons for lodging these late. This is a requirement of Rule 22(2) of the First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (as amended).

Mr McCosh stated that he wished to lodge documents which consisted of a tenancy document, an extract from a ledger and correspondence to the Tenant which she will already have seen. The reason for the late lodgment was that he had mislaid the file which he had on the property. He did not find the file until 31 July 2019. He stated that he suffers from a disability which means that he lacks organizational thoughts. He suffers from dyslexia and panicked at the prospect of the inspection and hearing. He stated that as a chartered surveyor he has never seen a house in such a condition as exists at Mid Hangingshaw Farm and this exacerbated his panic.

The Tribunal adjourned to deliberate on whether the documents should be allowed to be lodged late. The Tribunal considered that the tenancy agreement was directly relevant to the issue under consideration and it decided to allow late lodgment of the papers by the Landlord. However, mindful of the need for fairness to the Tenant and the need for fair notice of the evidence to allow parties to fully participate, the Tribunal instructed that copies of the documents provided by the Landlord be distributed to the Tribunal and the Tenant, and then adjourned the proceedings for around 40 minutes to allow the documents to be read and considered.

The clerk intimated to the Tribunal when the Tenant had considered the papers and was ready to proceed. At that stage the chairperson asked the Tenant if she wished an adjournment to another date to seek legal advice or if she required further time to consider her position or produce evidence. The Tenant indicated that she had not seen the tenancy agreement before but had seen the correspondence and she did not wish an adjournment and wished to proceed with the hearing.

10. The Tribunal heard from Mr Jon McCosh. He explained that up until he bought and took over the estate in April 2015, his cousin, Gerard McCosh, had been the managing partner of McCosh Bros. His knowledge of the background of the let was limited to family discussions before he took over. He had a difficult relationship with his cousin and had limited knowledge of the background of the tenancy. He stated

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that the house had been let to the Tenant's husband who was a very close friend of the family. The Tenant's husband and his spouse had been given a lifetime lease. The maintenance responsibilities are as stated in the lease. The Landlord is to keep the house and outbuildings wind and watertight and maintain the basic structure and the Tenant to maintain the interior in good order. The rent payable is £5500 per annum payable in arrears twice yearly in May and November. The lease was entered into in 1987. He considered that the Tenant has a secure tenancy and as such considers the exemption to the repairing standard applies. He did not consider the lease to be an agricultural tenancy.

The chairperson asked if he was aware if an application had been made to the sheriff for consent to let the house without meeting the repairing standard. Mr McCosh indicated that no such application had been made.

Mr McCosh was asked if he considered that any of the exemptions in the landlord's repairing duty detailed in Section 16 of the Act applied. He was referred to the relevant provisions. He stated that he was not arguing that any of the exemptions applied.

11. The chairperson took each of the repairing complaints in turn and allowed Mr McCosh and the Tenant, Mrs Graham, to give evidence and make submissions.

a. Installation for the supply of water

Mr McCosh indicated that his knowledge with regard to the disconnection of the water supply was based on hearsay. He did not dispute the Tenant's account that the water had been turned off at the stopcock in 2010 by Mr Gerald McCosh following a burst frozen pipe during a winter which saw temperatures for several weeks of zero degrees centigrade and hitting on one occasion minus 22 degrees. Mr McCosh indicated that the Tenant had allowed the pipes to freeze and he did not think that frozen pipes were the Landlord's responsibility. The Tenant's response was that she had no electricity to heat the house at that time as the electricity supply had been disconnected by Scottish Power in 2006 following their view that the electrical installation was unsafe. She stated that it was Mr Gerald McCosh who had turned off the supply at the stopcock under the back kitchen sink. Mr Jon McCosh stated that the Landlord had building insurance in place but did not consider that a claim could be made given the time lapse.

Mr Jon McCosh attributed the lack of water in the house due to a burst within the house rather than a burst pipe to the exterior of the property.

b. Installation for the supply of electricity

The Tenant indicated that the electricity supply was disconnected around 23 March 2006 by Scottish Power due to its unsafe condition and she has not had electricity to the house since then. The Aga in the kitchen is coal fired but with an electrical starter and, therefore, she has been unable to use the Aga since 2006. Mr McCosh stated that he did not know the reason for the electrical supply being disconnected.

Mr McCosh stated that a firm NAC Electrics from Bigger had rewired the outbuilding.

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However, it was disputed between the Mr McCosh and Mrs Graham as to whether there was currently an electricity supply to the outbuilding. The Tenant stated that the supply had lasted two days after the rewiring before it "shorted". This was disputed by Mr McCosh who believed the supply to be present but stated that if it had shorted it was due to the Tenant's use of an extension cable from the outbuilding. This was disputed by the Tenant. A ledger extract provided by the Landlord made reference to charges for electricity for about a year from 30 March 2017 and thereafter Scottish Power recharges. The Tenant disputed that she was due to pay any such charges.

c. Lack of fire detection provision and provision for detecting carbon monoxide

Mr McCosh provided no explanation for the lack of provision for detecting carbon monoxide. He understood the fire detection device required to be hardwired which was not possible without there being electricity within the house.

Mr McCosh concluded his oral submissions by stating that he was not excusing his cousin for the way that the house has been managed in the past. However, he stated that workmen who had attended at the house refused to go back because of the animals, the smell within the house and its state of cleanliness. He referred to rent owing by the Tenant. He stated that, if he is expected to fulfil his duties as a landlord, then the Tenant must keep the house in good order which she is not doing.

The Tenant stated that it was difficult to keep the house clean without hot water and there was no facility to heat water without electricity.

## **SUMMARY OF THE ISSUES**

12. The issues to be determined are whether the tenancy is a type to which the repairing standard applies; whether the house meets the repairing standard as laid down in Section 13 of the Act; whether an exemption to the Landlord's duty applies; and, if not, whether the Landlord had complied with the duty imposed by Section 14(1) (b) of the Act.

## **FINDINGS IN FACT**

13. The Tribunal made the following findings in fact:-

13.1. The Tenant has a tenancy of the house let for human habitation. The tenancy commenced on 1 November 1987.

13.2. The Applicant and Tenant have notified the Landlord of the complaints in the application over a considerable period of time before the application was submitted to the Tribunal.

13.3. No application has been made to contract out of the repairing standard in terms of Section 18 of the Act.

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13.4 The house is a detached farmhouse in a remote location. It is accessed along a private track which is in poor condition. The tenancy agreement applies to the farmhouse and various outbuildings within the lease.

The weather at the time of inspection was dry.

The house comprises a living room, dining room, bathroom and kitchen and back kitchen and upstairs there are two bedrooms and a further area upstairs of two rooms accessed via a second steep stair.

The house is in very poor condition and there was noxious smell within the house. There were three dogs and two cats within the house at the time of the inspection.

The inspection revealed that there were no fire detection alarms or carbon monoxide alarms within the house. There was an open fireplace within the living room, and the Aga in the kitchen, which it is understood operates on coal fuel.

The electrical switches in the dwelling house were tested by the surveyor member and no electricity registered. There were electrical light switches in place in several rooms in the house which did not operate the ceiling lights. In the kitchen, a paraffin lamp hung from the ceiling. In the back kitchen was the electrical meter which was of considerable age.

The taps in the double sink of the back kitchen were checked and were rusted shut and would not turn. The bathroom sink and bath taps were checked and either no water came through them when they were turned to open or they were rusted shut and would not turn. The bath was full of household items and the toilet lid was down and was stacked above with household items. The toilet is not in use.

Examination of the plumbing under the back kitchen sink showed the stopcock shut and the pipe leading to it cut through.

The Tribunal examined the outside area where it was reputed that there was a burst in the private water supply but no evidence of ponding was present.

The Tribunal asked the Tenant to demonstrate the water supply and water pressure to the outbuilding. She placed large buckets under a hose attachment which lead to the supply. Two large buckets could be slowly filled from the supply with an inch of water in a third bucket before the water supply stopped. The Tenant volunteered that this was usual and she would be able get the same volume of water after waiting about three hours.

13.5 The water supply to the dwelling house has been disconnected since 2010 and the electricity supply to the dwelling house disconnected since 2006. The Landlord does not have an electrical inspection condition report for any part of the dwelling house or outbuildings, a requirement in terms of Section 19A of the Act.

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## REASONS FOR THE DECISION

14. In considering the repairing standard issue the tribunal carried out an inspection of the house and in particular examined the specific defects highlighted in the application. In addition the Tribunal carefully considered the written documentation submitted and the parties' oral evidence and submissions.

15. The Tribunal considered the Landlord's submission that the tenancy was of a type to which the repairing standard did not apply. Section 12 of the Housing (Scotland) Act 2006 (as amended) provides as follows

*"Tenancies to which repairing standard duty applies*

*(1) This Chapter applies to any tenancy of a house let for human habitation unless it is—*

*(a) a Scottish secure tenancy or a short Scottish secure tenancy,*

*(b) a tenancy of a house retained or purchased by a local authority under section 121 of the 1987 Act for use as housing accommodation,*

*(c) a tenancy of a house which is—*

*(i) on land comprised in a lease constituting—*

*(A) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)),*

*(B) a short limited duration tenancy (within the meaning of that Act),*

*(C) a limited duration tenancy (within the meaning of that Act), and*

*(D) a modern limited duration tenancy (within the meaning of that Act), or*

*(E) a repairing tenancy (within the meaning of that Act),*

*(ii) occupied by the tenant of the relevant lease,*

*(d) a tenancy of a house on a croft (within the meaning of the Crofters (Scotland) Act 1993 (c. 44)), or*

*(e) a tenancy of a house on a holding situated outwith the crofting counties (within the meaning of that Act of 1993) to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies.*

*(f) a tenancy of a house which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the house for a holiday."*

The Tribunal rejected the landlord's submission that the tenancy was a Scottish secure tenancy. A Scottish secure tenancy is a lease where the landlord is a local authority, registered social landlord or water or sewage authority. For the tenancy to be a Scottish secure tenancy it must be created on or after 30 September 2002. A tenancy does not qualify to be a Scottish secure tenancy by virtue of the tenant

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having protected rights during the term of the tenancy. For example, the Rent (Scotland) Act 1984 provides protected rights for tenants of houses let as separate dwellings with private sector landlords prior to 1 January 1989 but is not a Scottish secure tenancy. The Landlord did not argue that the tenancy for the house fell within any of the other exempted categories in Section 12 of the Act. The Tribunal decided that the tenancy is a type to which the repairing standard applies.

The Landlord did not make a submission that any of the exemptions in Section 16 of the Act applied. However, the Tribunal having heard the evidence considered if there was evidence that any exemptions applied. The tenancy agreement states that it is capable of termination by the Tenant on six months' notice. Therefore, it is not a tenancy which is exempt from the Landlord's repairing duty in terms of Section 16(1) and (2) of the Act. The Landlord argued that the Tenant was responsible for the burst pipe in the dwelling house. The Tribunal was not persuaded that this was the case as the pipe became frozen as a result of a protracted period of winter weather with temperature at or below freezing where the Tenant was without the means to provide heating throughout the house because of the lack of electricity. The burst pipe was not damage caused by the Tenant. The Tribunal concluded that no exemptions in terms of Section 16 applied.

Once it is established that there are no exemptions applying to the repairing standard, Section 17 of the Act prohibits the contracting out of the repairing standard. This means that irrespective of the maintenance provisions in the Lease, the Landlord must ensure that the repairing standard is met. However, examination of the repairing conditions in the lease for this house discloses in any event that the Landlord is responsible for maintaining the basic structure with the Tenant responsible for keeping the interior in good order. Based on the wording of the lease, the responsibility could not be said to lie with the Tenant to install fire and carbon monoxide alarms or lie with her to maintain the installations of water or electricity to the house which fall within the structure of the house.

The repairing standard is detailed in Section 13 of the Act as amended and states

*"The repairing standard*

*(1) A house meets the repairing standard if—*

*(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,*

*(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,*

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*(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*

*(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,*

*(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and*

*(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.*

*(h) the house meets the tolerable standard.”*

*Section 13(1) (c) is explained in Section 13(4) of the Act*

*“ (4) The reference in subsection (1)(c) to installations in a house includes reference to installations outwith the house which, directly or indirectly, serve the house and which the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.”*

*In determining whether a house meets the standards of repair mentioned in subsection (1)*

*(c) (f) and (g) regard is to be had to any guidance issued by the Scottish Ministers in relation to—*

*(a) the condition of pipes supplying water for human consumption,*

*(b) electrical safety standards in relation to—*

*(i) installations for the supply of electricity, and*

*(ii) electrical fixtures, fittings and appliances,*

*(d) equipment for detecting fire and for giving warning of fire or suspected fire,*

*(g) equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health.*

*Section 14(1) (b) of the Act states the landlord in a tenancy must ensure that the house meets the repairing standard at all time during the tenancy.*

*Section 194 defines “house” as*

*“(a) means any living accommodation which is, or which is capable of being, occupied as a separate dwelling (other than a mobile home or any other living accommodation which is not a building), and*

*(b) includes—*

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*(i) any part of the living accommodation (including its structure and exterior) which is, and any common facilities relating to it which are, owned in common with others, and  
(ii) any yard, garden, garage, out-house or other area or structure which is, or which is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others)”*

Section 13 states the repairing standard refers to the standard applying to “a house”. Given the wide definition of house in the Act, the standard applies in this case to the farmhouse and the outbuilding which is occupied and enjoyed with the living accommodation as part of the tenancy.

Visual inspection of the dwelling house confirms that there is no provision for the detection of fires and the detection of carbon monoxide in a concentration hazardous to health. There was evidence that the fireplace in the living room was being used as an open fire. The Aga in the kitchen operates on coal fuel. In accordance with the statutory guidance on the provision for detection of carbon monoxide, this necessitates a carbon monoxide alarm in each of the living room and kitchen. Failure to provide these alarms in these locations is a failure by the Landlord to comply with Section 13(1) (g) of the Act.

There is no provision for fire detection in the dwelling house. Even without electricity the Tribunal would expect that there would at the very least be lithium battery smoke alarms in each level of the house and within the rooms identified in the statutory guidance. The statutory guidance on the provision for the detection of fires within private lets has not been given regard to by the Landlord and the Tribunal concluded that there is a failure by the Landlord to comply with Section 13(1) (f) of the Act.

The parties agreed that there is no water supply within the dwelling house. Visual inspection shows that the water supply to the outbuilding is intermittent and of low pressure. This is evidence that the installation for the supply of water to the outbuilding external to the dwellinghouse is not in reasonable state of repair and in proper working order.

Section 13(4) of the Act provides that for the purposes of Section 13(1)(c) that *“installations in a house includes reference to installations outwith the house which, directly or indirectly, serve the house and which the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.”*

In terms of the Landlord’s duties under the repairing standard, he is required to ensure that the installations for the supply of water serving the house and outbuilding are in a reasonable state of repair and proper working order, even if such installations lie out with the curtilage of the land included in the tenancy agreement, provided the installations lie within land in his ownership and he has a responsibility to contribute to their maintenance, solely or in common with others.

The Landlord's failure to provide an adequate water supply to the dwelling house and outbuilding is a failure to comply with Section 13(1) (c) of the Act which requires that the installation for the supply of water is in a reasonable state of repair and in proper working order.

There is no longer an electricity supply to the dwelling house since it was disconnected due to safety concerns in 2006. Even if there is an electricity supply to the outbuilding, which is disputed by the Tenant, concerns were expressed about defects to the electrical installation to the outbuilding. The house was let with an electrical supply and it is incumbent of the Landlord to ensure that the electrical installation to the dwelling house and the outbuilding meets the repairing standard in Section 13(1) (c) of the Act. This duty requires the Landlord to ensure that the installation for the supply of electricity is in a reasonable state of repair and in proper working order. The electrical meter and wiring in the dwelling house is old. Concerns have been expressed about short circuiting in the electricity supply to the outhouse. A landlord has a duty to have regard to the statutory guidance for electrical installations and must comply with Sections 19A and 19B of the Act with regard to regular electrical inspections and recording of inspection findings which the Landlord has failed to do. The Landlord's failure to maintain an electrical supply in a dwelling house which was let with one initially is a breach of the repairing standard contained in Section 13(1) (c) of the Act which requires that the installation for the supply of electricity be in a reasonable state of repair and in proper working order.

The Tribunal observes that to ensure that the Landlord meets the repairing standard regard has to be had to the tolerable standard as defined in Section 86 of the Housing (Scotland) Act 1987 (as amended) which states that there must be an adequate piped supply of wholesome water available within the house. The water supply will have to meet the necessary water quality standard for domestic use to ensure that it is "wholesome". The Tribunal observed that a number of taps were not functioning in the house and this also is a repairing standard issue which will require to be addressed by the Landlord. As well as being a tolerable standard issue, these are linked to the requirement in Section 13(1) (c) of the 2006 Act to ensure that the installation in the house for the supply of water is in a reasonable state of repair and in proper working order.

## **DECISION**

16. The Tribunal, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

17. The Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2), which Order is referred to for its terms. A period of eight weeks is considered a reasonable period of time for the works to be carried out.

The Landlord is reminded that should the Tenant vacate the property, it is an offence to re-let the house whilst a RSEO applies to the house.

18. The decision of the Tribunal is unanimous.

## **APPEAL PROVISIONS**

**19. A landlord 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.

A Devanny

**Chairing Member of the Tribunal  
Dated: 25 August 2019**



# Housing and Property Chamber First-tier Tribunal for Scotland



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

## SCHEDULE OF PHOTOGRAPHS

**ADDRESS:** Mid Hangingshaw Farm, Nr Coulter, Nr Biggar ML12 6HN

**DATE:** 6<sup>th</sup> August 2019

**REFERENCE:** FTS/HPC/RT/19/1673



**FRONT ELEVATION**



**RIGHT HAND GABLE**



**REAR ELEVATION/EXTENSION**



**LEFT HAND GABLE**



**OUTBUILDING**



**OUTBUILDING – REAR ELEVATION**



**PIGGERY**



**SHED**



**SHED FLOOR**



**DILAPIDATED SHED**



**LIVING ROOM FIREPLACE**



**LIVINGROOM CEILING**



**ELECTRIC SOCKET TESTER**



**BATHROOM**



**KITCHEN CEILING**



**KITCHEN – AGA STOVE**



**REAR KITCHEN-ELEC METERS**



**REAR KITCHEN – SINKS**



**UPPER LANDING CEILING**



**OUTBUILDING WATER TAP**



**STOPCOCK AT OUTBUILDING**



**STOPCOCK UNDER SINKS**

**MR M LINKS**

**ORDINARY MEMBER (SURVEYOR)**

**HOUSING AND PROPERTY CHAMBER**

**DATE: 6<sup>TH</sup> AUGUST 2019**