

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: Kennel Cottage, Balgray, Lockerbie, Dumfriesshire DG11 2RL (“the Property”/ “the house”)

Sasine Description: All and Whole the detached cottage known as Kennel Cottage, Balgray, Lockerbie, Dumfriesshire DH11 2JT with ground pertaining thereto, being part of the subjects more particularly described in and disposed by Disposition by the Trustees of David Jardine Paterson in favour of Michael John Jardine Paterson dated 16 May and subsequent dates and recorded in the Division of the General Register of Sasines applicable to the County of Dumfries on 2 December, all in the year 1980.

Chamber Reference: FTS/HPC/RT/19/3429

Parties:

Dumfries and Galloway Council Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD (“Third Party Applicant”)

Wellingtonia LLP, a Limited Liability Partnership incorporated in England (LLP Reg No OC416665) whose registered office is Fairview House, Victoriaia Place, Carlisle CA1 1EX (“the Landlord”)

Interested Party - Mr Jason Christie, Kennel Cottage, Balgray, Lockerbie, Dumfriesshire DG11 2RL (“the Interested Party”)

Tribunal Members - George Clark (Legal Member/Chairperson) and Mike Links (Ordinary Member/Surveyor)

Whereas in terms of their decision dated 9 March 2020, 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. In particular, the Tribunal requires the Landlord to:

1. Carry out such repairs to or renewal of the defective roof slating and guttering to the brick outbuilding of the Property as are necessary and ensure it is wind and watertight and in a safe condition.

2. Complete in a satisfactory manner the ongoing repairs to the front boundary wall of the Property.

The Tribunal orders that the works required by this Order must be carried out within the period of six months 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 preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 9 March 2020, before this witness, Valerie Elizabeth Jane Clark, Droman House, Lasswade.

George Clark
...

Valerie Clark
. Legal Member/Chair

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: Kennel Cottage, Balgray, Lockerbie, Dumfriesshire DG11 2RL
("the Property"/ "the house")**

Chamber Reference: FTS/HPC/RT/19/3429

Parties:

**Dumfries and Galloway Council Strategic Housing Services, Council
Offices, Buccleuch Street, Dumfries DG1 2AD ("Third Party Applicant")**

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England (LLP Reg No OC416665) whose registered office is Fairview
House, Victoria Place, Carlisle CA1 1EX ("the Landlord")**

**Interested Party - Mr Jason Christie, Kennel Cottage, Balgray, Lockerbie,
Dumfriesshire DG11 2RL ("the Interested Party")**

**Tribunal Members - George Clark (Legal Member/Chairperson) and Mike
Links (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 by the Tribunal on 24 October 2019, the Third Party Applicant 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 the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that 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, 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, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire..
3. The application was accompanied by a copy of a letters sent by the Third Party Applicant to the Landlord on 14 May 2019. The letter listed the following work which needed to be carried out and which formed the basis of the application.

“1. The Property is not wind and watertight due to

- a) the deterioration of the softwood windows,
- b) the poor installation of glass in the front window,
- c) the missing threshold plate at the front door,
- d) the poorly fitted door to the rear of the property where the cavity is exposed.

“2. The exterior of the property is not in a reasonable state of repair due to

- a) the damaged inspection manhole to the rear of the property,
- b) the hole in the wall behind the soil waste pipe,
- c) the lack of maintenance leading to the poor condition of the windows.
- d) The blocked surface water drains to the front of the property causing flooding,
- e) The broken boundary wall to the front of the property,
- f) The missing sections of render to the rear of the property.

“3. The installations for the sanitation, space heating and water heating may fail to meet the requirements of the repairing standard due to

- a) The untreated outflow from the septic tank/cess pit.
- b) The poor combustion of the oil central heating boiler,
- c) The installation of the log burner in the living room without a connected flue liner

“4. There is a question regarding the safety of the electrical circuits and devices within the property. An EICR document will be required to confirm whether or not it is satisfactory.

“5. The fixture and fittings that the landlord provides must be in a reasonable state of repair and be in proper working order. Some of the aforementioned issues above may also fall within this definition.

- a) The outbuildings are fixtures that are provided as part of the tenancy and will need to meet the requirements of the repairing standard to ensure that they are safe to use and fully functional.
- b) There are missing door handles on some of the internal doors.

“6. The Property does not have satisfactory provision for the detection of carbon monoxide within the location of the log burner in the living room.”

4. On 3 January 2020, the President of the Housing and Property Chamber intimated a decision to refer the Tenant's application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.
5. The Tribunal Members inspected the Property on the morning of 6 February 2020 and were admitted by the tenant, Mr Christie. The Third Party Applicant was represented by Mr Robert Rome and Mr Adam Black. The Landlord was represented at the inspection by Mr Matthew Law, Rural Surveyor and Mr Mark Fogden, Director, both of Savills, Dumfries.
6. The Tribunal comprised George Clark (Legal Member/Chair) and Mike Links (Ordinary Member/surveyor).
7. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

8. Following the inspection, the Tribunal held a Hearing at Moffat Town Hall, High Street, Moffat. Mr Rome and Mr Black attended the Hearing on behalf of the Third Party Applicant. The Landlord was represented by Mr Law and Mr Fogden.
9. The Parties told the Tribunal that there was little to add to the written representations and the evidence the Tribunal had seen for itself at the Inspection. The Landlord's representatives told the Tribunal that they would instruct patch repairs to the rendering of the outhouse, gutter replacement and the replacement of any damaged sections of sarking board, but requested adequate time to have this work carried out, as they had proposed that the outbuilding be removed from the let subjects and that it be replaced by a licence to use. The Tenant had told the Tribunal at the inspection that he had decided not to agree to have the outbuildings removed from the let subjects, and the Landlord's representatives accepted that position.
10. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of Fact

11. The Tribunal makes the following findings of fact:

- The Property comprises a two-storey detached cottage with garden ground and substantial outbuildings. Drainage is to a septic tank located within the curtilage of the Property.
- This is a Third Party Application by Dumfries & Galloway Council.
- The tenant is not a Party to the application but is classified as an Interested Party.
- There are smoke detectors in the living room, hallway and upstairs landing, a heat detector on the kitchen and carbon monoxide monitors in the living room and on the upstairs landing.
- All defective windows have been replaced.
- A threshold plate has been installed at the front door.
- The issue of the rear door has been resolved and the area around it has been re-rendered.
- The damaged manhole to the rear of the Property has been replaced.
- The issue of the hole in the wall behind the soil waste pipe has been resolved by the re-rendering.
- The Landlord's representatives confirmed that the flooding to the front of the Property had been caused by a blocked downpipe, which has now been jetted and cleared.
- The boundary wall to the front of the Property is currently under repair.
- The issue of missing sections of render to the rear of the Property has been resolved by the re-rendering.
- SEPA consent for the septic tank was obtained on 11 June 2019.
- The central heating boiler has been replaced. There is no thermostatic control for the boiler.
- The chimney flue in the living room has been lined.
- The Tribunal has seen a satisfactory Electrical Installation Condition Report in respect of the Property dated 8 February 2017. It contained no category C1 or C2 items of disrepair.
- The slating and gutters of the brick outbuilding are defective.
- The missing internal door handles of the Property have been replaced.

12. The Tribunal was satisfied that the large majority of issues raised in the application had been resolved to the satisfaction of the Third Party Applicant, but was concerned to ensure that the repair works to the front boundary wall of the Property would be satisfactorily completed and that the outbuilding would be rendered wind and watertight.

13. The Tribunal noted that the carbon monoxide monitor in the living room is incorrectly placed and that the smoke detector in the kitchen is attached to a wall, rather than to the ceiling. The Tribunal recommends that appropriate remedial action is taken by the Landlord. The Tribunal also recommends that a thermostatic control be installed for the central heating boiler.

14. The Tribunal accepted that the repair work to the outbuilding was weather dependent and that the Landlord had hoped that the Tenant would agree to the removal of the outbuilding from the let subjects, so was content to allow a period of up to 6 months for completion.

Decision

15. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided to make a Repairing Standard Enforcement Order in respect of the Property.

16. The decision of the tribunal was unanimous.

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.

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George Clark
Signed.
Date: 9 March 2020

. Legal Member/Chairperson

*This is the Schedule of Photographs referred to
in the Joint Statement of Decision
George Clark LegaleStar 9/3/20*

Housing and Property Chamber First-tier Tribunal for Scotland



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

SCHEDULE OF PHOTOGRAPHS

ADDRESS: KENNEL COTTAGE, BALGRAY, LOCKERBIE DG11 2RL

DATE: 6 FEBRUARY 2020

REFERENCE: FTS/HPC/RT/19/3429



FRONT ELEVATION



REAR ELEVATION



EXTENSION



REAR DOOR



MANHOLE



FRONT DOOR



FRONT BOUNDARY UNDER REPAIR



OUTBUILDING



OUTBUILDING



CENTRAL HEATING TIMECLOCK



CO MONITOR – LIVING ROOM



HEAT DETECTOR – KITCHEN



HEAT DETECTOR



STOVE – FLUE LINER



NEW HANDLES

Mr M LINKS

ORDINARY MEMBER (SURVEYOR)

HOUSING AND PROPERTY CHAMBER

DATE 6 FEBRUARY 2020