

# **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: 139 Burntscarthgreen, Locharbriggs, Dumfries DG1 1XW ("the Property"/ "the house")**

**Chamber Reference: FTS/HPC/RT/19/3253**

#### **Parties:**

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

**Miss Shannon Bolton, 139 Burntscarthgreen, Locharbriggs, Dumfries  
DG1 1NX ("the Tenant")**

**Mr Kenneth Irvine, 10 Corberry Mews, Dumfries DG2 7AX ("the  
Landlord")**

**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 11 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, that any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. The application was accompanied by copies of letters sent by the Third Party Applicant to the Landlord on 31 March 2017 and 27 August 2019. The second letter listed the following work which needed to be carried out and which formed the basis of the application and the Council pointed out in that letter that many of the issues were a repeat of matters raised in their previous letter of 31 March 2017:

- a) "There is evidence of possible water ingress on the ceiling of the first-floor bathroom. A similar issue was identified during a previous visit and notified to you on 31/03/2017.
- b) There is a leak below the shower that drips into the kitchen below. A similar issue was identified during a previous visit and notified to you on 31/03/2017.
- c) The external surface of the back door is broken which may allow the ingress of wind and rain.
- d) The minimal requirements for natural ventilation in the kitchen have not been satisfied. The top opening kitchen window sashes both have faults. One of them is screwed shut and silicone sealed, and the other one is loose from the frame when opened. Neither sashes have handles.
- e) There are cracks in the render above the kitchen window and above the back door which may allow the ingress of rainwater into the fabric of the building.
- f) The central heating thermostatic control on the Worcester Bosch 350 is broken and cannot regulate the temperature. This model was discontinued in 2016.
- g) There is no current landlord gas safety certificate for the gas central heating boiler or gas fire.
- h) The electric shower on the first floor appears to have a faulty thermostat and the water is too hot.
- i) The electric shower on the second floor does not appear to have a connected water supply.

- j) The gas fire in the living room has never worked during the term of this tenancy but does have a live gas supply to it. This same issue was mentioned within a previous letter dated 31/03/2017.
- k) The toilet in the first-floor bathroom is not secured to the back wall.
- l) There are loose floorboards in the first-floor hallway that move under the carpet when walked on.
- m) The Velux window in the attic bedroom has a broken ventilator mechanism which allows the unrestricted passage of wind into this bedroom which can be heard when the window is closed.
- n) There is a damaged socket in the living room that appears to be difficult to isolate from the power supply. There is also an issue with the light in the first-floor bedroom that allegedly remains luminated after the lighting circuit has been isolated at the fuse box.
- o) The tenant has not had sight of an Electrical Installation Condition Report (EICR). This must be carried out at least every 5 years and was mentioned within a previous letter dated 31/03/2017.
- p) A carbon monoxide detector located beside the gas boiler within the bedroom cupboard should be relocated outside of the enclosed cupboard. This same issue was identified during a previous visit and notified to you on 31/03/2017. The CO detector in the living room is in the wrong location.
- q) The minimal requirement for smoke and heat detectors has not been satisfied despite your previous assurance in 2017 that the property would be up to standard prior to being re-let...There is no heat detector in the kitchen, there is no smoke detector in the living room. There is no smoke detector within the circulation space on the ground floor."

4. On 19 November 2019, 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 7 January 2020 and were admitted by the Tenant. The Third Party Applicant was represented by Mr Robert Rome. The Landlord was not present or represented at the inspection.
6. The Tribunal comprised George Clark (Legal Member/Chairperson) 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 Lochvale House, Georgetown Road, Dumfries. Mr Rome and the Tenant, accompanied by her partner, Mr Gary McQueen, attended the Hearing. The Landlord was not present or represented.
9. Mr Rome, on behalf of the Third Party Applicant 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.
10. The Tenant stated that the tenancy had started in August 2018, but the Landlord had never provided a tenancy agreement. The rent is £500 per month. The Landlord's contractors had inspected the Property on 28 May 2019, but nothing further had happened and the Landlord had never attempted to carry out the works required.
11. 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**

12. The Tribunal makes the following findings of fact:

- The Property comprises an end-terraced former local authority house of traditional construction laid out over two floors and attic. The accommodation comprises one public room and kitchen on the ground floor, two bedrooms and a bathroom on the first floor, and a further bedroom with en-suite shower in the attic. The roof is tiled. There is garden ground to the rear and a small garden to the front.
- There is evidence of water ingress on the ceiling of the first-floor bathroom. A hole in the ceiling has been boarded over, but the hole itself may still be there.
- There is evidence of a leak below the shower that has dripped into the kitchen below. The kitchen ceiling is bowed.
- There is a hole in the beading of the external surface of the back door.
- The top opening kitchen window sashes both have faults. The right hand one (looking from inside the Property) is screwed shut and silicone sealed and cannot be opened, and the other one is loose from the frame when opened and is taped shut. Neither sashes have handles.
- There are cracks in the external render above the kitchen window and above the back door.
- The thermostatic control on the central heating boiler is broken and cannot regulate the temperature.

- The Tribunal has not seen a current Gas Safety Certificate for the Property.
- The electric shower on the first floor appears has a defective thermostat and the water temperature cannot be controlled. In addition, the shower screen is loose and insecure.
- The electric shower on the second floor has power but no water supply.
- The gas fire in the living room is not working. There is an electric radiator in the room..
- The toilet in the first-floor bathroom is not properly secured to the floor beneath or to the wall behind.
- There are loose floorboards in the first-floor hallway.
- The left hand (looking from the inside) Velux window in the attic bedroom has a broken ventilator mechanism and its timber frame is defective and heavily stained by the effects of condensation.
- There is a damaged power socket in the living room and a defective socket in the first-floor rear bedroom, which cannot be switched off.
- The Tribunal has not seen an Electrical Installation Condition Report in respect of the Property.
- The carbon monoxide monitor is inside the cupboard which houses the gas central heating boiler within one of the first-floor bedrooms. The carbon monoxide monitor in the living room is in the wrong location.
- There is no heat detector in the kitchen. There is a smoke detector on the first-floor landing, but there are no mains-wired and interlinked smoke detectors on the ground floor.

### **Reasons for Decision**

13. The Tribunal agreed with all the repairing issues raised in the application and was clear that the Property does not meet the repairing standard. It is not wind and water tight; the installations for supplying water, gas and electricity and for sanitation are not in proper working order; the fixtures, fittings and appliances (namely the gas fire and shower units) provided by the Landlord are not in proper working order; and the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire or if carbon monoxide is present in a concentration that is hazardous to health.
14. The Tribunal was particularly concerned about the risk of collapse of the kitchen ceiling and the absence of a compliant system for smoke and heat detection and the incorrect positioning of the carbon monoxide monitors. The inability to control the temperature of the shower on the first floor means that there is a real risk that a user might be scalded.
15. The view of the Tribunal is that, whilst the list of required repairs is lengthy, all the works can be carried out with Tenant remaining in residence.

## **Decision**

16. 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.
17. 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.**

**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.**

Signed.. **G Clark** .. Legal Member/Chairperson  
Date: 28 January 2020

*This is the Schedule of Photographs referred to in  
the foregoing Statement of Decision of 28/1/20  
G Clark*

# Housing and Property Chamber First-tier Tribunal for Scotland



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

## **SCHEDULE OF PHOTOGRAPHS**

**ADDRESS: 139 BURNTSCARTH GREEN, LOCHARBRIGGS, DUMFRIES  
DG11XW**

**DATE: 7<sup>TH</sup> JANUARY 2020**

**REFERENCE: FTS/HPC/RT/19/3253**



**FRONT ELEVATION**



**REAR ELEVATION**



**LIVING ROOM – GAS FIRE**



**REAR BED-GAS BOILER/CO MONITOR**



**KITCHEN – WINDOW**



**KITCHEN – DEFECTIVE RENDER**



**REAR DOOR LINTOL-CRACKED RENDER**



**REAR DOOR-CRACKED**



**SHOWER ROOM-DAMPNESS**



**SHOWER ROOM-LOOSE PANELS**



**SHOWER ROOM – W.C.**



**1ST FLLOR LANDING – SMOKE DETECTOR**





**1ST FL PASS – UNEVEN FLOOR**



**ATTIC LANDING- BATTERY SMOKE ALARM**



**ATTIC- VELUX –BROKEN VENT**



**ATTIC – SHOWER**



**REAR BED. – DEFECTIVE SOCKET**



**LIVING ROOM – DEFECTIVE SOCKET**



**LIVING ROOM CEILING –NO ALARM**



**HALL – NO ALARM**



**KITCHEN CEILING – HOLED AND BOWED. NO ALARM.**

**Mr M LINKS**

**ORDINARY MEMBER (SURVEYOR)**

**HOUSING AND PROPERTY CHAMBER**

**DATE 7 January 2020**