

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.**

**Chamber Ref: FTS/HPC/RT/24/2024**

**7 Runic Place, Ruthwell, Dumfries, DG1 4NW being the subjects registered in the Land Register of Scotland under title number ('The Property')**

**The Parties:-**

**David Stainthorpe residing at Allandale, Ruthwell, Dumfries, DG1 4NN ('the Landlord').**

**Dumfries and Galloway Council ('Third Party')**

**Raymond Swann ('the former Tenant').**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Nick Allan (Ordinary Member).**

### **Background**

1. The former Tenant leased the Property from the Landlord in terms of the private residential tenancy agreement dated 11<sup>th</sup> October 2021. The Third Party applied to the Tribunal for a determination of whether the Landlord has 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 they considered that the Landlord has failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the installations in the house for the supply of water, gas and electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are not in a reasonable state of repair and proper working order.

In particular the application stated :-

2.1 No fixed heating system which is plumbed or hardwired.

2.2 Possible removal of asbestos in the loft.

3. On 21<sup>st</sup> May 2024, Martin McAllister, as Convenor of the First-tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received between 3 May

2024 and 21 May 2024, and he referred the application under Section 22 (1) of the Act to a Tribunal.

#### **4. The Inspection.**

The Tribunal attended at the Property at 10.30 am on 4<sup>th</sup> October 2024. The Landlord was present at the inspection together with Adam Black, a Private Rented Sector Housing Officer with Dumfries and Galloway Council.

The Property, 7 Runic Place, Ruthwell, Dumfries is a semi detached bungalow. The accommodation comprises 2 bedrooms, lounge, kitchen and bathroom. The Tenant had vacated the Property which had been stripped. All heating, fitments and fittings (including the kitchen) had been removed.

The Tribunal inspected the alleged defects and found as follows:-

(i) No fixed heating system which is plumbed or hardwired.

There was no fixed heating in the Property in the inspection.

(ii) Possible removal of asbestos in the loft.

At the inspection Mr Stainthorpe confirmed that there was asbestos insulation to the hot water tank in the attic and there were asbestos floor tiles in the Property.

At the inspection Mr Stainthorpe gave Mrs Taylor a copy of the Upper Tribunal decision (UTS/AP/22/0027) by Sheriff Jamieson in relation to the eviction proceedings and agreed to send copies to the Tribunal administration by email before the hearing.

#### **5. The Hearing.**

Following the inspection of the Property the Tribunal held a telephone conference at 15.00 pm.

The Landlord, Mr Stainthorpe, and Adam Black, a Private Rented Sector Housing Officer with Dumfries and Galloway Council attended the hearing.

In respect of the matters in the application Adam Black advised that he had received a copy of the Upper Tribunal decision from the Tribunal administration which confirmed Mr Stainthorpe's intention to develop the Property which will be occupied by his step son. In the circumstances he wished to withdraw the application. He did not require an adjournment to allow him more time to consider the Upper Tribunal decision.

Mr Stainthorpe advised the Tribunal that he considered that the repairing standard application made by the Third Party had been vexatious and he explained why. However, he confirmed that he was happy to accept Mr Black's request to withdraw the application. He did not ask the Tribunal to make a determination as to whether or not the Third Party had been vexatious in lodging the repairing standard application.

**6. Decision.**

The Tribunal accepted Mr Black’s request to withdraw the application. The decision of the Tribunal was unanimous.

**7. Appeal.**

**A landlord, tenant or third party applicant 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.

# J Taylor

.....Chairperson

4<sup>th</sup> October 2024