

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order: Section 24 (2) Housing (Scotland) Act 2006

Chamber Ref: PRHP /RT/16/0326

8 High Street, Lockerbie, DG11 2AA

All and Whole the subjects described in a Lease dated 31ST March, 8th April and 1st May 1786, by Dame Grace Douglas Johnstone of Lockerbie relict of Sir William Douglas of Kelhead, Bart., with consent of Trust Managers of her said Estate, appointed by the deceased William Johnstone of Lockerbie to John Marshall of a Piece of Land extending in front to 50 feet, at the Townhead of Lockerbie bounded on the West by the Road or Street of Lockerbie, Parish of Dryfesdale, an extract of which is registered in the Division of the General Register applicable to the County of Dumfries on 30th May 1870 but only in respect of the house at 8 High Street, Lockerbie.

("The House")

The Parties:-

Dumfries and Galloway Council,
Council Offices,
Buccleuch Street,
Dumfries,
DG1 2AD

("the Third Party Applicant")

Ms Gillian Glennie,
Sometime residing at the House

("the Tenant")

Mr Allan Airley, Mr John Graham, George Trudt and Mr Robert McMillan, as
Trustees of the Mid Annandale Comrades Club,
2-6 High Street,
Lockerbie,
DG11 2AA

("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') makes the following repairing standard enforcement order:

**(ONE) The Landlord is to engage a competent damp and timber specialist to establish the cause and extent of dampness in the kitchen, undertake such works as necessary and reinstate where required including decoration.
(Section 13 (1) (a) of the 2006 Act as amended).**

**(TWO) The Landlord is to repair or renew joinery and glazing as required in the rear porch.
(Section 13 (1) (b) of the 2006 Act).**

**(THREE) The Landlord is to repair or renew the rear outside light to ensure that there is no cable running between the House and the adjoining building or, if it is, that it is adequately and safely supported and complies with appropriate standards.
(Section 13 (1) (c) of the 2006 Act).**

**(FOUR) The Landlord requires to ensure that heat and smoke alarms comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)
(Section 13 (1) (f) of the Act).**

**(FIVE) The Landlord requires to install a functioning carbon monoxide detector.
(Section 13 (1) (g) of the Act).**

**(SIX) The Landlord is to produce an electrical installation condition report prepared by a suitably competent person confirming that the electrical system within the Property is in a safe and efficient condition.
(Section 13 (1) (c) of the 2006 Act).**

In view of the nature of the failure to meet the Repairing Standard as defined in the Housing (Scotland) Act 2006, the tribunal that the repairing standard enforcement order requires to be complied with by the date twelve weeks from service of the repairing standard enforcement order upon the Landlord.

The Landlord is referred to the terms of Section 28 of the Housing (Scotland) Act 2006. A Landlord who, without reasonable excuse, fails to comply with a repairing standard order or enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house commits an offence.

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.

In witness whereof these presents type written on this and the preceding two pages are executed by Martin Joseph McAllister, solicitor, 51 Hamilton Street, Saltcoats, KA21 5DX, chairperson of the tribunal at Kilwinning, on 21st December 2016 before Audrey Boylan, 83 Main Street, Kilwinning, KA13 6AN

A Boylan

M McAllister

.....

Witness

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Section 24 Housing (Scotland) Act 2006

Chamber Ref: PRHP/RT/16/0326

8 High Street, Lockerbie, DG11 2AA

All and Whole the subjects described in a Lease dated 31ST March, 8th April and 1st May 1786, by Dame Grace Douglas Johnstone of Lockerbie relict of Sir William Douglas of Kelhead, Bart., with consent of Trust Managers of her said Estate, appointed by the deceased William Johnstone of Lockerbie to John Marshall of a Piece of Land extending in front to 50 feet, at the Townhead of Lockerbie bounded on the West by the Road or Street of Lockerbie, Parish of Dryfesdale, an extract of which is registered in the Division of the General Register applicable to the County of Dumfries on 30th May 1870 but only in respect of the house at 8 High Street, Lockerbie.

(“The House”)

The Parties:-

Dumfries and Galloway Council,
Council Offices,
Buccleuch Street,
Dumfries,
DG1 2AD

(“the Third Party Applicant”)

Ms Gillian Glennie,
Sometime residing at the House

(“the Tenant”)

Mr Allan Airley, Mr John Graham, George Trudt and Mr Robert McMillan, as
Trustees of the Mid Annandale Comrades Club ,
2-6 High Street,
Lockerbie,
DG11 2AA

("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determines that the House does not meet the repairing standard as set out in Section 13 of the Housing (Scotland) Act 2006 as amended ("the Act") and makes a repairing standard enforcement order.

Background:

1. By application dated 13th October 2016 the Third Party Applicant applied to the Private Rented Housing Panel for a determination of whether the landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Act. The tribunal assumed responsibility for the matter on 1st December 2016.

2. The application stated that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard. The application contended that the House is not wind and watertight and in all other respects fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; that installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, that the House does not have satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire and that the house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. In particular the application stated that:-

2.1 There is dampness on the gable wall in the kitchen

2.2 There is a leak from the exit pipe in the toilet.

2.3 The rear porch requires attention.

2.4 There is no carbon monoxide detection.

2.5 There are problems with the electrical sockets in the kitchen and it is difficult to insert plugs into sockets.

2.6 The rear outside light requires attention.

2.7 There is no electrical installation condition report.

3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 23 (1) of the Act to a Private Rented Housing Committee. The Committee members were Martin McAllister, solicitor, (Chairperson) and Kingsley Bruce, surveyor, ordinary member.

4. The Private Rented Housing Panel served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Tenant and the Third Party on 8th November 2016. An inspection and Hearing were fixed for 14th

December 2016. Prior to the Inspection and Hearing, it was intimated that the tenancy had been lawfully terminated. The then Private Rented Housing Panel Committee considered the matter and in terms of Schedule 2, 7(3) (b) (i) decided to continue to determine the application.

5. In response to a Notice of Direction dated 24th November 2016 the Landlord provided a copy of its constitution and details of its Office Bearers. The Landlord also provided a copy of a Gas Safety Certificate dated 8th September 2016.

Inspection

6. The tribunal attended at the House on 14th December 2016 for an inspection. Mr John Graham, Chairman of the Mid Annandale Comrades Club was present and was accompanied by Mr Brian Keith, a Committee member. The House comprises a detached house on two levels. A schedule of external and internal photographs is attached to this Determination.

7. The tribunal found the following:-

7.1 There is evidence of dampness to the gable wall and along an internal wall in the kitchen evidenced by excessively high moisture readings when tested using an electronic moisture meter.

7.2 There is no evidence of a leak in the exit pipe from the toilet.

7.3 There is decayed timber to cills and door surround of the rear porch and missing putty from some windows.

7.4 There are no smoke detectors and there is no heat detector or carbon monoxide detector installed within the property

7.5 The kitchen units have been installed above sockets in such a way that there is insufficient room to insert plugs. There is one socket in the kitchen which has been taped over. The consumer unit appears dated and its casing is broken.

7.6 The rear outside light is installed on a neighbouring property (Mid Annandale Comrades Club) with an unsupported power cable running between the two buildings.

Hearing

8. A Hearing was held at Lockerbie Town Hall. Mr Graham and Mr Keith were present to represent the Landlord. Mr Glendinning of Dumfries and Galloway Council (the Third Party) was present. The former Tenant was present and was accompanied by her husband, Stuart Glennie.

9. Mr Graham explained to the tribunal that the House had previously been the club master's house but had been rented out for about twenty years. He said that the Club's current plans are to sell the House because it cannot afford to carry out repairs. He said that he believed that at one time there had been battery powered smoke detectors. He said that the tenant and her husband had been members of the management committee and had been aware of the condition of the House prior to entering into the tenancy. He said that the expectation had been that the Tenant would carry out works to the House. Mr Glennie said that he is a painter and decorator and had carried out work but that there was no expectation that he would have to carry out the extensive work needed to meet the repairing standard.

10. The Tenant said that she and her husband had purchased hard wired smoke detectors but had been told by the Club Secretary that she could not fit them unless it was done by a qualified electrician. She also said that she had offered to hold back rent money to pay for works. Mr Graham said that he had no knowledge of that. The Tenant said that the Club did not offer to pay for the works and she said that she had spent £1500 on the House on such matters as replacing doors. Mrs Glennie said that the house had been let for years without proper smoke detectors being installed.

11. Mr Glendinning said that he had been asked to visit the House by the Tenant and that he had found a number of defects. He said that he had written to the club on the matters but had not secured any progress in having the house brought up to the repairing standard.

12. The Repairing Standard

The repairing standard is set out in Section 13 of the Act:
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,*
- (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.*

Findings

13. The tribunal made the following findings:

13.1 There is evidence of structural dampness to the gable wall and internal wall in the kitchen.

13.2 There is evidence of timber decay to cills and external door surrounds in the rear porch and missing putty from some windows.

13.3 There are no smoke detectors and there is no heat detector or carbon monoxide detector.

13.4 The electrical installations in the House including the consumer unit, sockets and outside light are defective.

Reasons

14. The tribunal made its findings as a result of what it found on inspection.

Determination

15. The tribunal considered whether or not any of its findings brought the House below the repairing standard as set out in the Act. It determined that the house did not meet the repairing standard and that it required to make a repairing standard order in accordance with Section 24 of the Act.

The tribunal determined that the following repairing standard enforcement order be made:

**(ONE) The Landlord is to engage a competent damp and timber specialist to establish the cause and extent of dampness in the kitchen, undertake such works as necessary and reinstate where required including decoration.
(Section 13 (1) (a) of the 2006 Act as amended).**

**(TWO) The Landlord is to repair or renew joinery and glazing as required in the rear porch.
(Section 13 (1) (b) of the 2006 Act).**

**(THREE) The Landlord is to repair or renew the rear outside light to ensure that there is no cable running between the House and the adjoining building or, if it is, that it is adequately and safely supported and complies with appropriate standards.
(Section 13 (1) (c) of the 2006 Act).**

(FOUR) The Landlord requires to ensure that heat and smoke alarms comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)

(Section 13 (1) (f) of the Act).

(FIVE) The Landlord requires to install a functioning carbon monoxide detector.

(Section 13 (1) (g) of the Act).

(SIX) The Landlord is to produce an electrical installation condition report prepared by a suitably competent person confirming that the electrical system within the Property is in a safe and efficient condition.

(Section 13 (1) (c) of the 2006 Act).

In view of the nature of the failure to meet the Repairing Standard as defined in the Housing (Scotland) Act 2006, the tribunal held that the repairing standard enforcement order requires to be complied with by the date twelve weeks from service of the repairing standard enforcement order upon the Landlord.

The Landlord is referred to the terms of Section 28 of the Housing (Scotland) Act 2006. A Landlord who, without reasonable excuse, fails to comply with a repairing standard order or enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house commits an offence.

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.

Martin J. McAllister, Solicitor,
Legal Member of the Housing and
Property Chamber of the First-tier
Tribunal for Scotland.
21ST December 2016

SCHEDULE OF PHOTOGRAPHS:

8 HIGH STREET, LOCKERBIE, DG11 2AA

PRHP/RP/16/0326

DATE: 1 DECEMBER 2016













