

# 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: Housing (Scotland) Act 2006, Section 26(1)**

Chamber Ref: FTS/HPC/RT/17/0339

**19 King Street, Stranraer, DG9 7JU**  
("The property")

The Parties:-

**Dumfries and Galloway Council**, Community & Customer Services,  
Strategic Housing Services, Ailsa House, Sun Street, Stranraer, DG9 7JL  
("the third party applicant")

**Stuart Alexander Adams**, Dunragit Home Farm, Dunragit, Stranraer, DG9  
8PH  
("the landlord")

**Tribunal Members:**

Adrian Stalker (Chairman) and Donald Wooley (Ordinary Member)

### **Decision**

The First-tier tribunal for Scotland (Housing and Property Chamber) ("the tribunal") decided, under section 26(1) of the Housing (Scotland) Act 2006 ("the Act") that the landlord has failed to comply with the Repairing Standard Enforcement Order ("RSEO") made by the tribunal on 15 December 2017.

### **Background**

1. On 25 January 2017, the tribunal issued a determination that the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act. On the same date, the tribunal issued an RSEO in respect of the property. The RSEO made by the tribunal required the landlord to:-
  - a) Reposition the carbon monoxide monitor in the kitchen, so as to comply with the Scottish Government Statutory Guidance for the provision of Carbon Monoxide alarms in private rented housing, the requirements of which are summarised in paragraph 14 of the tribunal's decision or provide written confirmation from the

manufacturers that the monitor has been installed in accordance with their specified recommendations.

- b) Instruct a suitably qualified electrical contractor to install in the property: (a) at least one functioning smoke alarm in the ground floor living room; (b) at least one functioning smoke alarm in the first-floor landing; and (c) a heat alarm in the kitchen; all of the alarms being interlinked and mains powered in accordance with the Revised Domestic Technical Handbook guidance and the Scottish Government revised statutory guidance on the requirements for smoke alarms, the requirements of which are summarised in paragraph 15 of the tribunal's decision.
- c) Repair or replace the ground floor living room window unit, such that the said unit is in a reasonable state of repair and in proper working order.
- d) Repair or replace the ventilation device above the gas hob in the kitchen, such that there is an appliance in the kitchen above the gas hob, for the purpose of removing airborne grease, combustion products, fumes, smoke, odours, heat, and steam from the air by evacuation of the air and filtration, which is in a reasonable state of repair and in proper working order. In the event that the existing ventilation device is repaired, rather than replaced, the landlord is also to renew the existing damaged fascia with a suitably manufactured heat and fire resistant replacement.
- e) Renew the damaged cabinet fittings on either side of ventilation device above the gas hob in the kitchen with suitably positioned fire and heat resistant replacements.
- f) Supply the tribunal with an appropriate installation certificate, provided by a suitably qualified kitchen installer, confirming that the re-positioning of the cabinets and associated fittings is in accordance with the manufacturer's specification in relation to minimum distance from and height above a gas fired cooking hob.

The tribunal ordered that the works specified in the RSEO were to be carried out and completed within six weeks from the date of service of the RSEO, that is, by 30 January 2018.

- 2. A further inspection of the property was undertaken by the Ordinary Member (Surveyor) of the tribunal on Wednesday 11 April 2018 (not, as stated on the first page of his report, "Wednesday 11th March 2018"). A copy of his inspection report dated 12 April 2018 is attached.
- 3. The landlord had been advised of the date of the re-inspection by way of letters dated 21 March and 3 April 2018. A further email was sent to the landlord on 5 April 2018 by the First-tier Tribunal administration, seeking his confirmation that access would be allowed for the re-inspection on 11 April. On 5 April, the landlord replied: "A haven't saw no letter. House is empty' no one stays in this property any more".
- 4. On 11 April 2018, the Ordinary Member could not gain access to the property. The landlord did not attend at the inspection. However, from an

external visual inspection the Ordinary Member found that there had no repair to the living room window. No Electrical Installation Condition Report had been provided by the landlord. No report by a suitably qualified Gas Safe registered engineer had been provided by the landlord. No installation certificate regarding the re-positioning of the cabinets and associated fittings in the kitchen had been provided by the landlord.

5. The landlord was provided with a copy of the Ordinary Member's re-inspection report and given the opportunity to comment thereon. However, the landlord did not respond.
6. The third party applicant's response of 29 March 2018 indicates that they have had no contact with the landlord. Their response of 8 May 2018 indicates that the tenants left the property on 23 February 2018. The third party applicant is unaware of any new occupants. However, during the inspection of 11 April 2018, the Ordinary Member noted that there were signs of recent occupation, as the windows on the first floor of the property were partially open.
7. The tribunal notes that, throughout the application process, the landlord has failed to participate, and in particular, did not attend the original inspection and hearing on 1 December 2017.

### **Decision**

8. Against that background, the tribunal decided, on a balance of probabilities, that none of the works required by the RSEO had been undertaken by the landlord.
9. The tribunal takes the view that the landlord has had ample time to carry out the works. This application was made to the First-tier Tribunal on 1 September 2017.
10. The landlord was given the opportunity to comment on the Ordinary Member's re-inspection report but failed to respond. The landlord failed to attend or provide access to the property for the purposes of re-inspection.
11. The tribunal took the view that the works required by the RSEO had been outstanding for over three months. The landlord had been made aware of the repairs issues by the third party applicant prior to September 2017, over six months ago.
12. Accordingly, the tribunal decided, under section 26(1) of the Act, that the landlord has failed to comply with the RSEO made by the tribunal on 15 December 2017.
13. A notice of the failure of the landlord to comply with the RSEO will be served on the local authority Dumfries and Galloway Council, in terms of the section 26(2)(a) of the Act. In accordance with section 26(2)(b), the tribunal had to determine whether a rent relief order should be made. As

the property had been vacated by the tenants, and it is not clear whether it is currently occupied by other tenants, the tribunal did not make such an order.

14. The decision of the tribunal is unanimous.

**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.**

A Stalker

Signed

Date 12 June 2018

Chairperson