

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Notice of Failure to Comply with a Repairing Standard Enforcement Order:
Housing (Scotland) Act 2006 ("the Act"), section 26**

Chamber Ref: FTS/HP/RP/17/0001

Property: Craigview, Lockerbie, Dumfriesshire, DG11 2PH, being the subjects formerly known as "Montana", Tundergarth Road, Lockerbie being 0.25 acres, on north side of road from Lockerbie to Langholm [part of farm of Mainhill] described in Feu Disposition to David Kelly Wilson recorded in the General Register of Sasines applicable to the County of Dumfries on 1st April 1965. ('The House')

The Parties:-

Mrs Stephanie Hunter, residing at Craigview, Lockerbie, Dumfriesshire, DG11 2PH ('the Tenant')

Mr Jim Black, residing at Cowthat, Ecclefechan, DG11 3JH ('the Landlord')

Tribunal Members:

Mary-Claire Kelly (Chair and Legal Member)

Robert Buchan (Ordinary Surveyor Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are appropriate, determined that the Landlord has failed to comply with the requirements of the Repairing Standard Enforcement Order ("RSEO") issued further to a decision of the tribunal dated 7th April 2017. It further determined that notice of failure should be served on the local authority in whose area the House is situated. The tribunal further determined not to make a Rent Relief Order as the Tenant no longer resides in the House.

Background

1. The tribunal issued a RSEO in respect of the House on 7th April 2017 following a hearing and a decision that the Landlord had failed to comply with

his duty under section 14(1)(b) of the Act. The RSEO required the Landlord to carry out the following works within two months of the date of the RSEO:

- a) To repair or replace the ceiling in the kitchen to ensure that it is in a reasonable state of repair and in proper working order;*
- b) To repair or replace the ceiling in the bathroom to ensure that it is in a reasonable state or repair and in proper working order;*
- c) To produce a satisfactory Electrical Installation Condition Report in respect of the electrical installations, fixtures and fittings and fixed electrical equipment in the house. The report must be prepared by a suitably qualified and registered electrical contractor and comply with Scottish Government Guidance on Electrical Installations and Appliances in Private Rented Property;*
- e) To install a carbon monoxide (CO) detection system in the house in accordance with current Scottish Government guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing*

2. A re-inspection of the House was carried out by the ordinary surveyor member of the tribunal following the expiry of the deadline for works to be completed in the RSEO. His report dated 7th July 2017 indicated that none of the works required to comply with the RSEO had been completed.
3. The Landlord provided a written response to the tribunal dated 15th July 2017. The Landlord stated therein that as the House was for sale there was no need to carry out the works. He also stated that attempts had been made to attend the House and carry out the repairs but there had been difficulty accessing the property.
4. The Tenant provided a written response to the tribunal dated 19th July. The Tenant confirmed that they had moved out of the property on 13th July 2017 and stated that no remedial works had been carried out prior to their removing from the House.

Reasons for decision

5. In terms of section 28(1) of the Act, it is an offence not to comply with the terms of an RSEO. Section 28(2) allows a reasonable excuse defence where the Landlord is unable to comply with the order because of a lack of

necessary rights despite having taken reasonable steps for the purpose of acquiring those rights.

6. Following the Landlord's response of 15th July 2017 the tribunal was not satisfied that the Landlord's failure to comply with the RSEO fell within the exception provided for within section 28(2) of the Act.
7. Section 14(4) of the Act requires the Landlord to complete the works necessary to bring the House up to the repairing standard within a reasonable time of being notified by the Tenant that such work is required. The Landlord had carried out no remedial works and confirmed in his written representation dated 15th July 2017 that no such works would be carried out as the House was being marketed for sale. The tribunal considered that the Landlord had ample opportunity to carry out the repairs and had failed to do so.
8. In terms of section 28(4) of the Act the tribunal determined on 14th August 2017 that the Landlord had failed to comply with the terms of the RSEO.
9. Therefore in terms of section 26(2)(a) of the Act the tribunal determined to send a notice of that failure to the Local Authority in whose area the property is located.
10. The tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. In this case the Tenant is no longer residing in the House. Accordingly the tribunal determined that it would not be appropriate to make a Rent Relief Order.
11. The decision of the tribunal was unanimous.

Right of Appeal

12. **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.**
13. 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: **M C Kelly**

Date: 17th August 2017

Chairperson ✓