

Housing and Property Chamber First-tier Tribunal for Scotland



RENT RELIEF ORDER: Housing (Scotland) Act 2006 Section 27

Chamber Ref: FTS/HPC/RT/18/0527

**Mr Krzysztof Konkol, Flat 3 Globe House, Ecclefechan, Lockerbie, DG11 3DF
("the Tenant")**

**Mr Amir Rasool, Denebank, High Street, Ecclefechan, Lockerbie, DG11 3DF
(the "Landlord")**

**Strategic Housing Services, Dumfries and Galloway Council, Council Offices,
Buccleuch Street, Dumfries, DG1 2AD**

("the Third Party Applicant").

**Flat 3, Globe House, Ecclefechan, Lockerbie, DG11 3DF part of Title Number
DMF 16169 ("the Property").**

**Tribunal Members: Martin J. McAllister (Legal Member) and Kingsley Bruce,
surveyor, (Ordinary Member)**

NOTICE TO THE LANDLORDS

Whereas in terms of its decision dated 9th January 2020, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the tribunal.

The tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 90% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

In terms of section 46 of the Tribunals (Scotland) Act, 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.

If permission for an appeal against the decision of the tribunal is granted, then the effect of the decision and the Rent Relief Order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

M McAllister

✓ Martin J. McAllister, Legal Member
9th January 2020

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Sections 24, 26 and 27.

Case Reference FTS/HPC/RT/18/0527

**Mr Krzysztof Konkol, Flat 3 Globe House, Ecclefechan, Lockerbie, DG11 3DF
("the Tenant")**

**Mr Amir Rasool, Denebank, High Street, Ecclefechan, Lockerbie, DG 11 3DF
("the Landlord")**

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

**Flat 3, Globe House, Ecclefechan, Lockerbie, DG11 3DF part of Title Number
DMF16169 ("the Property").**

Tribunal Members: Martin McAllister (Legal Member) and Kingsley Bruce, surveyor,
(Ordinary Member)

Background

1. By application received by the Tribunal on 9th March 2018, 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 has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act.

2. On 22nd June 2018 a repairing standard enforcement order was made in the following terms:

- The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who either is employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member

of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist.

The 2006 Act Section 13 (1) (c)

- The Landlord is to produce a Fire Risk Assessment relating to the Property and the common access area from a suitably qualified and experienced individual or company and to implement any recommendations contained within the Assessment.

The 2006 Act Section 13 (1) (a)

- The Landlord is to ensure that there are sufficient and appropriate smoke detectors and a heat detector in the kitchen. The fire detection system in the Property requires to comply with current regulations.

The 2006 Act Section 13 (1) (f)

- The fixed heating appliances in the Property require to be functioning.

The 2006 Act Section 13 (1) (c)

- The stairwell requires to have a banister and lighting and be without trip hazard.

The 2006 Act Section 13 (1) (a)

- The electric shower isolating switch requires to be replaced or made safe.

The 2006 Act Section 13 (1) (c)

The Landlord required to comply with the repairing standard order within eight weeks of its service on him.

3. Variations of the repairing standard enforcement order were made to give more time for compliance.

4. The ordinary member of the tribunal inspected the Property on 14th September 2019 and found that the repairing standard enforcement order had not been complied with. He noted that some of the work had been done. A copy of the inspection report is attached.

5. The tribunal determined that an inspection of the Property be carried out and that a Hearing be held immediately after the inspection.

6. The members of the tribunal attended at the Property on 20th December 2019. Mr Robert Rome and Mr Adam Black of Dumfries and Galloway Council were present. The Landlord was in attendance.

7. The Landlord attempted to open the door of the Property without success. He said that the Tenant must have changed the lock and that he did not know where he was.

8. The Landlord said that he had sent an Electrical Installation Condition Report to the Tribunal office three weeks prior to the date of the Inspection. He said that he had not retained a copy.

9. Notwithstanding the fact that access to the Property was not able to be achieved, the members of the tribunal noted that the door leading from the common area to the staircase which gives access to the Property was not a suitable or properly fitted fire door, the replacement door did not fit the opening, did not operate satisfactorily nor provide any fire protection.

10. The members of the tribunal noted that the trip hazard at the top of the stairway had not been removed. The height of the handrail appeared incorrect and it was not adequately secured. The light in the stairway was not working.

11. A schedule of photographs taken at the inspection is attached.

12. The Landlord said that he intended to be at the Hearing.

13. A Hearing was held at Lochvale House, Georgetown Road, Dumfries. Mr Rome and Mr Black were present. The Landlord was not in attendance.

14. The members of the tribunal noted the terms of the inspection report of 14th September 2019 and had regard to what it had observed at the inspection immediately preceding the Hearing. Enquiries were made of the administration and it was reported that no EICR had been received in the Tribunal office. The tribunal noted the terms of the fire safety assessment report provided by the Landlord.

The tribunal had no means of determining whether or not the recommendations of the Fire Risk Assessment had been complied with and it had not received an electrical installation condition report.

15. The Tribunal determined that the RSEO has **not been complied with**. Accordingly the Tribunal, having made such enquiries as is fit for the purposes of determining whether the Landlords has complied with the Repairing Standard Enforcement Order, in relation to the Property concerned, determined that the Landlords have failed to fully comply with the RSEO in terms of section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the Property is situated.

The members of the tribunal then considered whether or not a rent relief order should be made in terms of Section 27 of the 2006 Act. The tribunal considered that the Landlord had been given adequate opportunity to comply with the terms of the repairing standard enforcement order and had failed to do so. The tribunal noted it had made a Direction on 22nd July 2019 inviting the Landlord to make written representations with regard to whether or not a rent relief order should be made and that no representations had been received. It also considered that there are significant issues of safety which are present as a result of the failure to comply. The tribunal determined that it is appropriate for a rent relief order to be made and it considered that it would be appropriate to make an order to reduce the rent payable under the tenancy by 90%.

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.

M McAllister

✓
Martin Joseph McAllister,
Solicitor, legal member of
Tribunal.
9th January 2020

*This is the schedule of photographs referred to in the
Decision of 9th January 2020*

M McAllister

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



Schedule of Photographs:

Flat 3

Globe House,

Ecclefechan

20 December 2019

What is the purpose of the door in this
room and how is it used?





*This is the re-inspection report referred to in the
Decision of 9th January 2020*

M McAllister

Housing and Property Chamber
First-tier Tribunal for Scotland



HPC Re-inspection Report

Property: Flat 3, Globe House, Ecclefechan, Lockerbie, DG11 3DF
Ref No: FTS/HPC/RT/18/0527

Surveyor: Kingsley K Bruce, MRICS

Access:

I attended for the purposes of undertaking a re-inspection the property at 10:50 on Friday 14 September 2018.

In Attendance:

The property was occupied, the Landlord, Mr Amir Rasool, was present and provided access, the tenant Mr Krzysztof Konkol was neither present nor represented and the Third Party Applicant, Strategic Housing Services, Dumfries and Galloway Council on whose behalf the original application was submitted, was not present/represented.

Weather:

Conditions were generally dry and overcast at the time of my re-inspection.

Requirements of the Repairing Standard Enforcement Order (RSEO):

Following an inspection and hearing on 7 June 2018, the tribunal determined as follows:

- The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who either is employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist.*
The 2006 Act Section 13 (1)(c)

2. *The Landlord is to obtain a Fire Risk Assessment relating to the Property and the common access area from a suitably qualified and experienced individual or company and to implement any recommendations contained within the Assessment.*

The 2006 Act Section 13 (1)(a)

3. *The Landlord is to ensure that there are sufficient and appropriate smoke detectors and a heat detector in the kitchen. The fire detection system in the Property requires to comply with current regulations.*

The 2006 Act Section 13 (1)(f)

4. *The fixed heating appliances in the Property require to be functioning.*

The 2006 Act Section 13 (1)(c)

5. *The stairwell requires to have a banister and lighting and be without trip hazard.*

The 2006 Act Section 13 (1)(a)

6. *The electric shower isolating switch requires to be replaced or made safe.*

The 2006 Act Section 13 (1)(c)

The Landlord requires to comply with the repairing standard order within eight weeks of its service on him.

Works required by the RSEO which have been undertaken:

- A heat detector had been installed in the kitchen area and smoke detectors in the living/hallway each of which were found to be inter-linked.
- An electric heater in the bedroom had been replaced, albeit this was not hard-wired. An additional power outlet was installed.
- A smoke detector had been installed in the shared entrance area.
- The shower switch appeared adequately secured.
- An electric light had been fitted over the stairway serving the subject flat and a handrail had been fixed to the wall. The threshold plate had not been removed but was covered in tape.

Kingsley K Bruce, MRICS

Member

The First Tier Tribunal for Scotland (Housing and Property Chamber)

20 September 2018

Photographs taken during re-inspection 14 September 2018







