

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/18/0534

Miss Janice Mckendrick, formerly of Flat 4, Globe House, Ecclefechan, Lockerbie, DG11 3 DF and present address unknown (“the Original Tenant”).

Mr Javid Iqbal Cheema, Flat 4, Globe House, Ecclefechan DG113DF (“the Current 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 4, 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, in particular, replace or repair the detector in the bedroom. 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 Landlord requires to comply with the repairing standard order within eight weeks of its service on the Landlord.

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. Mr Javid Iqbal Cheema was present and he said that he had moved into the Property.

7. 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.

8. Since the previous re-inspection report, no further actions appear to have been undertaken to address outstanding issues in relation to the RSEO. It was noted that the electrical supply to a heater was unsatisfactory, presenting a possible hazard. The access route around the perimeter of the property, was unsatisfactory, with materials presenting trip and slip hazards. Providing a safe route had been a key recommendation of the Fire risk Assessment previously provided by the Landlord.

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

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

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

12. Mr Black and Mr Rome said that they had made enquiries from their office and said that it appears that the Landlord let the Property to Mr Javid Iqbal Cheema two months previous to the Hearing. Mr Rome said that the rent is £380 per month.

13. 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 which had immediately preceded 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 noted that the fire escape route from the Property was not acceptable and did not comply with the fire safety assessment report.

14. 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%.

15. The members of the tribunal had regard to Section 28 (5) of the 2006 Act where it states that an offence is committed by a landlord if he enters into a tenancy at any time where a repairing standard enforcement order has effect in relation to a house. It

appeared to the tribunal that the Landlord was in breach of this section of the Act and had committed an offence.

16. The tribunal determined that this Decision and the Rent Relief Order of even date should be served on the Current Tenant. There are issues of safety which he should be aware of.

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

Housing and Property Chamber First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RT/18/0534

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(“the Third Party Applicant”).

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**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