

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/17/0326

Title no: DMF3443

110 Lockerbie Road, Dumfries, DG13BL ("the house")

The Parties:-

**Ms Claire Helen Spencer and James David Spencer c/o Lettis Ltd, Kenmore
Penpont, Thornhill, Dumfries (The Landlord)**

**Mr Steven Leask, Lettis Ltd, Vollie House, Main Street Penpont, Thornhill,
Dumfries, DG3 4BP (Landlord's Agent)**

Ms Mahdiya Darroch, 110 Lockerbie Road, Dumfries, DG13BL (the Tenant)

AND

Chamber Ref: FTS/HPC/RT/17/0431

Title no: DMF3443

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**Mr Steven Leask, Lettis Ltd, Vollie House, Main Street Penpont, Thornhill,
Dumfries, DG3 4BP (Landlord's Agent)**

**Mr Robert Rome, Dumfries and Galloway Council, Strategic Housing Services,
Council Office, Buccleuch Street, Dumfries, DG12AD (Third Party Applicant)**

Ms Mahdiya Darroch, 110 Lockerbie Road, Dumfries, DG13BL (the Tenant)

Whereas in terms of their decision dated 19 March 2018. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the Landlord has failed to ensure that the house is:-

Wind and water tight and in all other respects reasonably fit for human habitation, that 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, that 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, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order;

The tribunal now requires the Landlord to carry out such works as are necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the Landlord to:-

- 1) Repair/ replace the shower screen in the bathroom to ensure that it is in a reasonable state of repair and in proper working order.
- 2) Repair/ replace the bathroom floor and floor covering to ensure that it is in a reasonable state of repair.
- 3) Repair/replace the windows and /or frames in the house to ensure they are in a reasonable state of repair and in proper working order.
- 4) Provide a satisfactory and up to date Electrical Condition Installation Report by a NICEIC qualified electrician in respect of the house. This report should in addition to the usual matters also specifically address:-
 - a) confirmation that the light fitting is connected to the extractor fan in the bathroom and that the extractor fan has an adjustable time delay
 - b) the accessibility of the consumer units and electricity meters
 - c) confirmation that the smoke and heat detectors are interlinked.
 - d) the suitability of the electric fittings being below the sink.
- 5) Repair/ replace the rear gutter above the front door and bathroom to ensure that it is in a reasonable state of repair and in proper working order.

The tribunal order that the works specified in this Order must be carried out and completed within 10 weeks from the date of service of this Notice.

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.

In terms of Section 63 of the Act, 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed Judith Lea legal member of the tribunal, at Cyber on 19/3/18 in the presence of the undernoted witness:-

Lisa Belton

__ witness

Judith Lea

__ Legal Member

__ name in full

12 North St

Address

Freschie

K415 7HL

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Street view



First Floor Flat

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Steps up to front door



Kitchen

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Heat detector



Electric fittings below the sink

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Electricity meter behind a kitchen cupboard



Consumer units

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Condensation mould



Detail

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Misted double glazing



Shower screen

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Bathroom floor



Seal around the bath

Photographs taken during the inspection of
110 Lockerbie Road, Dumfries, DG1 3BL



Roadside wall



Back fence

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/17/0326

Title no: DMF3443

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Mr Robert Rome, Dumfries and Galloway Council, Strategic Housing Services, Council Office, Buccleuch Street, Dumfries, DG12AD (Third Party Applicant)

Ms Mahdiya Darroch, 110 Lockerbie Road, Dumfries, DG13BL (the Tenant)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence provided by the Third party Applicant, the Landlord and the Tenant in both applications, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 21st August 2017, the Tenant applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006("the Act").
2. The application stated that the Landlord had failed to comply with the duty to ensure the house is wind and water tight and in all other respects reasonably fit for human habitation, that 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, that 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, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, that any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

By letter dated 5 January 2018 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

On 19 January 2018, the tribunal issued a Direction requiring the Tenant to provide a clear list of the issues raised in her application which she alleges breach the repairing standard, that had been notified to the Landlord and which were still outstanding.

3. By application received on 17 November 2017, the Third Party Applicant applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006("the Act").
4. The application stated that the Landlord has failed to comply with the duty to ensure the house is wind and water tight and in all other respects reasonably fit for human habitation, that 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, that 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, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, that any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
5. The Tenant was a participating party on the third party application.
6. By letter dated 5 January 2018 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
7. On 19 January 2018, the tribunal issued a Direction requiring the Landlord to produce a copy of up-to-date electrical installation condition report by a suitably qualified electrician in respect of the house.
8. On 20th February 2018 the tribunal (comprising Judith Lea, legal member and Robert Buchan, ordinary member) inspected the house. The Tenant and Mr Rome on behalf of the Third Party Applicant were present. The landlord was not present or represented.
9. The tribunal then held a hearing at 1130 am at Georgetown community centre, Lockvale house, Georgetown Road, Dumfries in respect of the third party application. Mr Rome appeared on behalf of the Third Party Applicant(TPA). The Landlord was not present or represented. An e mail had been received on the morning of the Tribunal from the Landlord's Agent

listing some repairs that had been carried out at the house. The Tribunal held a hearing in respect of the Tenant's application at 2:30 pm at Georgetown community centre. No one was present, the Tenant advising at the inspection that she would not attend the hearing.

10. There were two applications relating to the same property, the same landlord and same tenant and a lot of the issues raised were the same. In these circumstances, having regard to the overriding objective in the Tribunal Rules, the tribunal decided to deal with the two applications in one decision and one order.

Findings of fact and Reasons for the decision

The tribunal dealt with each issue raised in turn as undernoted.

Front and rear gutters

11. The TPA submitted that the state of the gutters to the front of the house were causing rainwater ingress to the living room and the wall paper was peeling off the wall. The Tenant stated that the living room wall paper was cracked. The damp meter readings in this area were normal and the tribunal saw no sign of any ongoing water ingress problem and did not consider this to be a breach of the repairing standard.
12. The TPA submitted that the rear gutter was overflowing above the bathroom window and access steps. The Tenant stated that there was damp in the bathroom. The TPA also explained that the undulation in the line of the gutter was such that rainwater could not flow "uphill" to the downpipe and so it was inevitable that the gutter must overflow. From the inspection there was evidence of damp in the wall in the bathroom which could be being caused by the undulating gutter above. The tribunal considered this to be a breach of section 13 (1)(b) of the repairing standard and made an order.

Garden Boundary

13. The TPA submitted that the garden boundary had gaps allowing potential access or escape of children or animals. From inspection the tribunal noted that there was a small gap between an outhouse and a hedge but the tribunal did not consider the gap significant enough to breach the repairing standard.

Bathroom

14. The TPA and the Tenant submitted that the shower screen has a torn rubber seal and is not in proper working order. The Tenant's application stated that

the bath seals were defective and the bathroom floor was broken and damp. The Landlord renewed the bath seals the day before the inspection.

15. It was clear from inspection that the shower screen was broken and allowing water to leak out and damp meter readings were high on the floor and external wall. The tribunal considered this to be a breach of section 13(1)(b) and made orders.
16. Both the TPA and the Tenant raised the issue of the ceiling mounted pull switch for the shower unit not turning off but this was fixed by the Landlord the day before the inspection.

Kitchen

17. The Tenant submitted that the kitchen cupboard door was broken and although this had been repaired by the Landlord the day before the inspection she considered it still broken. From inspection the tribunal found that the door had been repaired sufficiently not to be a breach of the repairing standard. The TPA submitted that the access to the consumer units and prepayment meter was unacceptable being at the back of the kitchen cupboard. The Landlord had fitted an extra unit but it was clear from inspection that access was still difficult. The tribunal considered that this matter should be covered in the Electrical Condition Installation Report. A heat detector has been installed in the kitchen.

Livingroom

18. The wall paper was cracked in one area of the wall but there was no sign of any dampness or water ingress. The TPA and the Tenant had pointed out that there was no fixed ceiling light in the living room. The landlord had installed one. A smoke detector has also been installed. The tribunal accordingly considered that there was no breach of the repairing standard.

Bedrooms and hall

19. The Tenant raised issues about uneven floors, cracks in the ceiling and the skirtings and flaking paint but the tribunal did not consider these matters to be significant and they are not a breach of the repairing standard. The tribunal did note however that there appeared to be some damp in the rear bedroom wall. This is a matter not raised in either application and so cannot be considered by the tribunal but the Landlord may wish to investigate.

Windows

20. The TPA and the Tenant submitted that the windows in the house do not fit well and had cracks in the frames and there is water ingress. It was evident from inspection that the windows have mould on the surrounds, two of the windows have misting in the window unit and one window has a loose sill. The e mail sent by the Landlord on the morning of the Tribunal refers to a

damp report having been carried out on the house which report suggests that the problem is condensation. The tribunal was not provided with a copy of this report. It was difficult for the tribunal to determine whether the windows leak but there is clearly a problem with the windows and the tribunal find that they are not in a reasonable state of repair and this is a breach of section 13(1)(b) and an order was made.

Heaters

21. The TPA and the Tenant had submitted that the storage heaters may be faulty. These heaters have been replaced with a new heating system by the Landlord which appears to work. The tribunal however considered it unfortunate that the Landlord has not yet redecorated the areas where the old heaters had been situated.

Electrics

22. The TPA submitted that the Landlord had failed to comply with the legislation by not producing an Electrical Installation Condition Report (EICR). The tribunal had issued a Direction requiring the Landlord to produce one by 13 February and the Landlord has failed to do this. The tribunal considered it disappointing that neither the Landlord nor Landlord's Agent addressed this issue in the e mail sent on the morning of the Tribunal and failed to attend the inspection or hearing. To fail to comply with the Direction is an offence. The tribunal made an Order requiring the EICR to be produced. Given the electrical issues raised by both parties the tribunal asked that the EICR particularly cover these in addition to the usual matters covered in an EICR.
23. The Tenant confirmed that the letter box, the bedroom leak and the issue of door handles hitting the walls had been rectified by the Landlord but no redecoration work had been carried out. The tribunal noted that there was damage to the boundary wall which although not part of the applications is a health and safety issue which the Landlord should address.
24. It was confirmed by Claire Spencer and the Landlord's Agent that they were acting on behalf of James Spencer who is a joint owner but who has not taken part in the process.

A Photographic Schedule is attached to this Decision.

Decision

25. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
26. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The tribunal considered that a period of ten weeks would give the Landlord sufficient time to rectify matters.
27. The decision of the tribunal was unanimous.

Right of Appeal

- 28. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal 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.**

Effect of section 63

29. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Judith Lea

Signed

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Date

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Legal Member