

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/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 Mainshill] 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')

Whereas in terms of their decision dated 7th April 2017, 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:-

- i. The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair;
- ii. 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;
- iii. The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

the tribunal now requires the Landlord to carry out such work as is 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:-

- 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.

The tribunal order that the works specified in this Order must be carried out and completed within the period of two months 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.

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 by Mary-Claire Kelly, solicitor, 57 Vandeleur Avenue, Edinburgh EH7 6UQ, chairperson of the tribunal at Edinburgh on 7th April 2017 before this witness:-

N Ferguson _____ witness **M C Kelly** _____ chairperson

NORMAN HUNT (Ferguson) name in full

57 VANDELEUR AVE, Address

EDINBURGH

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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

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 Mainshill] 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')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (the "Act") in relation to the house concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of:-

Mary-Claire Kelly, Chairing and Legal Member

Robert Buchan, Ordinary Member

Background

1. By application received on 5th January 2017, the Tenant applied to the First-tier Tribunal (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.

2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13 (1) of the Act:

(c) 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;

(f) The house has satisfactory provision for detecting fire and for giving warning in the event of fire or suspected fire;

(g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. The application by the Tenant specified that the said failure was established as follows:

- Electric storage heaters faulty - not working at all in hallway so no heating in the middle of the house. Main bedroom heater faulty so can't regulate temperature
- Polystyrene tiles on kitchen and bathroom ceilings falling off
- Fire hazard in kitchen
- No Electrical Installation Condition Report completed
- Open fire in living room - no carbon monoxide monitor fitted

4. The Tenant submitted as part of the application various correspondence between the Landlord and Tenant spanning the period from 18th July 2016 to 9th January 2017. No written lease was submitted in support of the application. The Tenant specified that she had signed a written lease but that she had not been provided with a copy.

5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 22nd February 2017 following a decision to refer made by the Convener of the First-tier Tribunal on 25th January 2017.
6. The entry in the Register of Sasines in respect of the house identifies the registered owners as Robert Black and Mary Nairn Reid Black.
7. On 6th March 2017 the Tribunal requested further information from the Tenant regarding the identity of the Landlord. The Tenant confirmed by email dated 6th March 2017 that the lease had been signed by Jim Black. The Tenant confirmed that the lease was signed at Jim Black's house and that the rent was paid directly into Jim Black's bank account.
8. On 9th March 2017, the Tribunal issued a Notice of Direction requiring the Landlord to produce an Electrical Installation Condition Report ("EICR") by 23rd March 2017. No EICR was provided to the Tribunal by the Landlord in advance of the hearing.

9. Inspection

The Tribunal inspected the house at 11am on Tuesday 28th March 2017. The Tenant was present at the inspection. The Landlord did not attend. Photographs were taken by the Tribunal during the Inspection. Copies of the photographs are attached as a schedule to this Statement of Decision.

10. Hearing

Following the inspection the Tribunal held a hearing at Lockerbie Town Hall, High Street, Lockerbie on the same day. The Tenant attended the hearing. The Tenant's father Dennis Cowley was also present. The Landlord did not attend.

11. Preliminary Matters: The identity of the Landlord

The Tenant confirmed that she had entered into a lease in February 2012. The Tenant did not have a copy of the Lease however she advised that her recollection was that Jim Black was named as the Landlord in the Lease. The Tenant confirmed that the lease had been signed by Jim Black as the

Landlord. The Tenant confirmed that the rent due in terms of the Lease was £475 per month. The Tenant advised the Tribunal that she had requested a copy of the written lease but had not been provided with a copy. The Tenant advised that the rent is paid by Direct Debit into Jim Black's bank account. The Tenant advised the Tribunal that the property had previously been the home of Jim Black's parents and that her understanding was that Jim Black had inherited the house jointly with his brother Robert Black, after their parents had passed away. The Tenant advised the Tribunal that she saw Jim Black infrequently. He had attended the house in August 2016 which was the first time she had seen him for approximately two and a half years. During the hearing the Tenant produced a document purporting to be a Notice to Quit. The document had been signed by James Black, Cowthat, Ecclefechan, DG11 3JH. The Notice to Quit confirmed the existence of a lease between James Black and the Tenant and indicated that James Black now wished to sell the house. The Tribunal were satisfied that the relationship between the Tenant and Jim Black had all the characteristics of a lease. The Tribunal noted that Jim Black had the same surname as the registered owners and noted the Tenant's evidence that the previous owners were deceased and the house had been inherited by Jim Black and his brother Robert Black. The Tribunal proceeded to issue a Direction to the Landlord requesting that he produce documentary evidence to confirm that he is the owner of the house or otherwise acts as an agent for the owners.

12. At the hearing the Tribunal dealt with each of the issues specified in the application in turn:-

The electric storage heaters in the hallway and main bedroom

The Tenant confirmed that both heaters had been replaced in January 2017. The Tenant confirmed that both heaters were functioning satisfactorily.

Polystyrene tiles on kitchen and bathroom ceilings

The Tenant advised that she was concerned at the condition of the polystyrene tiles, particularly in the kitchen. She advised that they were in a poorer state of repair in the kitchen which she thought may be due to steam

generated by cooking. The Tenant advised that the condition of the ceiling tiles was deteriorating over time.

Fire Hazard in kitchen

The Tenant advised the Tribunal that this related to the polystyrene tiles which she considered represented a hazard in the event of a fire in the house.

Electrical Installation Condition Report

The Tenant advised the Tribunal that she had looked at the government guidelines on the matter. It appeared to her that there should be an EICR provided from 1st December 2016. The Tenant advised that no maintenance had been carried out to the electrical installations within the property throughout the duration of her tenancy.

Carbon Monoxide Monitor

The Tenant advised that the lack of adequate carbon monoxide and smoke alarms within the house left her feeling unsafe within the property.

The Tribunal found the Tenant to be a credible witness and had no reason to disbelieve her evidence..

13. Summary of the issues

The issue to be determined is whether the house meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Act. The focus of the Tribunal's investigation related to the complaints as specified in paragraph 3 above.

14. Findings in fact:-

The Tribunal find the following facts to be established:-

- i. The house is a detached bungalow. The house is of wooden construction. The house comprises three bedrooms, a hallway, kitchen, bathroom, dining room and small office.

- ii. The Tenant has resided in the house since February 2012. The Tenant signed a lease agreement with the Landlord in or around February 2012. The rent payable in terms of the lease is £475 per calendar month. The rent is paid to the Landlord by Direct Debit. The Tenant resides with her husband James Hunter.
- iii. The registered owners of the property are Robert Black and Mary Nairn Reid Black.
- iv. In terms of letters dated 18th July 2016 and 9th January 2017 the Tenant intimated to the Landlord that work required to be carried out to the house for the purposes of ensuring that the Landlord complied with the duties imposed by section 14(1)(b) of the Act. The letters included lists of issues which required repair at the property. Those issues identified at paragraph 3 above have all been intimated to the Landlord.
- v. Since the application was submitted the electric storage heaters in the hallway and one of the bedrooms within the house have been replaced.
- vi. The polystyrene ceiling in the kitchen was in a poor state or repair. There were fourteen patches of tiles missing from the ceiling.
- vii. Two of the polystyrene tiles on the bathroom ceiling were loose.
- viii. The Tenant had not been supplied with an Electrical Installation Condition Report in relation to the house either at the time that she took entry to the house or during the period of the tenancy.
- ix. There was an open fire in the living room of the house. No carbon monoxide detector had been installed in the house.

15. Reasons for the Decision

The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.

16. The Tribunal was only able to consider those items which formed part of the imitated application.
17. The Tribunal noted that the Landlord had replaced the electric storage heaters within the hallway and one of the bedrooms and that the Tenant had confirmed that the heaters were now operating satisfactorily.
18. The Tribunal noted that the ceilings within the kitchen and bathroom were composed of polystyrene tiles. The ceilings were dated. Older polystyrene tiles are a known health and safety hazard in the event of fire. Tiles were loose in both rooms and in the kitchen a large number of tiles had come away from the ceiling. The Tenant was concerned that the ceiling material represented a fire hazard. The Tribunal considered that the ceilings were part of the structure of the house and were not in a reasonable state of repair and in proper working order. Accordingly the Tribunal considered that there was a breach of the repairing standard in respect of section 13(1)(b) of the Act.
19. The Tribunal noted that the Landlord had failed to supply an EICR to the Tenant. The Landlord had failed to comply with the Notice of Direction issued by the Tribunal on 9th March 2017 requiring the Landlord to submit an EICR by 23rd March 2017. The Tribunal considered that they could not be satisfied that the installations in the house for the supply of electricity were in a reasonable state of repair and in proper working order. Accordingly the Tribunal considered that there was a breach of the repairing standard in respect of section 13(1)(c) of the Act.
20. The Tribunal noted that there was an open fire in the house but that there was no provision for giving warning if carbon monoxide was present in a concentration that is hazardous to health. Accordingly the Tribunal considered

that there was a breach of the repairing standard in respect of section 13(1)(g) of the Act.

21. Decision

The Tribunal determines that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

Right of Appeal

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.

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N Ferguson

_____witness

M C Kelly

chairperson

Norman Hunter (Ferguson) name in full ✓

57 VANDERLON AVE Address ✓

N. Ferguson

EH7 6UQ

Photographs taken during the inspection of
Craigview, Lockerbie, Dumfriesshire, DG11 2PH



Front



New storage heater

Photographs taken during the inspection of
Craigview, Lockerbie, Dumfriesshire, DG11 2PH



Kitchen ceiling 1



Kitchen ceiling 2

Photographs taken during the inspection of
Craigview, Lockerbie, Dumfriesshire, DG11 2PH



Loose ceiling tiles in the bathroom



Battery powered smoke detector