

Housing and Property Chamber

First-tier Tribunal for Scotland



REPAIRING STANDARD ENFORCEMENT ORDER

Parties :Dumfries and Galloway Council, Landlord Registration, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD per their employee Robert Rome (the "third party applicant")

Abdul Muhit, residing at 41,Loganbarns Crescent, Dumfries, DG1 4BX ("the Landlord")

and

Otylia Dutczak, residing at 11,Airds Drive, Dumfries, DG1 4EW ("the interested person")

Property: 11,Airds Drive, Dumfries, DG1 4EW, registered in the Land Register for Scotland under Title Number DMF18830 ("the Property")

Chamber reference: FTS/HPC/RT/17/0044

Tribunal Members

Karen Moore (Chairperson)

Andrew Taylor (Surveyor Member)

NOTICE TO THE LANDLORD

Abdul Muhit, residing at 41, Loganbarns Crescent, Dumfries, DG1 4BX

Whereas in terms of their decision dated 19 April 2017, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord had failed to comply in respect of Sections 13(1)(c), 13(1)(f) and 13(1)(g) of the Act having failed to ensure that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair, having failed to ensure that there are smoke detectors and a heat detector in the Property and so the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and having failed to ensure that the Property has satisfactory provision for giving warning that carbon monoxide is present in a concentration that is hazardous to health, the First-tier Tribunal now requires the Landlord to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlord must on or before 30 May 2017:-

1. Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection, report and service on the gas fire, back boiler, heating and hot water supply installation including all radiators, valves, thermostats and other parts of the installation. Follow the recommendations of that report to ensure that the entire system is safe and in proper working order. On completion of the works, provide a valid CP12 Gas Safety Certificate to the interested person and the First-tier Tribunal.
2. Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property. Follow the recommendations of that report to ensure that the entire system is safe and in proper working order. Provide a copy of the EICR to the interested person and the First-tier Tribunal.
3. Supply and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.
4. Supply and install Carbon Monoxide detection compliant with the Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing.
5. Make good any décor damaged as a result of these works.

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.

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act,

also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the two preceding pages are subscribed by Karen Moore, solicitor, Glasgow, chairperson of the First-tier Tribunal, at Glasgow on 19 April 2017 before this witness, Norman William Moore, solicitor, Dunnswood House, 10 Dunnswood Road, Cumbernauld.

N Moore

Witness

K Moore

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application made under Section 22(1A) of the Act

Parties :

Dumfries and Galloway Council, Landlord Registration, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD per their employee Robert Rome ("the third party applicant")

Abdul Muhit, residing at 41, Loganbarns Crescent, Dumfries, DG1 4BX ("the landlord")

and

Otylia Dutczak, residing at 11, Airds Drive, Dumfries, DG1 4EW, the interested person and the tenant ("tenant")

Property: 11, Airds Drive, Dumfries, DG1 4EW, registered in the Land Register for Scotland under Title Number DMF18830 ("the Property")

Chamber reference: FTS/HPC/RT/17/0044

Tribunal Members:

Karen Moore (Chairperson)

Andrew Taylor (Surveyor Member)

Background

1. By application paperwork received between 6 February 2017 and 9 February 2017 ("the Application"), the third party applicant applied to the First-tier Tribunal for Scotland for a determination that the landlord had failed to comply

with the duty imposed on him by Section 14 (1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(c), 13(1)(d), 13(1)(e), 13(1)(f) and 13(1)(g) of the Act.

2. A Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber) with delegated powers under Section 96 and Section 21(8A) of the Act, having considered the Application in terms of Section 23(3) of the Act and having determined to continue the Application in terms of Schedule 2, Paragraph 7(2) of the Act, intimated to the landlord by Notice of Referral dated 13 February 2017, a decision under Section 23(1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act, fixed an Inspection and Hearing for 5 April 2017 at 11.00 a.m. and 12.30 p.m. respectively.

Preliminary Issue in respect of tenancy

3. Having regard to the fact that there is no written tenancy agreement, the tribunal considered its jurisdiction and the status of the tenancy. The tribunal had regard to the third-party applicant's email of 8 February 2017 which forms part of the Application and states that the tenant has resided at the Property since 22 February 2008, has paid rent by monthly direct debit and that the Property is registered on the Landlord Register as a rental property. The tribunal accordingly took the view that there is a tenancy in force and so it has jurisdiction.

In any event, the tribunal took the view that the Application having been referred to it pursuant to Section 22 and Section 23 of the Act, the tribunal must have regard to the terms of Section 24(1) of the Act which state: -

"The First-tier Tribunal, must in relation to an application under section 22(1) or (1A)] 2 decide whether the landlord has complied with the duty imposed by section 14(1)(b).

Accordingly, the tribunal proceeded to determine the Application.

Inspection

4. The Inspection took place on 5 April 2017 at 11.00 a.m. at the Property. Mr. Alan Glendinning, an employee of the third-party applicant, the tenant and her husband were present at the Inspection. The landlord was not present at the Inspection. The tribunal inspected the parts of the Property referred to in the Application namely:-
 - I. the lack of a carbon monoxide detector, heat detectors and smoke detectors in the Property;
 - II. the gas appliances being the cooker and the gas fire in the living room and
 - III. the condition of the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water.
5. The tenant advised the tribunal that she did not intend to attend the Hearing, and so, the tribunal enquired of her if she possessed a current gas safety certificate and a current Electrical Installation Condition Report for the Property. The tenant advised the tribunal that she recalled the landlord giving her a gas safety certificate at the start of her tenancy but she had received no other certificates since that date.
6. Neither Mr. Glendinning nor the tenant referred the tribunal to concerns relating to fixtures, fittings and appliances provided by the landlord.
7. Neither Mr. Glendinning nor the tenant referred the tribunal to concerns relating to furnishings provided by the landlord.
8. The tribunal took digital photographs which photographs form the Schedule annexed to this Statement of Decision.
9. Following the Inspection, a Hearing was held at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries, DG1 4DF on the same day at 12.30 p.m. Neither the tenant nor the landlord was present at the Hearing. Mr. Glendinning, who had been present at the Inspection, was present at the Hearing.

Evidence on behalf of the third-party applicant

10. Mr. Glendinning, on behalf of the third-party applicant, gave evidence that he is employed by the third-party applicant to deal with landlord enforcement matters. Mr. Glendinning submitted that, having established that the landlord is the registered landlord for the Property, and, following routine enquiries including a visit to the Property, the team which he manages became aware that there appears to be no current gas safety certificate, no Electrical Installation Condition Report for the Property and, that there are no carbon monoxide detectors, no heat detectors and no smoke detectors in the Property. Mr. Glendinning stated that a request was made of the landlord to propose actions to remedy the matters raised by the third party applicant but the landlord had not done so.

Summary of the Issues

11. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1)(c), 13(1)(d), 13(1)(e), 13(1)(f), and 13(1)(g) of the Act at the date of the Inspection and Hearing.

Findings of Fact

12. Abdul Muhit, residing at 41, Loganbarns Crescent, Dumfries, DG1 4BX is the owner of the Property. Although no tenancy agreement was lodged with the tribunal, for the reasons stated at paragraph 3 of this Statement of Decision, a tenancy exists and so the tribunal is satisfied that Abdul Muhit is the landlord.

13. The Property is a detached two storey villa with a brick and roughcast exterior and pitched tiled roof, constructed circa 1970. The downstairs part of the Property comprises a living room, dining area and kitchen and, the upstairs part of the Property comprises bedrooms and a bathroom. The Property has double glazed windows and gas central heating. There are gardens to the front, side and rear.

14. From the Inspection, the tribunal found the following:

- i. There are no carbon monoxide detectors, heat detectors or smoke detectors anywhere in the Property and

- ii. The tenant does not have a current gas safety certificate or a current Electrical Installation Condition Report for the Property.
15. From the Hearing, the tribunal found the evidence of Mr. Glendinning to be truthful and accepted it without reservation.

Decision of the tribunal

16. The tribunal's decision is based on the Application, the Inspection and the Hearing.
17. In respect of Section 13(1)(c) of the Act, the tribunal found that at the date of the Hearing the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, the reason being that, as there is no current gas safety certificate and no Electrical Installation Condition Report for the Property, the tribunal cannot be certain that the installations in the Property 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.
18. In respect of Section 13(1)(d) of the Act, the tribunal found that at the date of the Hearing the landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act, the reason being that there is no specific complaint of fixtures, fittings and appliances provided by the landlord not being in a reasonable state of repair nor being in proper working order in the Application nor was any complaint raised at either the Inspection or the Hearing
19. In respect of Section 13(1)(e) of the Act, the tribunal found that at the date of the Hearing the landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act, the reason being that there is no specific complaint of furnishings provided by the landlord not being capable of being used safely for the purpose for which they are designed in the Application nor was any complaint raised at either the Inspection or the Hearing.
20. In respect of Section 13(1)(f) of the Act, the tribunal found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, the reason being that there are no smoke detectors nor is there a heat detector in the Property and so the Property does

not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

21. In respect of Section 13(1)(g) of the Act, the tribunal found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, the reason being that there is no carbon monoxide detector in the Property and so the Property does not satisfy the provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

22. The decision was unanimous.

Repairing Standard Enforcement Order

23. Having determined that the landlord has failed to comply with the duty imposed by section 14(1)(b), the tribunal had regard to the course of action open to it thereafter. Section 24(2) of the Act states:- *"Where the First-tier Tribunal decides that the landlord has failed to comply with that duty, it must by order (a "repairing standard enforcement order") require the landlord to carry out such work as is necessary for the purposes of ensuring (a) that the house concerned meets the repairing standard, and (b) that any damage caused by the carrying out of any work in pursuance of that duty or the order is made good"*.

24. Accordingly, the tribunal has no discretion and having made a finding of failure to comply, it must impose an order.

25. The tribunal then had regard to the scope and content of the order and referred again to Section 24(2) which states that the order *"must specify works required to ensure that the house concerned meets the repairing standard."* Therefore, the tribunal must specify works to be carried out in the order.

26. Accordingly, the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 of the Act.

Appeal

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.

Effect of Section 63

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

Karen Moore
Chairperson
19 April 2017

18 April 2017
This is the schedule
referred to in the
foregoing decision of
even date

Housing and Property Chamber
First-tier Tribunal for Scotland



K Moore
Chairperson

11 Airs Drive, Dumfries, DG1 4EW
FTS/HPC/RT/17/0044
Schedule of Photographs - Inspection Date 5th April 2017
Weather – Dry and overcast.



1. The property



2. Gas fire with back boiler