

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

Revocation Decision under section 25 of the Housing (Scotland) Act 2006

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 Mainhill] 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**, formerly residing at Craigview, Lockerbie, Dumfriesshire, DG11 2PH ('the Tenant')

**Mr Jim Black**, residing at Cowthat, Ecclefechan, DG11 3JH ('the Landlord')

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") decided to revoke the Repairing Standard Enforcement Order dated 7<sup>th</sup> April 2017.

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 ("the Act").
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 Tribunal inspected the house and held a hearing on 28th March 2017. Following the inspection and hearing the Tribunal determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act and proceeded to make a Repairing Standard Enforcement Order ("RSEO")
5. The RSEO required 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 of 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 RSEO specified that the works must be completed within two months from the date of service of the RSEO.

6. The Landlord failed to carry out the works within the specified timescale. The Tenant confirmed that they had moved out of the property on 13th July 2017. The Landlord advised the Tribunal on 15<sup>th</sup> July 2017 that the property was being marketed for sale.
7. Following a reinspection the Tribunal issued a Failure to Comply decision dated 17<sup>th</sup> August 2017 and notified Dumfries and Galloway council of the Landlord's failure to comply.
8. By email dated 21<sup>st</sup> June 2019 the Landlord's agents requested that the RSEO be revoked to allow sale of the property to proceed.

#### **Reasons for decision to revoke the RSEO**

9. The Landlord's agent's written representations to the Tribunal specified that a prospective purchaser intended to purchase the property with a view to demolishing it and building a new property on the site.

10. The Landlord's agent's lodged a written offer for purchase of the property dated 10<sup>th</sup> June 2019 submitted by Henderson & Mackay solicitors. A letter from Henderson & Mackay dated 21<sup>st</sup> June 2019 was also lodged. They advised that the intention of the purchaser is to demolish the property and replace it with a new house. An advisory report from the local planning authority which supported the proposal dated 7<sup>th</sup> June 2019 was also lodged.
11. The Tribunal is satisfied that a genuine offer has been made to purchase the property. The Tribunal has taken into account the planning report lodged by the prospective purchaser and accepts the representations that he intends to demolish the property.
12. The Tribunal has taken into account that the Tenant has not resided in the property since 13<sup>th</sup> July 2017 and the property has been untenanted since that date.
13. The Tribunal is satisfied that in light of the above, the RSEO is no longer necessary.

### **Decision**

14. The RSEO dated 7<sup>th</sup> April 2017 is revoked in terms of section 25 of the Act.

### **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.

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.

Mary-Claire Kelly

Chairperson, 12<sup>th</sup> July 2019