

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Housing (Scotland) Act 2006 Section 24**

**Chamber Ref: FTS/HPC/RT/19/3644**

**Re Property: 18 Brewery Street, Dumfries, DG1 2RP**

**Parties:**

**Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD (“the Applicant”),**

**and**

**Mr Sharaz Rasul, 23 Callum Drive, Dumfries DG1 3EF (“the Respondent”) and**

**Gillespie, Gifford and Brown Solicitors, 133-135 Irish Street, Dumfries, DG1 2NT (“the Respondent’s Representative”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**M Links- Ordinary Member**

### **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 or not 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 Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.**

## **Background**

1. By Application, received by the Tribunal on 13<sup>th</sup> November 2019, the Third Party Applicant applied to the Tribunal for determination of whether or not the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act").

## **Case Management Discussions**

2. A Case Management Discussion ("CMD") took place on 12<sup>th</sup> January 2021. A further CMD proceeded on 27<sup>th</sup> April 2021. Reference is made to the Notes on the CMD dated 12<sup>th</sup> January 2021 and 27<sup>th</sup> April 2021.

## **Inspection**

3. The Tribunal Members inspected the Property on 15<sup>th</sup> July 2021. The Third Party Applicant was represented at the Inspection by Mr A. Black. The Respondent and his Representative's Mr A Turnbull were also present.
4. A Schedule of Photographs, taken at the Inspection, is attached to and forms part of this Decision.

## **Hearing**

5. Following the Inspection, the Tribunal held a Hearing which proceeded remotely by telephone conference call on 20<sup>th</sup> July 2021. Mr Black, and Mr Turnbull attended.
6. The Tribunal considered all of the evidence it had obtained at the Inspection and noted at the Hearing.
7. The Repairing Standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended:

A property (house) meets the Repairing Standard if:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (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,

- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires 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.
- (h) The house meets the tolerable standard.

### **Findings in Fact**

8. Having considered all of the evidence the Tribunal made the following findings in fact:
- i) The Property forms the ground floor of a two/three storey building in the centre of Dumfries. The Property comprises of a close entrance, living room, bedroom, kitchen and WC/bathroom. There is garden ground to the rear of the Property.
  - ii) The ceiling strip light at the close entrance does not have a glass/perspex cover, has loose wiring and is not working.
  - iii) There is no natural light in the living room.
  - iv) There is no smoke detector in the living room.
  - v) There is dampness on the wall adjacent to the radiator in the living room.
  - vi) The cooker/oven in the kitchen is not working.
  - vii) There is no heat detector in the kitchen.
  - viii) There is no CO monitor in the kitchen
  - ix) The back door of the Property has been reinforced/ recovered with a metal sheet and appears to be wind and watertight.

### **Decision**

9. The Tribunal found, on a balance of probabilities, that the defects to the close entrance, living room and cooker/oven the lack of heat and smoke detectors, in the kitchen and living room respectively, and the absence of a CO monitor in the former, had been established. The defects, and lack of detectors and monitor, were visible at the Inspection and agreed by Mr Black, for the Applicant, and Mr Turnbull, for the Respondent, at the Inspection and Hearing. The Tribunal considered whether or not the defects, and lack of detectors and monitor, brought the Property below the Repairing Standard in terms of the provisions of the 2006 Act. Having considered matters the Tribunal found, on a balance of probabilities, that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, and that it does not meet the tolerable standard.

10. The Tribunal accordingly determined that the Respondent has failed to comply with the duties imposed by Section 14(1)(b) of the Act given the defects to the close entrance, living room and cooker/oven, and the lack of heat and smoke detectors, in the kitchen and living room respectively, and the absence of a CO monitor in the former,
11. The Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO"), as required by Sections 24 (1) and 24 (2) of the Act, in the following terms:-
- a) The Respondent is to carry out such works as are required to ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation, all in terms of Section 13(1)(a) of the said Act. Specifically the Respondent has to
    - i) repair the light at the close entrance; and
    - ii) restructure the Property in such a way so as to ensure that there is natural light in the living room or, alternatively, that the living room is no longer used as such; and
    - iii) instruct a timber and damp specialist to prepare a report in respect of dampness in the Property, including the dampness on the wall adjacent to the radiator in the living room, lodge the report with the Tribunal and carry out any/all remedial works identified in that report; and
    - iv) repair the cooker/oven in the kitchen; and
    - v) install a heat detector and CO monitor in the kitchen, which comply with current health and safety guidelines ; and
    - vi) install a smoke detector in the living room, which complies with current health and safety guidelines.
  - b) In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, and the extent of the remedial works which require to be carried out, the Tribunal determines that the RSEO requires to be complied with by 31<sup>st</sup> December 2021.

### **Reasons for Decision**

12. The Tribunal made its findings and determination based on what they found at the Inspection and having considered all of the evidence as well as the representations and the submissions of Mr Black, for the Applicant, and Mr Turnbull, on behalf of the Respondent at the Hearing. Both Mr Black and Mr Turnbull candidly agreed that the facts were as found by the Tribunal and that it was appropriate and just that an RSEO be made.

13. The Decision of the Tribunal was unanimous.

### **Right of 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.**

**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.**

**Signed: G McWilliams**

**Legal Member**

**Date: 6th September 2021**