

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **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 under Section 22(1A) of the Act

**Chamber Reference number:** FTC/HPC/RT/22/0840

#### **Parties:**

1. Dumfries and Galloway Council per its employee Mr. Robert Rome, HMO Licensing and Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street. Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”) ;
2. Mr. James Donnelly residing at 4, Knowe Cottages, Kirkconnel, Sanquhar, DG4 6NN (“the Tenant”)
3. Inkersall Investments Limited, Challenge House, 46, Nottingham Road, Mansfield, Nottinghamshire, NG18 1BL (“the Landlord”), together referred to as “the Parties”.

**Property:** 4, Knowe Cottages, Kirkconnel, Sanquhar, DG4 6NN being part of the subjects registered under title sheet number DMF22527

#### **Tribunal Members**

Karen Moore (Chairperson) and Carol Jones (Ordinary Member)

#### **Decision**

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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (h) of the Act and that for the reasons set out below.

1. By application received on 23 March 2022 (“the Application”), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (h) of the Act.

2. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as:-
  - i) There are areas of dampness to the front wall of the Property at the front door, the hallway and the adjacent front bedroom;
  - ii) There is an area of damp staining on the ceiling of the ground floor front bedroom at the gable wall;
  - iii) The garden to the front of the property is overgrown with swamp grass and cannot be used by the Tenant;
  - iv) The timber cladding at the front door is rotten;
  - v) The septic tank requires to be monitored during spells of wet weather due to surface water and risk of flooding;
  - vi) The extractor fan in the kitchen does not appear to be working effectively;
  - vii) There are broken roof slates;
  - viii) There are missing heat resistant tiles at the open fire hearth in the living room;
  - ix) The wall inside the kitchen cupboard is in poor condition and is flaking onto food etc;
  - x) The skirting board in the living room is loose and the wall behind is moist and
  - xi) The gutter to the rear extension of the Property overflows in heavy rain.
  
3. The Application comprised a copy of the tenancy agreement between the Tenant and the Landlord, the Third-party Applicant's reports on the Property dated 10 June 2021 and 8 September 2021; the Landlord's response to that report dated 17 September 2021; property inspection report by McMillan's Property Maintenance instructed by the Tenant dated September 2021 and copy email issuing the report to the Landlord; further report by the Third-party Applicant dated 2 December 2021 and the Landlord's response to that report and a note of a subsequent phone call dated 14 February 2022.
  
4. A Convener of the Chamber, with delegated powers under Section 96 of the Housing ( Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act determined to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act the First-tier Tribunal for Scotland served Notice of Referral upon the parties on 4 May 2022 and fixed an Inspection and Hearing for 8 and 15 June 2022 respectively.
  
5. Prior to the Inspection, the Landlord submitted written representations intimating that the work recommended by the McMillan's Property Maintenance had been carried out save for the chemical injection which the Landlord did not agree was appropriate, that the Tenant failed to report repairs in terms of the tenancy agreement and that the Tenant failed to heat the Property properly. Copy receipts for work carried out were attached.

### **Inspection**

6. The Inspection took place on 8 June 2022 at 11.30 a.m. at the Property. The Third-party Applicant was not present. The Tenant was present. The Landlord was not present and not represented.

7. The Tribunal inspected the parts of the Property referred to in the Application namely:-
  - i) The areas of dampness to the front wall of the Property at the front door, the hallway and the adjacent front bedroom;
  - ii) The area of damp staining on the ceiling of the ground floor front bedroom at the gable wall;
  - iii) The skirting board and wall behind it in the living room;
  - iv) The grassland to the front of the Property;
  - v) The timber surround at the front door;
  - vi) The septic tank area;
  - vii) The extractor fan in the kitchen;
  - viii) The broken roof slates;
  - ix) The open fire hearth in the living room;
  - x) The wall inside the kitchen cupboard and
  - xi) The cast iron downpipe and gutter to the rear kitchen extension of the Property.
8. At the Inspection, the Tribunal took damp meter readings and digital photographs which photographs form the Pre-hearing Inspection Summary and Photograph Schedule, which was issued to the Parties ahead of the Hearing.

### **Hearing**

9. The Hearing was held by telephone conference call on 15 June 2022 at 10.00 am. The Third-party Applicant was represented at the Hearing by Mr. Adam Black. The Tenant was present. The Landlord was represented by Mr. Merriman and Ms. Gilbert of the Landlord's organisation.
10. Mr Black advised the Tribunal that five main areas of concern remained as outlined in the Third-party Applicant's report of December 2021 which are the dampness in the Property, the wet grass area at the front of the Property, the damp patch on the ground floor bedroom ceiling; the timber cladding at the front door and the possible issues with the septic tank.
11. With reference to the Tribunal's Pre-hearing Inspection Summary and Photograph Schedule, Mr. Black noted that there may be still be issues with the new kitchen extractor fan, that there are photos of moderate and high damp readings at the front of the Property, that there are loose tiles at fireplace, there is staining to the base of the walls at the rear kitchen extension and that there appears to be ponding at the front garden and on the roadway outside the Property.
12. The Tribunal advised that the photos of the heat and smoke detectors were included as observations only as the Tenant had advised that he had removed the living room smoke detector from the ceiling as it appeared to go off for no reason, even when the fire was not on.

13. Mr. Merriman on behalf of the Landlord submitted that moderate to high dampness readings are showing because damp-proofing works had been carried out recently in May 2022 and that the Property needs time to dry out. He explained that liquid damp proofing had been applied to the front wall, that the trench at the front of the Property had been dug out further and gravel laid and a membrane inserted.
14. The Tribunal pointed out that floorboards at the front wall of the ground floor bedroom had been lifted, that the underneath joist was wet to the touch and that a large wet stain could be seen on the on the exposed floorboards under the window. Mr. Merriman advised that he thought the problem is that the Tenant does not heat the Property and so it does not dry out but accepted that the Landlord would have to revisit the dampness issue.
15. With regard to the damp staining on the front bedroom ceiling, the Tenant confirmed that repairs to the cracked roughcast causing the water ingress at the gable wall had been repaired and that there was no longer an issue with dampness at this area.
16. Mr. Merriman stated that he understood that the Landlord himself had visited the Property a few weeks ago. He stated that he was aware that the contractor is awaiting cast iron guttering to replace defective guttering at rear of the Property.
17. At this point, it became apparent that Mr. Black did not have a copy of the Landlord's written submission. This was emailed to Mr. Black, and he was content to proceed with the Hearing.
18. Mr. Merriman confirmed to the Tribunal that the contractor who carried out all of the work at the Property was Mr. R. Ifans of Mansfield, a multiskilled contractor who although not in the employment of the Landlord is retained to carry out work on the Landlord's portfolio.
19. Mr. Merriman advised that the Mr. Ifans had not carried out the chemical injection procedure as the Landlord's view was that of Mr. Boniface of the RICS that chemical injections damaged masonry and were not appropriate. He advised that Mr. Ifans had previously dug out a trench at the front of the house and infilled it with pea gravel. He stated that Mr. Ifans had returned and dug out a deeper trench, applied damp-proofing paint to the brickwork and inserted a membrane.

20. With reference to the guttering, it was noted at the inspection that there is a hole in the gutter to the rear kitchen extension and the down pipe above is not of sufficient length to allow rainwater to flow into the gutter, this is causing the base of the external walls to become very mossy. Mr. Merriman restated that new guttering was on order and would be "like for like". With reference to the roof slates, he advised that Mr, Ifans did not have the equipment to carry out roof work and that a local contractor would be instructed.
21. With reference to the front garden and the septic tank, Mr. Merriman submitted that these are the responsibility of the Tenant but accepted that the Tenant's responsibility was to maintain and not to repair or remedy faults and that while work to the septic tank had already been carried out he would investigate the drainage issues in respect of the front garden.
22. Mr. Merriman submitted that communication is an issue with the Tenant as he does not report repairs in writing as required by the tenancy agreement but deals with the Landlord via the Third-party Applicant and that it was hoped that the Landlord could get back on track with the Tenant in respect of reporting repairs. The Tenant confirmed to the Tribunal that he did not use email and was not comfortable with writing. He advised that his telephone calls to report repairs had not been successful.
23. With regard to the front garden, the Tribunal confirmed that in its view the ground is very wet, even for the location and that this could be contributing to the dampness at the front of the Property and that drainage might be needed to take the water away from the front elevation of the Property.
24. The Tenant advised that, in his opinion, the drainage and soak-away installed by Mr. Ifans some time ago was not sufficient as the ground was too boggy and that reeds continue to grow.
25. The Tenant confirmed that the septic tank is draining properly and is not an issue at present.
26. In response to a question from Mr. Black, Mr. Merriman advised that although the Landlord instructed Mr. Ifans, as skilled contractor the Landlord took Mr. Ifans' advice on the work which required to be done.
27. Mr. Merriman accepted there is dampness in the Property but maintained that the Landlord had taken all measures to rectify the problem and that the Property needed time to dry out to ensure that the work was effective. He agreed that the Landlord had not considered instructing a specialist report and maintained that

the Landlord had complied with the McMillan's Property Maintenance report obtained by the Tenant, save for the chemical injection as it could damage the brickwork and would not solve the problem.

28. With regard to heating the Property, the Tenant advised the Tribunal that he used the open fire and electric storage heaters in the downstairs bedroom and kitchen and an electric storage heater in one upper bedroom, he has supplied his own heater in the other upper bedroom. He stated that he used these regularly at 11.00 pm nightly as the system is white meter storage heating.
29. With regard to the timber cladding at the door, the Tenant agreed that this had been replaced but did not think it had been properly insulated underneath. He agreed that that there are no current problems with it.
30. With regard to the kitchen cabinets, the Tenant advised that he had been told by the Landlord's office by phone that only one side of the cabinets needed repair. Mr. Merriman advised again that communication is an issue but undertook to have the cabinets fully repaired.
31. With regard to the kitchen extractor fan, the Tenant advised that he had been told by the Landlord's office by phone to tape over it. He advised that it is noisy and the louvre slats lift in the wind causing the wind to blow into the kitchen. A second repair by Mr. Ifans had not remedied the problem, which problem had not occurred with the previous electric extractor fan.
32. With regard to the fireplace tiles, some of which had been replaced and have become loose, the Tenant did not accept that this had been caused as a result of using the fire too soon after the tiles were replaced. Mr. Merriman maintained that using the fire before the tiles had fully adhered was the likely cause as Mr Ifans had used the correct equipment and materials. He noted that Mr. Ifans had reported back that he advised the Tenant not to use the fire on day the tiles were fitted but that the Tenant indicated that he would not take this advice.

### **Summary of the Issues**

33. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1)(a), 13(1)(b), and 13(1)(h) of the Act at the date of the Inspection and Hearing.

### **Findings of Fact**

34. The Tribunal's findings in fact were made from the Application, the written submissions and the Inspection and Hearing.

35. The Tribunal found the following matters established: -
- i) There is a tenancy agreement between the Landlord and the Tenant;
  - ii) The Property is a two-storey semi-detached property constructed circa 1890 and is in a rural location. The Property is brick built with roughcast exterior and a pitched slated roof. The Property comprises a living room, a kitchen, hallway, three bedrooms and a bathroom with grassed gardens to the front, side and rear. The Property is served by a septic tank located in an adjacent field.
  - iii) There are areas of dampness to the front wall of the Property at the front door, the hallway, the adjacent front bedroom and living room;
  - iv) There is dampness under the floor of the front bedroom of the Property;
  - v) The underfloor vent on the front external wall of the ground floor bedroom of the Property has been blocked with paint;
  - vi) The area of damp staining on the ceiling of the front bedroom at the gable wall appears to be fading;
  - vii) The grass to the front of the Property is extremely wet and does not appear to be draining properly and there are a significant number of reeds growing;
  - viii) The timber door lining at the front door has been replaced and is in good order;  
The septic tank area appears to be in good order;  
The extractor fan in the kitchen appears to not function properly;
  - ix) The heat resistant tiling at the open fire hearth in the living room is defective and the fire cannot be used safely;
  - x) There are several broken roof slates;
  - xi) The lower kitchen cabinets have not been properly or fully repaired nor the former shelves re-instated and they are not in good order;
  - xii) The cast iron downpipe and gutter to the rear kitchen extension of the Property are defective and are not watertight and
  - xiii) There appear to be sufficient heat and smoke detectors in the Property although the living room detector requires to be re-fixed.
36. From the Hearing, the Tribunal accepted that the Tenant does not report repairs to the Landlord in writing. However, the Third-party Applicant does so on his behalf and the Tribunal is satisfied that the Third-party Applicant gives the Landlord an opportunity to carry out repairs before taking formal action.
37. The Tribunal accepts that the Landlord has carried out some works to address the dampness and other issues and that some works have been instructed but not yet carried out. However, in the view of the Tribunal this does not disburden the Landlord of his statutory duties and responsibilities. The Tribunal accepted that the Landlord has instructed repair work to be carried out and that he intends to complete the works to the kitchen cabinets including the re-instatement of the shelves.
38. The Tribunal accepted that the Tenant heats the Property and is of the view that lack of heating in the front bedroom is unlikely to cause dampness of the kind displayed in that room.

**Decision of the tribunal and reasons for the decision.**

39. The Tribunal's decision is based on the Application with supporting documents, the Landlord's written submissions, the Inspection and the Hearing.
40. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the dampness at the front of the Property is such that the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
41. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal found that the poor condition of the guttering at the rear of the Property and the wet condition of the garden to the front of the Property are such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
42. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the Tolerable Standard, the condition of the Property in respect of the damp and drainage issues is such that it does not meet the Tolerable Standard. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
43. The decision is unanimous.

**Repairing Standard Enforcement Order**

44. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

**Appeal**

45. 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**

46. 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

Date 21 June 2022