

# 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: Housing (Scotland) Act 2006, Section 24(1)**

Chamber Ref: FTS/HPC/RT/17/0339

**19 King Street, Stranraer, DG9 7JU**  
("The property")

The Parties:-

**Dumfries and Galloway Council**, Community & Customer Services,  
Strategic Housing Services, Ailsa House, Sun Street, Stranraer, DG9 7JL  
("the third party applicant")

**Stuart Alexander Adams**, Dunragit Home Farm, Dunragit, Stranraer, DG9  
8PH  
("the landlord")

**Tribunal Members:**

Adrian Stalker (Chairman) and Donald Wooley (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 the landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006, to ensure that the property meets the repairing standard under section 13, determined that the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.**

### **Background**

1. By an application to the Housing and Property Chamber received on 1 September 2017, the third party applicant sought a determination of whether the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application contended that the landlord had failed to comply with his duty to ensure that the property meets the repairing standard under

section 13 of the 2006 Act, and in particular, that the landlord had failed to ensure, at all times during the tenancy, that:-

- the house is wind and water tight and in all other respects reasonably fit for human habitation (section 13(1)(a));
  - 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 (section 13(1)(b));
  - 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 (section 13(1)(c));
  - any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d));
  - any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (section 13(1)(e));
  - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f)); and
  - the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (section 13(1)(g)).
3. On 26 September 2017, a Convener having delegated powers under section 23A of the Act made a decision, under section 23(1)(a), to refer the application to a First-tier tribunal. The tribunal served notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord and the third party applicant by letter dated 26 October 2017.
  4. This is a third party application made by a local authority, under section 22(1A) and (1B) of the Act. The third party applicant provided the tribunal with a copy of a tenancy agreement, in terms of which the property was let by the landlord to Mohammad Faryyad, under an assured tenancy, commencing on 1 May 2014.
  5. Following service of the notice of referral, no written representations were made by either party.
  6. The tribunal inspected the property on the morning of 1 December 2017. Ms Amanda Green, of the third party applicant's Community & Customer Services, Strategic Housing Services, was present. There was no representation for, or appearance by, the landlord at the inspection. Also present was Mrs Faryyad, the tenant's wife. Later that morning the tribunal held a hearing at the High Kirk, Leswalt Road, Stranraer. Ms Green was in attendance at the hearing. There was no representation for, or appearance by, the landlord at the hearing.

## **Summary of the issues**

7. In the application, the third party applicant described outstanding repair issues at the property, as follows:
  - (a) There is no carbon monoxide detector
  - (b) No Gas Safety Certificate
  - (c) The kitchen cabinets are in a poor state of repair
  - (d) There are no hard wired smoke detectors installed
  - (e) There is no EICR Certificate
  - (f) The living room window is broken and sealed with duck tape
  - (g) Rainwater goods are choked with grass.
8. Ms Green was able to advise the tribunal that, contrary to the application, no complaint was to be pursued under section 13(1)(e) of the Act, ("any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed").
9. The tribunal also notes that early in the application process, a question arose as to whether the last of the above points ("Rainwater goods are choked with grass") had been notified to the landlord, as is required by section 22(3) of the Act. That does not appear to have been the case. Therefore, point (g) it does not form part of this application. The tribunal would not, in any event, have been persuaded to make a repairing standard enforcement order (RSEO) in respect of the rainwater goods. At the time of the inspection, there were no significant signs of vegetation, although the remains of localised, now apparently dead weeds, were noted. There was no evidence in the form of staining to the external wall rendering to suggest that the rainwater goods were not functioning satisfactorily.

## **Findings in fact**

10. The tribunal finds the following facts to be established: -
  - i. The property is occupied by Mohammad Faryyad and his wife and six children. Mr Faryyad has an assured tenancy under the Housing (Scotland) Act 1988. The date of commencement of the current tenancy was 1 May 2014.
  - ii. The property comprises the major portion of a two storey and attic end terraced property estimated to be in excess of 100 years in age. It is accessed directly from King Street and situated on the periphery of Stranraer town centre. It is of traditional stone construction with a two-storey brick rear projection. The original attic has been substantially extended to incorporate flat roof areas and is in separate occupation.
  - iii. The accommodation is located on the ground and first floors. At ground floor level there is a living-room, laundry-room, kitchen and store-room. There are three bedrooms on the first floor and the bathroom is accessed from the mid floor landing.

- iv. A separate internal stair with main door entry leading from King Street provides access to the second floor / attic flat. This area is separately occupied, does not form part of the application and was not inspected.
  - v. Since the application was made, a carbon monoxide detector has been fitted in the kitchen. It is located approximately 600 mm below ceiling level and below the height of both the door and window.
  - vi. No gas safety certificate has been produced by the landlord to the third party applicant, or to the tribunal.
  - vii. The kitchen cabinets and fittings above and around the gas hob area are in a poor condition. In particular, there is a top hung protective covering in front of a non-functioning flueless ventilation device. This has become badly damaged and warped. This is due to its type of construction and positioning immediately above the gas hob. The adjoining wall cupboards display evidence of similar heat distortion.
  - viii. The present positioning, condition and construction of the kitchen cabinets and fittings above and around the gas hob area represents a significant fire risk.
  - ix. The air ventilation system above the hob is not functioning.
  - x. There is a ceiling mounted heat detector in the kitchen and a separate ceiling mounted smoke detector at the first floor landing. At the ground floor entrance hall there is, attached to the ceiling, what appears to be the remains of a former battery operated smoke detector fixing.
  - xi. The aforementioned smoke and heat detectors are not mains powered, or interlinked.
  - xii. No Electrical Inspection Condition Report (EICR) has been produced by the landlord to the third party applicant, or to the tribunal.
  - xiii. The electrical power points are set into the walls at a level well below the minimum height requirement.
  - xiv. Since the date of application, the landlord has replaced several of the windows, at first floor level.
  - xv. The ground floor living room window is an old double glazed fitting. Duct tape or equivalent has been fitted around the window to mitigate against draughts. The window comprises a deadlight lower panel with top hung upper panel and at the time of inspection was incapable of being opened.
  - xvi. The general decorative condition of the property was very poor.
  - xvii. Within the first-floor rear bedroom there is evidence of significant deterioration to wall and ceiling plaster.
  - xviii. There is significant vegetation affecting the gable chimney head and exposed gable wall. Localised repairs to the stonework in both the chimney head and gable wall are necessary.
11. The first of these findings follow from the papers obtained by the tribunal in relation to the application, in particular the tenancy agreement. The remaining points were apparent to the tribunal members during the course

of the inspection, or were based on their discussion with Ms Green at the inspection and hearing.

12. It should be noted that findings xvi to xviii were not a matter of complaint in the application. The tribunal was unable to ascertain the cause of the deterioration indicated at finding xvii. Ms Green suggested that this may have been caused by a previous plumbing defect in the flat immediately above the property. However, it may also be due to the state of the gable chimney head and exposed gable wall. It will be a matter for the third party applicant to decide whether to make a further application in respect of those issues.

### **Reasons for the decision**

13. Of the points (a) to (f) listed at paragraph 7 above, being the complaints made in the application, the tribunal was satisfied that complaints (b), (c), (e), and (f) were clearly established.
14. As regards point (a), a carbon monoxide detector has been fitted in the kitchen. However, it is not positioned in accordance with the Scottish Government Statutory Guidance for the provision of Carbon Monoxide alarms in private rented housing. This states that, unless otherwise indicated by the manufacturer, such alarm should either be ceiling mounted and positioned at least 300mm from any wall, or wall mounted and positioned at least 150 mm below the ceiling and higher than any door or window in the room. That is not the case here.
15. As regards point (d), there was no evidence, in the form of wiring or otherwise, that the smoke and heat detectors were mains powered or interlinked. The requirements regarding smoke and heat detectors as outlined in the revised Domestic Technical Handbook regarding private rented property states there should be at least: one functioning smoke alarm in the room which is frequently used by occupants for general daytime living purposes; one functioning smoke alarm in every circulation space, such as hallways and landings; one heat alarm in every kitchen, that all alarms should be interlinked, and that the alarms should be mains powered. The tribunal accordingly concluded that these requirements were not met.

### **Decision**

16. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
17. In particular, the tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(a), given finding (viii & xv). The tribunal also determined that the property fails to meet the repairing standard in terms of section 13(1)(c): given the failure to produce either gas safety or EICR certificates, the tribunal could not be satisfied that the landlord had complied with this aspect of the standard and as identified

under finding xiii there are clear visible defects in the current system of wiring. The tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(d), given findings (vii), (ix) and (xv). The tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(f) given findings (x) and (xi) and paragraph 15 above. The tribunal determined that the property fails to meet the repairing standard in terms of section 13(1)(g) given finding (v) and paragraph 14 above.

18. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act, which Order is referred to for its terms. Standing finding (vi) above, the Repairing Standard Enforcement Order includes a direction to the landlord to produce a gas safety certificate, as is required by regulation 36 of the Gas Safety (Installation and Use) Regulations 1998. Standing finding (xii) above, it also includes a direction to produce an EICR under sections 19A and 19B of the 2006 Act.

19. The decision of the tribunal was unanimous.

**20. 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.**

21. 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.

## A Stalker

Signed .

Date

15/12/17

Chairperson

**19 King Street Stranraer DG9 7JU**

**Schedule of Photographs taken at the inspection on 1<sup>st</sup> December 2017**



**Photograph 1:- Entrance & External View**



**Photograph 2:- Gable Wall & Chimney**



**Photograph 3:-** Dead Vegetation in PVC guttering



**Photograph 4:-** Warped kitchen fittings



**Photograph 5:-** Warped kitchen fittings





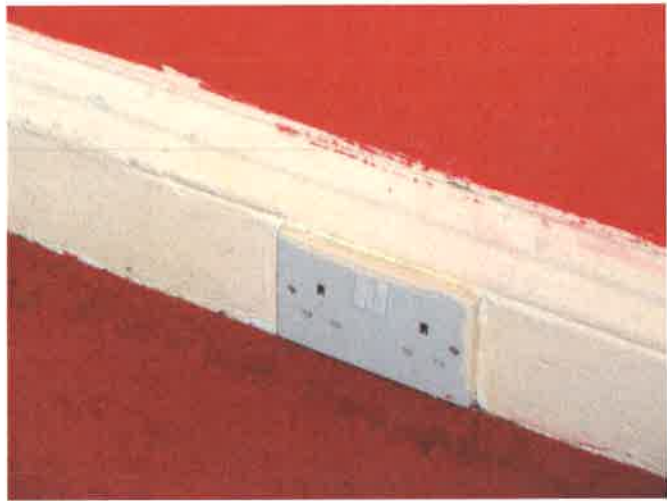
**Photograph 6:-** CO detector



**Photograph 7 :-** Heat detector - kitchen



**Photograph 8:-** Landing smoke detector



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**Photographs 7 & 8:-** Low mounted power points



**Photograph 9:-** Living room window