



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

**Statement of Decision of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under section 60(5) of the  
Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RT/22/0870**

**37 Main Road, Collin, DG1 4JL being part of the subjects described in the Disposition by James Francis Mundell Mundell in favour of James Frederick Stodart Mundell recorded in the Division of the General Register of Sasine for the County of Dumfries on 18<sup>th</sup> December 1995 (“the Property”)**

**The Parties:-**

**Peter Geddes residing at 37 Main Road, Collin, DG1 4JL (“The Tenant”)**

**James Mundell residing at Braehead Farm, Collin, Dumfries, DG1 4JN (“The Landlord”)**

**Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD (‘The Third Party’)**

**Tribunal Members:**

**Jacqui Taylor (Chairman) and Donald Wooley (Ordinary Member)**

**1. Background**

1.1 The Tenant leases the Property from the Landlord in terms of the lease agreement between the parties dated 2019. The lease had not been produced to the Tribunal but a letter from the Wallets Rural Property Services to the tenant dated 7<sup>th</sup> March 2019 was produced. The letter confirmed that the tenancy commenced on 13<sup>th</sup> March 2019.

1.2 The Third Party applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (‘the Act’).

**2. Application**

The application by the Third Party dated 28<sup>th</sup> March 2022 stated that they considered that the Landlord has failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property is not wind and watertight and in all other respects reasonably fit for habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order; the installations in the Property for the supply of water, gas and

electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order and the Property does not meet the tolerable standard.

In particular the application stated that the work that needed to be carried out was as follows:

- 2.1 damp patch immediately below window of front bedroom
- 2.2 damp patch on rear bedroom chimney breast
- 2.3 damp patch on rear bedroom ceiling at chimney breast
- 2.4 damp patch on rear bedroom wall at ground level
- 2.5 damp patch on bathroom ceiling
- 2.6 seal broken on bathroom window
- 2.7 rear door has section missing at bottom. Tenant has temporarily secured a length of wood to outside.
- 2.8 the exterior of various wooden windows is untreated and rotten. Some windows are in a very poor state of repair.
- 2.9 smoke/ heat alarms are not interlinked. The alarm in the living room appears to be functioning correctly whilst all other alarms do not appear to function correctly.
- 2.10 numerous patches of render are missing at the rear exposing brick which is now weathering.
- 2.11 the drop pipe adjacent to the rear door is broken at its junction with the gutter.
- 2.12 the chimney pot at the rear does not appear to be capped.
- 2.13 painted masonry to the front is extensively cracked.
- 2.14 the roof on the front elevation has loose, broken and missing slates.
- 2.15 a dislodged slate is in the gutter at the front.
- 2.16 The EICR Certificate has not been produced.

### **3. Notice of Acceptance**

On 5<sup>th</sup> April 2022, Jacqui Taylor, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that she had considered the application, comprising documents received on 28<sup>th</sup> March 2022, and she referred the application under Section 22 (1) of the Act to a Tribunal.

### **4. Productions**

Adam Black provided the Tribunal with copies of the following documents by email dated 14<sup>th</sup> June 2022:

#### **4.1 EICR**

The report was dated 28<sup>th</sup> March 2022. It was prepared by J B McCormick, an approved electrician and it confirmed that the electrical installation in the Property is in a satisfactory condition.

#### **4.2 Fire Detection and Fire Alarm Systems Report**

The report was dated 9<sup>th</sup> February 2022. It was prepared by J B McCormick, an approved electrician, and it confirmed that all detectors have been installed in accordance with BS 5839-6:2019 and includes cover of Grade F1 detectors which are satisfactory equipment in the detection of fire, as well as

satisfactory in the detection of carbon monoxide. All detectors have been fitted to a tolerable standard as set out by the Scottish Government.

#### 4.3 EPC Report

The report was dated 24th August 2017.

### 5. Inspection

Donald Wooley, Ordinary member of the Tribunal, attended at the Property at 11.00 am on 14<sup>th</sup> June 2022. Adam Black of Dumfries and Galloway Council was present at the inspection. The Landlord did not attend and was not represented.

The Property, estimated to be in the region of 120 years old, comprises an extended single storey mid terraced cottage. Located within a small village approximately 4 miles from the centre of Dumfries it forms part of a development of similar styled cottages in a semi-rural location. The outer walls are of stone/brick construction rendered with roughcast and the roof is timber framed, pitched and clad externally with slates.

The inspection report with accompanying photographs is attached as a Schedule to this Decision.

### 6. Hearing

This case called for a conference call Hearing at 15.30 am on 14 June 2022 2022.

Adam Black of Dumfries and Galloway Council attended. The Landlord did not attend and was not represented.

The Landlord had been notified of the hearing by letter from the Tribunal Administration dated 4<sup>th</sup> May 2022. Adam Black confirmed that he had spoken to the Landlord about the inspection and the Landlord was aware that it was taking place.

The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been met and proceeded with the hearing.

In connection with the matters detailed in the application Adam Black advised as follows:

**6.1 damp patch immediately below window of front bedroom; damp patch on rear bedroom chimney breast and damp patch on rear bedroom ceiling at chimney breast.**

He accepted that there was no dampness apparent at the inspection.

**6.2 damp patch on rear bedroom wall at ground level.**

He accepted that there was no dampness apparent at the inspection.

**6.3 damp patch on bathroom ceiling**

He accepted that although there was a historic damp staining on the bathroom ceiling, it was not damp at the inspection.

**6.4 seal broken on bathroom window**

He accepted that there was no evidence of the broken window seal at the inspection.

**6.5 rear door has section missing at bottom. Tenant has temporarily secured a length of wood to outside.**

He agreed that the tenant had made a temporary external repair to the rear door, principally to prevent rodent infestation, although the bottom of the door remained unrepaired.

**6.6 the exterior of various wooden windows is untreated and rotten. Some windows are in a very poor state of repair.**

He agreed that the window frames and sills of the front bedroom are rotten and the sash cord of the front bedroom window is ineffective. Also, the kitchen window frame is in a poor state of repair.

**6.7 smoke/ heat alarms are not interlinked. The alarm in the living room appears to be functioning correctly whilst all other alarms do not appear to function correctly.**

He accepted that the smoke/ heat alarms are now compliant with the regulations.

**6.8 numerous patches of render are missing at the rear exposing brick which is now weathering.**

He agreed that sections of rendering are missing but there was no evidence of water penetration at the inspection.

**6.9 the drop pipe adjacent to the rear door is broken at its junction with the gutter.**

He agreed that there was a gap between the rear downpipe and the guttering, although the tenant had carried out a temporary repair.

**6.10 the chimney pot at the rear does not appear to be capped.**

He agreed that the chimney pot was uncapped but there was no evidence of water ingress.

**6.11 painted masonry to the front is extensively cracked.**

He agreed that the masonry around the front windows was cracked but this was largely cosmetic.

**6.12 the roof on the front elevation has loose, broken and missing slates and there is a dislodged slate in the gutter at the front.**

He agreed that there are sections of loose, broken and missing tiles.

**6.13 The EICR Certificate has not been produced.**

He agreed that a compliant EICR certificate had now been produced.

## 7. Decision

7.1 The Tribunal made the following findings in fact:

7.1.1 There was no evidence of damp immediately below window of the front bedroom, the rear bedroom chimney breast and the rear bedroom ceiling at the chimney breast.

7.1.2 There was no evidence of damp on the rear bedroom wall at ground level.

7.1.3 There was no evidence of damp to the bathroom ceiling although the staining on the ceiling corresponds with loose and missing slates on the front roof pitch

7.1.4 The seal of the bathroom window was not broken and was not defective.

7.1.5 The smoke and heat alarms were compliant.

7.1.6 The patches of missing render did not result in the exterior of the Property not being in a reasonable state of repair.

7.1.7 The fact that the chimney pot at the rear is not capped does not result in the Property not being wind and water tight and in all respects reasonably fit for habitation.

7.1.8 The fact that the painted masonry to the front is cracked does not result in the Property not being wind and water tight and in all respects reasonably fit for habitation, nor would it result in the exterior of the property not being in a reasonable state of repair.

7.1.9 A compliant EICR Certificate has been produced.

7.2 In connection with the remaining matters:-

The remaining matters in the application concern an alleged breach of Section 13(1)(b) of the Housing (Scotland) Act 2006: The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order.

**7.2.1 The rear door has section missing at bottom. Tenant has temporarily secured a length of wood to outside.**

The Tribunal determined that the rear door of the Property leading from the kitchen to the garden is not wind and watertight as there is a broken and missing section of the door with the result that the door is not in a reasonable state of repair and proper working order.

**7.2.2 The exterior of various wooden windows is untreated and rotten. Some windows are in a very poor state of repair.**

The Tribunal determined that (i) the timber window frame of the window of the bedroom nearest the kitchen (the front bedroom) is rotten (ii) the timber

window frame of the kitchen window is rotten and (iii) the sash cord of the front bedroom window, while present is wholly ineffective. Consequently, the Tribunal find that the front bedroom and kitchen windows are not in a reasonable state of repair and proper working order.

**7.2.3 The drop pipe adjacent to the rear door is broken at its junction with the gutter.**

The Tribunal determine that the down pipe at the rear of the Property, referred to as the drop pipe in the application, is defective as there is a gap between the top of the down pipe and the gutter with the result that the downpipe is not in a reasonable state of repair and proper working order.

**7.2.4 The roof on the front elevation has loose, broken and missing slates and there is a dislodged slate in the gutter at the front.**

The Tribunal determine that there are loose, broken and missing slates with the result that the roof is not in a reasonable state of repair.

7.2.5 The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Sections 13 (1) (b) and 14(1)(b) of the Act, for the reasons stated.

8. The decision of the Tribunal was unanimous.

**9. 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.