



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RT/22/2028**

**Property : 16 Stewartry Avenue, Dumfries DG2 0PG (registered under title number DMF13850) (“Property”)**

**Parties:**

**Dumfries & Galloway Council, Housing and Licensing Standards, Municipal Chambers, Buccleuch Street, Dumfries DG1 2AD (“Third Party”)**

**Suzanne Skinner, 16 Stewartry Avenue, Dumfries DG2 0PG (“Tenant”)**

**John and David Yorke, 46 Drumlane Road, Upperlands, Maghera, County Londonderry BT46 5XE (“Landlord”)**

**Tribunal Members :**

**Joan Devine (Legal Member); Nick Allan (Ordinary Member)**

**DECISION**

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(a)(c) (d) and (f) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

**Background**

1. By application dated 24 June 2022, the Third Party applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Third Party stated that they believed that the Landlord had failed to comply with their duty to ensure that the Property met the repairing standard as set out in Sections 13(1) (a)(c) (d) and (f) of the Act. The Application stated that the Landlord had failed to ensure that:
  - The house is wind and watertight and in all other respects reasonably fit for human habitation

- 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
  - Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
  - The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
3. The Third Party made the following complaints in the application and in the notification communications to the Landlord :
- Central heating system not functioning
  - Radiator in living room defective
  - There are only two battery smoke alarms fitted
  - Unable to close upstairs window
  - Back / front door not wind or watertight
  - No EICR
  - No gas safety certificate
4. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 8 February 2023.
5. Prior to the Inspection the Tribunal issued a direction requesting the Landlord to produce a current Electrical Condition Installation Report (EICR) from a SELECT, NICEIC or NAPIT registered electrician following a full inspection of the electrical installation and apparatus throughout the Property confirming the installation and apparatus is fully functioning and meets current regulatory standards and a current Gas Safety Certificate for the Property. No response was received to the direction.

### The Inspection

6. The Tribunal inspected the Property on the morning of 8 February 2023. The weather conditions at the time of the inspection were dull and overcast. Adam Black of the Third Party was present at the Property during the inspection. He explained that the Tenant had vacated the Property in the summer of 2022. Annabella More attended on behalf of the Landlord to provide access to the Property. The Property is a two storey semi-detached house with a living room, kitchen and bathroom on the ground floor and three bedrooms on the upper floor. Following the inspection a summary with a schedule of photographs will be issued to the Parties.

## The Hearing

7. A Hearing took place on 8 February 2023 by conference call. Adam Black of the Third Party was in attendance as was John Yorke. The Tribunal asked Mr Yorke to confirm his address. He said that the address should be 46 (rather than 40) Drumlane Road.
8. The Tribunal noted that a direction had been issued to the Landlord and no response had been received. The Tribunal noted that the direction requested production of an EICR and a gas safety certificate. Mr Yorke said that he did have a current EICR and gas safety certificate although not to hand at that time. He said that they could be produced. The Tribunal noted that only David Yorke was stated to be the landlord in the tenancy agreement produced. Mr Yorke said that the Property was held in joint names. The Tribunal asked how the tenancy had been terminated. Mr Yorke said that the Tenant simply disappeared.
9. The Tribunal asked Mr Yorke about the central heating system. He said that the Tenant had complained that the heating was not working. He said that it had been fixed and he could provide copy receipts for the work carried out.

## The Evidence

10. The evidence before the Tribunal consisted of:
  - 10.1 The Application completed by the Third Party
  - 10.2 Land Register report relating to the Property
  - 10.3 Copy short assured tenancy agreement between the Tenant and David Yorke
  - 10.4 The Tribunal's inspection of the Property
  - 10.5 The oral representations of the Third Party and John Yorke

## Summary of the Issues

11. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

## Findings in Fact

12. Tribunal made the following findings in fact:
  - 12.1 The Tenant lived in the Property from 26 February 2018 until the summer of 2022.

- 12.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- 12.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
- 12.3.1 The central heating system was not in operation, and therefore it was not possible to assess its working condition.
  - 12.3.2 Temporary battery operated smoke alarms were fitted in the ground floor Hall and on the upper Landing. They were not interconnected.
  - 12.3.3 There was no smoke alarm in the living room.
  - 12.3.4 There was no carbon monoxide alarm in the Property.
  - 12.3.5 There was no heat sensor in the kitchen.
  - 12.3.6 There was a plastic panel in the front door which was inappropriate.

### Reasons for Decision

13. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (a)(c) (d) and (f) of the Act.
14. The Tribunal was unable to test the central heating system, or observe the system in operation. The plastic panel in the front door was unsatisfactory.
15. There was no smoke alarm in the living room and no heat detector in the kitchen. There were smoke alarms fitted to the ground floor Hall and upper Landing but these were battery operated and not interlinked. The provision for the detection of smoke and heat does not comply with current statutory requirements for rented properties. The repairing standard includes a requirement under Section 13(1)(f) of the 2006 Act that the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires, and for giving warning in the event of fire or suspected fire, Section 13(5) of the Act states that regard is to be had to any building regulations or any guidance issued by the Scottish Ministers in these matters.
15. The current Scottish Government statutory guidance states that there should be at least:

- one functioning smoke alarm in the room which is frequently used by the 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; and
- all alarms should be interlinked.

16. The Landlord should also be aware of the extension of the repairing standard to require the installation of carbon monoxide warning detectors from 1 December 2015.

17. The guidance states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:

- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling;
- a fixed combustion appliance in an interconnected space, for example an integral garage;
- a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) – the CO detector should be sited outside the room, as close to the appliance as possible, but allowing for the effect humid air might have on the detector when the bathroom door is open.

### Decision

18. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

**J Devine  
Legal Member  
23 February 2023**