

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Chamber Ref: **FTS/HPC/RT/20/0494**

4 Knowe Cottages, Kirkconel, Sanquhar, DG4 6NN registered in the Land Register of Scotland under Title Number DMF22527 (“the property”)

The Parties:-

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

James Donnelly, 4 Knowe Cottages, Kirkconel, Sanquhar, DG4 6NN (“the Tenant”)

Inkersall Investments Ltd Challenge House, 46 Nottingham Road, Mansfield, Nottinghamshire, NG18 1BL (“the Respondent” and “the Landlord”)

Tribunal Members:

Martin McAllister (Chairman) and Lorraine Charles (Ordinary Member)

Background

1. This is an application by the Third Party Applicant requiring the Tribunal to determine whether the Respondent has failed to comply with the duty to ensure that the Property meets the repairing standard as set out in the Housing (Scotland) Act 2006.
2. The Tenant submitted an application to the Tribunal for a payment to be made by the Respondent to reimburse him for costs incurred by him which he said were due to issues arising from the condition of the septic tank. The reference

for that case is FTS/HPC/CV/20/0963. Both applications are being dealt with together and by the same tribunal members.

3. The application concerns a septic tank which serves the Property and which the Third Party Applicant states is not maintained in good working order. The application also refers to water ponding at the front garden of the Property. The application states that the Property does not meet the repairing standard set out Section 13 (1) (a) and (c) of the 2006 Act in the following respects: The house is not wind and water tight and in all other respects reasonably fit for human habitation and that 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 in proper working order and that the house does not meet the tolerable standard.
4. The application gave detail on why the applicant considered that the Property did not meet the repairing standard:
 - 4.1 The septic tank does not provide effective treatment of foul water and is not maintained in good working order
 - 4.2 Ground water ponds at the front of the property on the access path.
5. The application is dated 12th February 2020 and was accepted for determination on 4th March 2020. An inspection and Hearing were fixed for 24th April 2020 and these were both postponed because of the coronavirus restrictions. Case management discussions were held and an inspection of the Property was carried out by the tribunal members on 2nd June 2021. A copy of the Pre-Hearing inspection summary and Schedule of Photographs is attached to this Decision.
6. A Direction was issued on 3rd June 2021 requiring the Respondent to advise the Tribunal of any written guidance provided to the Tenant at the outset of the tenancy or at any time during its duration in relation to the operation and use of the septic tank serving the Property and also to obtain a report from a suitably qualified independent contractor or consultant as to the efficiency and condition of the septic tank and soakaway serving the Property.

The Inspection

7. The members of the Tribunal carried out an inspection of the Property on 2nd June 2021 and a copy of the Pre-hearing inspection summary and Schedule of Photographs is attached to this Decision.

The Hearing

8. A Hearing was held by audio conference on 26th August 2021. Mr Adam Black of Dumfries and Galloway Council and the Tenant were present. The Respondent was represented by Mr James Woodcock, senior manager.

Preliminary Matters

9. It was noted that parties had lodged written representations and documents. In response to the Direction, the Respondent had stated that guidance to the Tenant as to the use of the septic tank was contained in the tenancy agreement dated 9th May 2016 and it had lodged a copy of a report from SOS Drains Ltd dated 24th August 2021. Mr Woodcock said that, at various times during the period of the tenancy, he had had conversations with the Tenant with regard to the correct use of the septic tank.

Evidence

10. Parties were agreed that works had been carried out to the septic tank since the application had been made.
11. Mr Donnelly said that he had commissioned a report from Xoli Ltd with regard to the septic tank and this report dated 21st December 2020 had been lodged with the Tribunal. He drew the tribunal's attention to the recommendations of the report.
12. Mr Woodcock said that, prior to his receipt of the Xoli Ltd report, he had instructed various works to the septic tank, its surroundings and to the soakaway. His evidence was that the report "moved matters forward" and that additional works were commissioned by him as a result of the contents of the report.
13. Mr Woodcock helpfully set out the works which had been carried out since the application had been made. He said that trenching and backfilling had been undertaken around the septic tank in an attempt to mitigate gathering of groundwater. He said that the soakaway had been blocked and that a new one had been installed. He said that repointing of the brickwork of the tank had been done and one of the concrete slabs at the top of the tank had been replaced. Mr Woodcock said that the inlet pipe had been repaired. He said that the treatment of drainage around the tank had been improved.
14. Mr Woodcock said that the works had been completed by February 2021 and he referred to a photograph sent to him by Mr Donnelly and which had been lodged with the Tribunal which was taken in that month and shows the septic

tank under a considerable amount of water. He said that the rainfall at that time had been excessive and to support that had submitted a copy of a newspaper report reflecting this.

15. Mr Woodcock said that, upon investigation, he had come to the view that the source of the water covering the septic tank had been runoff from the hill in the adjoining field and on the other side of the drystone wall which separates it from the Property. He said that he had discussions with the farmer who works that field and had commissioned a shallow ditch -an earth bund- to run parallel with the drystone wall. He said that he is hopeful that this will provide a solution to the issue of flooding from the field. He said that this work is shown on photograph 5 of the schedule of photographs.
16. Mr Black and Mr Donnelly challenged Mr Woodcock as to whether the works which had been carried out would remedy the faults with the septic tank. Mr Woodcock said that he was confident that they would and that he would monitor the situation. He referred the tribunal to the terms of the report of SOS Drains Ltd dated 24th August 2021. He said that the report stated that the tank was working to all levels and that the gap in the concrete slabs did not have any bearing on the workings of the tank. It states that, on the date of inspection, there was no sign of groundwater or contamination from the tank. Mr Black and Mr Donnelly did not agree that the gaps in the covering slabs would not cause water to go into the septic tank during heavy rain.
17. Mr Woodcock said that septic tank had not been used properly and that sanitary products or similar materials had been introduced to it. He said that this would affect the working of the tank and could cause blockages. He referred to the terms of the SOS Drains Ltd report: "there were sanitary towels floating on the top of the septic tank contents. These in turn can bunch up and allow blockages to start and should not be flushed into septic tanks as they are not degradable." Mr Woodcock acknowledged that the septic tank serves the Property and an adjoining Property and that he had no way of knowing who was misusing the septic tank.
18. Mr Woodcock said that the report of SOS Drains Ltd disclosed that the inlet pipe did not have a dip pipe for the solids to be diverted towards the bottom of the tank. He said that he had instructed SOS Drains Ltd to install this.
19. Mr Donnelly said that the front garden flooded and Mr Woodcock did not dispute that. Mr Woodcock said that the flooding was caused by run off from the adjoining road and he said that the garden is lower than that of the adjoining property. He said that it was possible that the ground drainage work which had been done to the area adjacent to the septic tank might improve drainage to the front garden but he was not certain that it would do so.

20. Mr Donnelly said that the septic tank appeared to be working adequately since works to it, the soakaway and the surrounding area had been done.

Submissions

21. Mr Black was clear in stating that he did not consider that all necessary works to the septic tank had been done. He referred in particular to the gaps in the concrete slabs forming its cover.

22. Mr Woodcock said that, as far as he was concerned, the septic tank met the necessary standards and, in particular, the repairing standard set out in the 2006 Act.

Findings in Fact

- I. The Property does not meet the repairing standard set out in the Housing (Scotland) Act 2006 and a dip pipe requires to be installed in the septic tank which serves it.
- II. Poor drainage in the front garden of the Property is not a departure from the repairing standard set out in the Housing (Scotland) Act 2006.

Reasons

23. The delay in determining this application has meant that the Respondent has taken advantage of the opportunity to carry out a considerable amount of work to the septic tank. It has installed a new soakaway, carried out repointing work, improved drainage around the tank, replaced one of the concrete slabs forming its cover and carried out works to mitigate water ingress from the adjoining field.

24. Mr Donnelly said that the septic tank appears to be working since works have been carried out. The tribunal understood that, from the manner of his statement that it *appears* to be working, it is not necessarily the case that the Tenant believes that this will be permanent.

25. The tribunal considered that, on the basis of the report from SOS Drains and also the evidence of Mr Woodcock, the septic tank is operating in an appropriate manner. It did note that a relatively small amount of work is recommended in that report and it considered it appropriate that a repairing standard enforcement order be made notwithstanding the fact that Mr Woodcock had said that he had commissioned the contractor to carry out the work.

26. In determining the issue with the septic tank, the tribunal had no regard to evidence with regard to possible misuse because a landlord's obligation is to maintain a property to a repairing standard unless it could be proved that it is unable to do so because of actions of a tenant. In this case, the Respondent did not do so and, in any event, some of the works which were carried out were not required because of any misuse of the system. What the tribunal had to do was determine whether or not the repairing standard is met.

27. The tribunal considered that, in the particular circumstances of the Property and its topography in relation to the road, flooding to the front garden was not a departure from the repairing standard.

Determination

The tribunal determined to make a repairing standard enforcement order in the following terms:

**The Landlord is to carry out works to the septic tank serving the Property (installation of a dip pipe) detailed in the report of SOS Drains Ltd dated 24th August 2021 and is required to supply adequate evidence to the Tribunal that the works have been completed;
(Section 13 (1) (c) of the 2006 Act)**

The Landlord requires to comply with the repairing standard order by 31st October 2021

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.

Martin J. McAllister,
Solicitor, legal member of the First-Tier Tribunal for Scotland
Tribunal.
30th August 2021