

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

---



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Chamber Ref: FTS/HPC/RT/16/1025**

**Title no: DMF18543**

**7 Birkburn Road, Kelloholm, Kirkconnel DG4 6SE ("The Property")**

**The Parties:-**

**Dumfries & Galloway Council, Strategic Housing, Council Offices, Buccleuch Street, Dumfries DG1 2NE ("the Third Party Applicant")**

**Mr Liam Wakenshaw, residing at 7 Birkburn Road, Kelloholm, Kirkconnel DG4 6SE ("the Tenant")**

**Dowsing & Culmer Limited, a company incorporated under the Companies Acts (Company Number 08808079) and having its registered office at 1a Rosedale Road, Richmond, Surrey ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Donald Wooley (Ordinary Member)**

### **NOTICE TO DOWSING & CULMER LTD ("the Landlord")**

Whereas in terms of their decision of even dated 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") and in particular that the Landlord has failed to ensure that:-

- Whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating, heating water, are in a reasonable state of repair and in proper working order. Section 13(1)(c) of the Act;
- Whether 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) of the Act.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the Repairing Standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord:-

1. To produce an up-to-date Gas Safety Certificate in respect of the property. In the event that the Certificate raises any concerns and works which require to be undertaken, then those additional works should be completed and evidenced by way of vouching.
2. To relocate the carbon monoxide detector within the living room and front bedroom of the property in order to ensure that they comply with the Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice and evidenced to the Tribunal.

**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 first party must 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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Daly Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 17 March 2017 before this witness:-

**R Mill**

Legal Member

Margaret Johnstone Murray

Witness

Name

69-71 DALRY ROAD  
EDINBURGH EH11 2AA

Address

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

---



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

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RT/16/1025**

**Title no: DMF18543**

**7 Birkburn Road, Kelloholm, Kirkconnel DG4 6SE ("The Property")**

**The Parties:-**

**Dumfries & Galloway Council, Strategic Housing, Council Offices,  
Buccleuch Street, Dumfries DG1 2NE ("the Third Party Applicant")**

**Mr Liam Wakenshaw, residing at 7 Birkburn Road, Kelloholm,  
Kirkconnel DG4 6SE ("the Tenant")**

**Dowsing & Culmer Limited, a company incorporated under the  
Companies Acts (Company Number 08808079) and having its registered  
office at 1a Rosedale Road, Richmond, Surrey ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Donald Wooley  
(Ordinary Member)**

### **Decision**

The Property does not meet the Repairing Standard. The Landlord has not complied with their duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

### **Background**

1. By way of application received on 16 December 2016, the Third Party Applicant applied to the Tribunal for a determination on whether the Landlord had failed to comply with the duties imposed by Section 24(1)(b) of the Act in respect of the property.
2. In the application the Third Party Applicant stated that the Landlord had failed to comply with their duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of the repairing standard put at issue are those contained within Section 13(1)(c), (d), (e) and (g).

- Whether 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.
  - Whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - Whether any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
  - Whether the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. Notices of referral were issued to all parties on 18 January 2017.
  4. Representations were made by the Landlord in writing dated 30 January 2017 in which a postponement was sought. The Tribunal considered the available information and refused the postponement. The decision was contained within the Direction of the Tribunal dated 31 January 2017 in which the Tribunal also required the Landlord, within 7 days of receipt of the Direction, to produce an up-to-date Electrical Installation Condition Report (EICR) and Gas Safety Certificate. The Landlord failed to comply with this Direction of the Tribunal.

### **Inspection**

5. The Tribunal inspected the property on 17 February 2017 at 11.00 am. The Tenant was present and invited the Tribunal members into the property. The Tenant directed the Tribunal members around. There was no representative for the Third Party Applicant nor the Landlord.

### **Hearing**

6. Following the inspection of the property, the Tribunal convened a hearing later the same day at noon in Sanquhar Town Hall, Church Road, Sanquhar. There were no attendees.

### **Representations post-Inspection and Hearing**

7. On the day of the Tribunal's inspection and hearing and unknown to them, the Landlord's representatives Messrs Mathie Morton, Solicitors, emailed the Tribunal Administration providing a copy of a Gas Safety Certificate and EICR. The EICR Report, dated 14 February 2017, did not raise any issues of concern. Concerns were however raised by the Gas Safety Certificate. In the circumstances, instead of proceeding to reach a determination of whether or not the property complied with the

Repairing Standard, the Tribunal proceeded to issue a further Direction dated 21 February 2017 setting out the further requirements of the Landlord so as to avoid a finding that the property failed to meet the Repairing Standard and avoid the requirement for the Tribunal making a Repairing Standard Enforcement Order. A copy of the Tribunal's Direction dated 21 February 2017 is annexed to this Decision for reference.

### **Summary of Issues**

8. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
9. A number of issues were referred to within the initial Application. These can be summarised as:-
  - The upstairs radiators forming part of the central heating system were alleged not to be working.
  - Drawer fronts were missing from two of the kitchen drawers.
  - The fluorescent light and a second light fitting in the kitchen were both faulty.
  - Problem with the front door and its lock.
  - Concerns about the working order of the carbon monoxide detector in the living room and a question as to whether or not a carbon monoxide detector ought to be installed in the bedroom above the living room where the flue passes through.
10. Further representations were received from the Third Party Applicant by way of email on 1 February 2017 advising that the Tenant had reported that a number of repairs and replacements had been carried out but that they had not yet confirmed this themselves.
11. Additional representations were made by the Third Party Applicant by way of e mail on 14 February 2017 advising that they had inspected the property themselves and the only outstanding matters of concern to them were that the replacement carbon monoxide detector in the living room did not appear to be located in accordance with the regulations and that neither a gas safety certificate nor an inspection of the electrical installations had been carried out.

### **Findings in Fact**

12. The Tribunal makes the following findings in fact:-

1. The Title to the subjects known as 7 Birkburn Road, Kelloholm, Kirkconnel DG4 6SE is held by the Landlord. His interest is registered in the Land Register of Scotland under Title number DMF18543 on 7 May 2014.
2. The Property which is the subject of this Application is a two bedroomed end terraced villa.
3. The Property comprises a living room and kitchen on the lower level and two bedrooms and a bathroom on the upper level.
4. The Tenant entered into a Short Assured Tenancy Agreement with the agent acting on behalf of the Landlord (Ober Estate Ltd) with a commencement date of 26 September 2016. The property is let on an unfurnished basis. No portable electrical appliances are provided as part of the tenancy.
5. In relation to the matters complained of in the application, the inspection of the Tribunal revealed:-
  - i. Recent repairs to the front door had been effected. The front door opened and shut effectively and was capable of being locked and unlocked.
  - ii. There is a gas fire in the living room. This is an older type fire with a back boiler behind.
  - iii. The central heating system fired by the back boiler appeared to be in good order. The radiators were working throughout the property.
  - iv. A carbon monoxide detector is installed within the living room. This is situated lower than the height at which the statutory guidance requires.
  - v. A new carbon monoxide detector has recently been installed in the bedroom through which the flue passes. It is situated lower than the height at which the statutory guidance requires.
  - vi. Many of the electrical installations appear to be somewhat aged. There is surface mounted conduit wiring which serves as power to one of the ceiling lights in the kitchen. The light fitting to same is not in good order. The sockets within the property are of an older 13 amp style. No Electrical Insulation Condition Report (EICR) was available for inspection.
  - vii. Remedial work had recently been undertaken to the kitchen drawer units. The Tenant, had subsequently



removed these to carry out his own works in terms of an agreement with an agent of the landlord.

- viii. There are adequate linked hardwired fire and heat alarms within the property.

### **Reasons for Decision**

13. The Tribunal determined the application having regard to the bundle of papers which were made available in advance and immediately after the hearing to parties, together with observations made during their inspection and the lack of a satisfactory response from the landlord within the timescale detailed in the Tribunal's Direction dated 21<sup>st</sup> February 2017. Reference is made to the annexed schedule of photographs taken at the time of the Tribunal's inspection.
14. The Tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the Hearing on 17 February 2017.
15. The Tribunal was satisfied having regard to all of the available evidence and having sufficient information and material with which to reach a fair determination of the reference.
16. Given the position of the two carbon monoxide alarms within the living room and front bedroom, the Tribunal concluded having regard to the Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing, that they were not situated in a location to provide optimum warning in the event of a leakage of carbon monoxide. The alarms are situated lower on the walls than required by the statutory guidance.
17. The central heating system fired by the back boiler in the living room is of a more historical nature. A Gas Safety Certificate was required to be produced by the Landlord in accordance with the Tribunal's Direction previously issued and the Landlord has failed to comply. A Gas Safety Certificate was subsequently produced by the solicitors acting on behalf of the Landlord although this was not available to the tribunal until after the hearing had been completed. The following faults were noted:-

"No cross bonding visible within 600 millimetres of outlet, pipework not sleeved, electrical cable less than 25 millimetres from pipework."
18. The electrical installations in the house are of a historical nature and, on the face of it, some concern existed around some of the electrical installations. An Electrical Installation Condition Report (EICR) was required to be produced by the Landlord in accordance with the Tribunal's Direction previously issued and the Landlord has failed to

comply. An EICR Report was subsequently lodged by the solicitors acting on behalf of the Landlord although this was not available to the tribunal until after the hearing had been completed. Despite the Tribunal's concerns having scrutinised the terms of the EICR Report, this evidences that there are no electrical concerns.

19. There was no landlord representation at the hearing and the gas safety certificate was only available for consideration by the Tribunal after conclusion of the hearing. While it is noted that the gas certificate is a "pass" it raised a number of "faults/notes". Despite the Direction issued by the Tribunal dated 21<sup>st</sup> February 2017, no subsequent vouching or further clarification regarding the faults has been received. In the absence of such vouching the Tribunal is therefore not satisfied that the installations for gas are in a reasonable state of repair and in proper working order. The Tribunal's concerns are heightened by virtue of the fact that the Landlord specifically failed to comply with the Tribunal's former Direction to produce adequate vouching.
20. The Tribunal is not satisfied, having regard to the location of the carbon monoxide alarms, that the house has satisfactory provision for giving warning if carbon monoxide is present.

### **Decision**

21. The Tribunal, having made enquiries 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 failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

### **Right of Appeal**

22. **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 first party must 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**

23. 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.

Signed

**R Mill**

Date 17 March 2017

Legal Member

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

---



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

**DIRECTION OF THE TRIBUNAL (2)**

**Chamber Ref: FTS/HPC/RT/16/1025**

**Title no: DMF18543**

**7 Birkburn Road, Kelloholm, Kirkconnel DG4 6SE ("The Property")**

**The Parties:-**

**Dumfries & Galloway Council, Strategic Housing, Council Offices, Buccleuch Street, Dumfries DG1 2NE ("the Third Party Applicant")**

**Mr Liam Wakenshaw, residing at 7 Birkburn Road, Kelloholm, Kirkconnel DG4 6SE ("the Tenant")**

**Dowsing & Culmer Limited, a company incorporated under the Companies Acts (Company Number 08808079) and having its registered office at 1a Rosedale Road, Richmond, Surrey ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Donald Wooley (Ordinary Member)**

By way of Direction dated 31 January 2017 the Tribunal required the Landlord, within 7 days of receipt of the Direction, to produce to the Tribunal an up-to-date Electrical Installation Condition Report (EICR) and Gas Safety Certificate. They failed to do so.

The Tribunal proceeded to carry out the inspection and hearing on 17 February 2017. The Landlord was not represented at the inspection or hearing.

The Tribunal's concerns following their inspection and hearing related to:

1. The absence of an up to date gas safety certificate.
2. The absence of an up to date Electrical Installation Condition Report (EICR).
3. The carbon monoxide detectors in the property are not located in accordance with the Scottish Government Statutory Guidance for the Provision of carbon monoxide alarms in private rented housing. They are located lower than the recommended requirements.

Unknown to the Tribunal at the time of their inspection and hearing Messrs Mathie Morton solicitors, acting on behalf of the Landlord that same morning e mailed the

Tribunal administration on the morning providing a copy of a Gas Safety Certificate and EICR.

It is regretful the Landlord has failed to engage and comply with the legal process timeously. This has led to unnecessary time and expense of public resources.

The tribunal issues this Direction in an attempt to resolve the reference proportionately and expeditiously.

The Tribunal notes that the EICR Report does not raise any issues of concern. The Tribunal are concerned to note that the Gas Safety Certificate raises the following faults/notes:-

“No cross bonding visible within 600 millimetres of outlet, pipework not sleeved, electrical cable less than 25 millimetres from pipework.”

The Tribunal also remains concerned that the property does not have sufficient provision for the giving of warning of the presence of carbon monoxide.

Within 14 days the Landlord requires to :-

1. Remedy the defects highlighted within the Gas Safety Certificate produced and provide evidence by way of a fresh Gas Report/Gas Safety Certificate that said concerns have been rectified; AND
2. Either:-
  - a) Provide vouching confirming that the carbon monoxide detectors installed are in accordance with the manufacturers installation instructions; or alternatively
  - b) Provide photographic evidence that the carbon monoxide detectors have been relocated in accordance with the statutory guidance.

The Tribunal will thereafter make a Decision and issue their determination in writing. The Landlord should note that failure to comply is likely to result in the Tribunal finding that they have failed in their duties regarding the Repairing Standard and lead to the issuing of a Repairing Standard Enforcement Order.

**The Landlord is hereby given notice of the terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016, which state that in any proceedings before the First-tier Tribunal it is an offence for any person to—**

- a) make a false statement in an application in a case;**
- b) alter, conceal or destroy, or fail to produce, something that is required to be produced in accordance with Tribunal Rules; or**

- c) fail to attend or give evidence, when required to do so in accordance with Tribunal Rules.**

**A person who commits an offence as described above is liable —**

- a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both);**
- b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding £5,000 (or both).**

---

Legal Member

21 February 2017

**7 Birkburn Road, Kelloholm, Kirkconnel DG4 6SE**

**Schedule of photographs taken at the inspection on 17<sup>th</sup> February 2017**

**Photographs 1- 3**



Photograph 1 - Front Elevation



Photograph 2 - CO Detector Bedroom



Photograph 3 - CO Detector Living room