

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION OF THE FIRST-TIER FOR SCOTLAND (HOUSING
AND PROPERTY) CHAMBER
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

**Property at 58 Carnethie Street, Rosewell, Midlothian EH24 9AR (hereinafter
referred to as “the House”)**

**Kenneth Dawson, formerly of 58 Carnethie Street, Rosewell, Midlothian EH24
9AR hereinafter referred to as “the Tenant”)**

**Corinna Anne Flanagan, 79 Carnethie Street, Midlothian, Rosewell EH24 9AN
(hereinafter referred to as “the Landlord”)**

Chamber Ref: PRHP/RP/15/0139

DECISION

The Tribunal having made such enquiries as are 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 (hereinafter “the Act”) in relation to the House, and taking account of the written documentation attached to the application and submitted by the parties, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 27 April 2015 (hereinafter referred to as “the Application”) the Tenant applied to the Tribunal's predecessor, the Private Rented Housing Panel (hereinafter “the PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

- “(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*
- (b) 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,*

(c) 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,
(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire."

The Tenant complained of a substantial number of defects in the House.

On being informed that the Tenant had vacated from the House, the President of the PRHP issued on 18 June 2015 a Minute of Continuation in terms of paragraph 7(2) of Schedule 2 to the Housing (Scotland) Act 2006.

By letter of 9 July 2015, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as "the Committee").

The Committee comprised the following members:

John McHugh, Chairperson
Scott Campbell, Housing Member
Alexander Carmichael, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Committee inspected the House on 26 August 2015. The Landlord's father, Gerald Flanagan, was present. The Tenant was neither present nor represented.

Following the inspection, the Committee held a hearing at The Lasswade High School Centre, Bonnyrigg. The Committee considered the written evidence submitted by the parties. The Landlord and Tenant were neither present nor represented.

The Committee considered the written submissions and evidence which had been sent on behalf of the Landlord and the Tenant.

The Committee resolved to continue the hearing until the building works were complete to then assess whether the House met the repairing standard.

Subsequently, further inspections were carried out on 1 March and 31 October 2016 and 24 July 2017. Works were found to remain incomplete and further continuations granted.

The composition of the Committee changed over this period. The Tribunal members who carried out the final inspection were John McHugh, Legal Member and Andrew Taylor, Ordinary (Surveyor) Member.

Submissions at the Hearing

No representations were made at the hearing on 26 August 2015 or later hearings although the Landlord's father explained at the inspection on 26 August 2015 that the Landlord considered that the Tenant's complaints were all factually inaccurate.

He advised that the House was being fully refurbished and was not intended to be re-let.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Tribunal confined their inspection to the items of complaint detailed within the Tenant's Application.

The Tribunal made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on 12 June 2012.

The Landlord was recorded on the Lease as C Flannigan.

Corinna Anne Flannigan is the registered owner of the House.

The Tenant took possession of the House from 27 June 2012 and vacated it on or around June 2015.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by recorded delivery letter on 20 May 2015.

The inspection on 26 August 2015 revealed that the House was in the course of a major refurbishment and extension. All fixtures and fittings had been removed. The House was in a shell form and would not meet the repairing standard although all of the items which were the subject of the Application were no longer there to be seen.

Subsequent re-inspections on 1 March and 31 October 2016 revealed that the building works were incomplete and ongoing.

The re-inspection on 24 July 2017 revealed that the building works were complete. The House had been finished to a standard that would comply with the repairing standard. The house is not, and is not intended to be, let.

A schedule of photographs taken at the inspection on 24 July 2017 is attached.

Reasons for the Decision

The matters which are the subject of the Application have all been replaced as part of a refurbishment of the House. The House was found to be in a condition which would meet the repairing standard.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Tribunal was unanimous.

Right of Appeal

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.

J McHugh

**John McHugh
Chairperson**

Date: 1 August 2017



55 Carnethie Street, Rosewell, Midlothian, EH24 9AR
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Schedule of Photographs - Inspection Date 24th July 2017
Weather – Dry and sunny.



1. The property.



2. Refurbished and extended living room.



3. Refurbished hall and new external door.



4. Fire detection.



5. Refurbished kitchen.



6. Refurbished bathroom.



7. Refurbished bedroom.