



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**

Case Reference FTS/HPC/RT/23/2477

7 Terregles Road, Dumfries, DG2 9HE being the subjects registered in the Land Register of Scotland under title number DMF20870 ('The Property')

Ryan and Rebecca Gamble, formerly 7 Terregles Road, Dumfries, DG2 9HE ('The former Tenants')

Mr Andrew MacDonald, Mrs Janice Agnes MacDonald, 29 Old Carlisle Road, Moffat, DG10 9QJ; 29 Old Carlisle Road, Moffat, DG10 9QJ ('The Landlords')

Dumfries & Galloway Council, Housing & Licensing Standards, Militia House, English Street, Dumfries, DG1 2HR ('the Third Party Applicant')

Tribunal Members:

Jacqui Taylor (Chairperson) and Donald Wooley (Ordinary Member)

1. Background

1.1. The former Tenants leased the Property from the Landlord. 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. The Tribunal received a request to withdraw the application from the Third Party Applicant dated 16th November 2023 in the following terms:

'In relation to the above property, we have been provided with proof from Steven Whitelaw of JHS Law, 8- 10 Bank Street, Dumfries DG1 2NS of an intention to sell the property. We have had sight of the home report and are satisfied that there is no intention to re-let the property. On that basis, it is not in the public interest to pursue further and therefore respectfully request that the referral be withdrawn. I trust that this is acceptable to yourselves and would be grateful for confirmation of withdrawal.'

The Tribunal considered the request to withdraw the application and whether the application should continue to be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Housing (Scotland) Act 2006. The Tribunal were mindful that section 7 of Schedule 3

of the Act provides that the Tribunal may still determine an application even although the lease has been lawfully terminated.

The Tribunal acknowledged that the Landlord intends to sell the Property but as there was a reasonable possibility that a purchaser of the Property may lease the Property and as the application includes complaints that are health and safety concerns the tribunal decided to continue to determine the application.

3. Application

The application by the Third Party dated 26th July 2023 stated that they considered that the Landlord has failed to comply with his 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 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; that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous for health 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:

- 3.1 There is a visible gap between the slates and the chimney flashing on the front elevation, as well as below the ridge tiles in that area, that will allow the ingress of rainwater into the building.
- 3.2 There is evidence of dampness on the kitchen ceiling that requires to be addressed.
- 3.3 There is a water leak under the kitchen sink that requires to be addressed.
- 3.4 The bath panel in the bathroom is not secure and will require attention for safety.
- 3.5 A broken glass door to the living room has been temporarily covered over for safety reasons, but now requires to be properly repaired by a competent tradesman.
- 3.6 The surface mounted electrical supply cable to the shower unit should have a protective cover over it.
- 3.7 The wall switch for the ceiling light in the kitchen requires some manipulation to get the ceiling light to come on. This should be checked by a competent electrician.
- 3.8 The power supply to an electrical socket beside the kitchen sink disconnects whenever the cooker isolation switch on the other side of the room is turned off.
- 3.9 The redundant immersion heater switch in the hallway still has a live supply to it, but the electrical immersion heater element was removed years ago. This should be disconnected from the main fuse box.
- 3.10 According to the tenant, the double electrical plug socket in the downstairs hall has been condemned by a representative of Scottish Power. This will need to be checked by a competent electrician.
- 3.11 There is a requirement for an EICR to be completed every five years.

- 3.12 There is an open electrical junction box under the hall carpet on the second floor with exposed unprotected electrical joints.
- 3.13 Kitchen floorboards are subject to water ingress from under sink leak. Floor boards are spongy under foot.
- 3.14 Heat detector in the kitchen has been removed due to leak from bathroom directly above.
- 3.15 Evidence of dampness in the living room underneath front window and rear wall at bottom LH corner.
- 3.16 Water ingress from leaking bath to floorboards, skirting and door fascia in the upper hallway.
- 3.17 Kitchen door handle is broken on both sides.
- 3.18 Bath is leaking.
- 3.19 Shower is inoperative.
- 3.20 Bath has dropped and there is a gap in sealant surrounding bath.
- 3.21 Evidence of damp on external wall in top LH and RH corners of child's bedroom.
- 3.22 Tiles on front doorsteps are loose and coming away from base.
- 3.23 Front driveway slabs are cracked and loose.
- 3.24 Mould visible on vent- front external wall.
- 3.25 Gas Safety Certificate.
- 3.26 The Property does not have a carbon monoxide alarm.

4. Notice of Acceptance

On 8th August 2023, Martin McAllister, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received on 26th July 2023, and he referred the application under Section 22 (1) of the Act to a Tribunal.

5. Inspection

The Tribunal, attended at the Property at 10.00 am on 8th December 2023.

The Landlord's solicitor Stephen Whitelaw attended the inspection.

The property comprises a two storey mid terraced house originally built by and on behalf of the local authority and now in private ownership. Estimated to be approximately 70 years old, the outer walls are of brick cavity construction and the roof is pitched, clad externally with slates. The accommodation comprises living room, two bedrooms, kitchen and bathroom.

The Tribunal inspected the repairs detailed in the application and found as follows:

5.1 There is a visible gap between the slates and the chimney flashing on the front elevation, as well as below the ridge tiles in that area, that will allow the ingress of rainwater into the building.

There is no evidence of a significant gap between the roof slates and chimney flashing or the ridge tiles.

5.2 There is evidence of dampness on the kitchen ceiling that requires to be addressed.

There is no evidence of damp at the kitchen ceiling.

5.3 There is a water leak under the kitchen sink that requires to be addressed.

There is no evidence of a water leak under the kitchen sink.

5.4 The bath panel in the bathroom is not secure and will require attention for safety.

The bath panel is secure although a section is cracked and broken

5.5 A broken glass door to the living room has been temporarily covered over for safety reasons, but now requires to be properly repaired by a competent tradesman.

The glass panel in the living room door is in good order.

5.6 The surface mounted electrical supply cable to the shower unit should have a protective cover over it.

The surface mounted electrical cable leading to the shower is only partially protected by a pvc cover. It is not fully enclosed.

5.7 The wall switch for the ceiling light in the kitchen requires some manipulation to get the ceiling light to come on. This should be checked by a competent electrician.

The kitchen ceiling light and control switch are defective.

5.8 The power supply to an electrical socket beside the kitchen sink disconnects whenever the cooker isolation switch on the other side of the room is turned off.

The electrical socket beside the sink unit was not tested.

5.9 The redundant immersion heater switch in the hallway still has a live supply to it, but the electrical immersion heater element was removed years ago. This should be disconnected from the main fuse box.

The redundant immersion heater switch remains live.

5.10 According to the tenant, the double electrical plug socket in the downstairs hall has been condemned by a representative of Scottish Power. This will need to be checked by a competent electrician.

The double electrical power point in the hall was not tested. It is located immediately above the skirting board and there is an old wire visible immediately below the fitting.

5.11 There is a requirement for an EICR to be completed every five years.

No Electrical Installation Condition Report (EICR) was available for inspection.

5.12 There is an open electrical junction box under the hall carpet on the second floor with exposed unprotected electrical joints.

The Tribunal were unable to inspect or comment on an electrical junction box in the hall due to the presence of fitted floor coverings.

5.13 Kitchen floorboards are subject to water ingress from under sink leak. Floor boards are spongy under foot.

No evidence of "spongy" floorboards or deterioration from water ingress in the kitchen.

5.14 Heat detector in the kitchen has been removed due to leak from bathroom directly above.

The heat detector within the kitchen was present and functional.

5.15 Evidence of dampness in the living room underneath front window and rear wall at bottom LH corner.

Moisture readings taken in the living room confirmed relatively low moisture content throughout most of the room. Isolated and random areas identified readings of up to 20%. There is no obvious underlying cause other than the property having been vacant and unheated.

5.16 Water ingress from leaking bath to floorboards, skirting and door fascia in the upper hallway.

There is no evidence of water damage arising from a leak at the bath/shower attachment affecting the floor boards, skirting or door fascia in the "upper hallway".

5.17 Kitchen door handle is broken on both sides.

The kitchen door handles are both functional and in reasonable condition.

5.18 Bath is leaking.

There is no evidence of any leak at the bath.

5.19 Shower is inoperative.

The shower was tested and was functional.

5.20 Bath has dropped and there is a gap in sealant surrounding bath.

The bath appears level and is adequately sealed at the area between the rim and surrounding walls.

5.21 Evidence of damp on external wall in top LH and RH corners of child's bedroom.

There is no evidence of damp at the top left and right corners on the outer wall of the "child's bedroom".

5.22 Tiles on front doorsteps are loose and coming away from base.

Several tiles at the front door steps are cracked loose and ill fitting.

5.23 Front driveway slabs are cracked and loose.

A number of the concrete slabs on the front driveway/parking area have become damaged with several lifting from their original position. They are in need of repair, relaying and re-grouting as appropriate.

5.24 Mould visible on vent- front external wall.

There is no visible mould either on or around the fitted sub floor ventilator at the front external wall and there is a good clearance between external ground level and internal flooring.

5.25 Gas Safety Certificate.

A "Landlord's Gas Safety Certificate" was exhibited to the Tribunal members. It is valid until 1st February 2024.

5.26 The Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous for health.

There is a "hard wired" Carbon Monoxide (CO) detector located within the boiler cupboard in the main bedroom in close proximity with the boiler. The positioning of the CO detector does not comply with the Scottish Government Statutory Guidance as the detector should be sited outside the space/cupboard with the appropriate distance between the appliance and detector of between one and three metres.

The photographs taken at the inspection are attached as a Schedule to this Decision.

6. Hearing

This case called for a conference call Hearing at 15.00 on 8th December 2023.

The Landlord and his solicitor Stephen Whitelaw attended the hearing.

Mrs Taylor advised that the Tribunal were satisfied that many of the items detailed in the application had been satisfactorily repaired and the hearing would be restricted to the items that they did not consider to have been satisfactorily repaired namely the electrical defects, the repairs required to the

front steps and the slabs in the driveway and also the position of the carbon monoxide alarm.

In connection with these matters Stephen Whitelaw advised as follows:

A. The defective electrical items listed in the application and the absence of an EICR certificate.

Mr MacDonald advised that he had an EICR certificate which was valid to December 2022.

Mr Whitelaw explained that Mr MacDonald had not obtained an updated EICR due to difficulties in obtaining access. He accepted that Mr MacDonald should not have let matters rest there and confirmed that Mr MacDonald is willing to obtain an updated EICR certificate.

B. Tiles on front doorsteps are loose and coming away from base.

Mr Whitelaw submitted that this matter is on the lower scale of seriousness.

C. Front driveway slabs are cracked and loose.

Mr Whitelaw submitted that this matter is also on the lower scale of seriousness.

D. The Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous for health.

Mr MacDonald explained that the carbon monoxide alarm was already installed when the EICR report was prepared. It is hardwired and located within the cupboard that houses the boiler.

Mr Whitelaw made further submissions to the Tribunal. He explained that the Tenant has vacated the Property on 9th September 2023 and the Third Party had advised the Tribunal that they were withdrawing the application. The Property is on the market for sale. He asked what public interest would be served by placing a RSEO over the Property especially as it is likely that the Property will be sold to an owner occupier.

7. Decision.

7.1 The Tribunal determined that the following items detailed in the application have been satisfactorily repaired and meet the Repairing Standard:

7.1.1 There was no longer a visible gap between the slates and the chimney flashing on the front elevation, or below the ridge tiles in that area.

7.1.2 There was no evidence of dampness on the kitchen ceiling.

7.1.3 There was no evidence of a water leak under the kitchen sink.

7.1.4 The bath panel in the bathroom was secure.

7.1.5 The glass door to the living room was not broken.

7.1.13 The Floor boards in the kitchen were not spongy under foot.

- 7.1.14 The Heat detector in the kitchen was in place and was in proper working order.
- 7.1.15 There was no evidence of dampness in the living room underneath front window and rear wall at bottom LH corner.
- 7.1.16 There was no evidence of water ingress in the upper hallway.
- 7.1.17 The Kitchen door handle was in proper working order.
- 7.1.18 The Bath was not leaking.
- 7.1.19 The Shower was in proper working order.
- 7.1.20 There was no gap in the sealant surrounding bath.
- 7.1.21 There was no evidence of damp on external wall in top LH and RH corners of child's bedroom.
- 7.1.24 There was no evidence of mould visible on vent- front external wall.
- 7.1.25 The valid Gas Safety Certificate had been produced.

7.2 The Tribunal made the following determinations in relation remaining items detailed in the application:-

7.2.1 Section 13(1)(b) of the Housing (Scotland) Act 2006: The structure and exterior of the Property is not in a reasonable state of repair and proper working order.

The Tribunal determine that the cracked tiles at the front door steps and the damaged and loose concrete slabs on the front driveway/parking area result in them not in a reasonable state of repair and proper working order.

7.2.2 Section 13(1)(c) of the Housing (Scotland) Act 2006: 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.

The Tribunal determine that the condition of the following electrical items detailed in the application result in them failing to comply with the repairing standard. Namely:

- The surface mounted electrical supply cable to the shower unit does not have a protective cover over it.
- The wall switch for the ceiling light in the kitchen does not work correctly.
- The redundant immersion heater switch in the hallway which still has a live supply to it.

The Tribunal were unable to determine if the condition of the following electrical items detailed in the application result in them failing to comply with the repairing standard. Namely:

- The power supply to an electrical socket beside the kitchen sink disconnects whenever the cooker isolation switch on the other side of the room is turned off.
- The condition of the double electrical plug socket in the downstairs hall.

- The condition of the electrical junction box under the hall carpet on the first floor. (The application details this as the "second floor") It is assumed that this has been wrongly described as there are only two storeys.

The Tribunal require the electrician that prepares the required EICR to confirm if these items are in a satisfactory condition.

There is a requirement for an EICR to be completed every five years. The Landlord does not have a current valid EICR certificate and the Repairing Standard Enforcement Order to follow hereon will include a requirement to exhibit a current valid EICR report to the Tribunal.

7.2.3 Section 13(1)(h) Housing (Scotland) Act 2006: the Property does not meet the Tolerable Standard.

The Tolerable standard requires the carbon monoxide alarms to comply with the relevant statutory requirements.

'The statutory requirements state:

A CO detection system to alert occupants to the presence of CO gas should consist of at least:

- *1 CO detector in every space containing a fixed combustion appliance (excluding an appliance used solely for cooking) and*
- *1 CO detector to provide early warning in high risk accommodation, that is, a bedroom or principal habitable room, where a flue passes through these rooms.*

Unless otherwise indicated by the manufacturer, CO detectors should be either:

- *ceiling mounted and positioned at least 300 mm from any wall (unless otherwise indicated by the manufacturer) or*
- *wall mounted and positioned at least 150 mm below the ceiling and higher than any door or window in the room.(unless otherwise indicated by the manufacturer).*
- *If the combustion appliance (primarily boilers) is located within a small space, usually a cupboard, the detector should be sited outside the space / cupboard with the appropriate distance between appliance and detector of between 1 and 3 metres.*
- *If the combustion appliance (primarily boilers) is located in an attic, the detector should ideally be sited between 1 and 3 metres from the appliance in the attic and another interlinked detector sited outside the attic near the attic hatch. Where this is not possible, a detector sited outside the attic as near the attic hatch as possible is acceptable.*

15. A carbon monoxide detector should not be sited:

- *in an enclosed space (for example in a cupboard or behind a curtain)'*

As the Carbon monoxide alarm in the Property is located in the boiler cupboard the Tribunal determine that the position of the alarm does not comply with the statutory requirements and therefore it does not comply with the tolerable standard.

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

7.4 Section 24(2) of the Housing (Scotland) Act 2006 states that where the Tribunal decide that a Landlord has failed to comply with the Repairing Standard they must make a Repairing Standard Enforcement Order which requires the Landlord to carry out such work necessary to ensure that the Property complies with the Repairing Standard. The Tribunal do not have discretion not to impose a RSEO. The RSEO will be issued separately.

7.5. The decision of the Tribunal was unanimous.

8. 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.

Signed

Chairperson,

Date: 12 December 2023