

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION:** in terms of Section 24 of the Housing (Scotland) Act 2006 ("the Act") of respect of an application under Section 22(1) of the Act

**Chamber Reference number:** FTS/HPC/RT/18/1547

Mr James Kyle, Lyndale, Leswalt Road, Stranraer, DG9 0EP ("the Landlord")

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

### Tribunal Members

Karen Moore (Legal Member)

Donald Wooley (Ordinary Member) ("the Tribunal")

This Decision should be read in conjunction with Decision and Direction in relation to the Application as aftermentioned both dated 24 January 2019.

### Background

1. By application received on 27 June 2018 ("the Application"), the Third Party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1) (a), 13(1) (c), 13(1) (d) and 13(1) (f) of the Act.
2. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard for the following reasons:-
  - i) The kitchen units are not fit for purpose and require to be replaced;
  - ii) The bathroom is not in a useable condition;
  - iii) The front window is not operative;
  - iv) The electric cooker cable is exposed;
  - v) The windows require to be replaced and
  - vi) There is no electrical report.

3. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the Act, referred the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 17 January 2019 at 10.00 a.m. and 11.30 a.m., respectively.
4. Subsequent to the Inspection and Hearing being fixed, the Tribunal was advised by the Third Party Applicant that the Tenant is now deceased and received a request from the Third Party Applicant to withdraw the application. The Tribunal considered the Application in terms of Schedule 2 Paragraph 7(1A) of the Act and considered 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 Act. Considering that the matters complained of in the application are of a serious nature and affect the health and safety of occupants or potential occupants of the property, the Tribunal decided to continue to determine the Application of its own accord.
5. The Inspection and hearing took place on 17 January 2019 at 10.00 a.m. and 11.30 a.m., respectively. Following which the Tribunal determined to continue the Application and directed the Landlord as follows:-

“In terms of Rule 16 of The First -tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the Tribunal directs as follows: -

- i) The Landlord is to complete the refurbishment works at the Property to ensure that the Property meets the Repairing Standard and that no later than 31 March 2019;
- ii) Once complete, the Landlord is to notify the Tribunal in order that the Tribunal might consider if a Re-inspection of the Property is to take place;
- iii) No later than 31 March 2019, the Landlord is to submit a current and valid EPC and EICR to the Tribunal.”

#### **Re- Inspection.**

6. The Ordinary Member of the Tribunal re-inspected the Property on 29 April 2019 and found the Property to be fully refurbished. The Landlord subsequently submitted the valid EPC and EICR to the Tribunal.

#### **Summary of the Issues**

7. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of 13(1) (a), 13(1) (c), 13(1) (d) and 13(1) (f) of the Act at the date of the Re-inspection and if its Direction dated 24 January 2019 has been complied with by the Landlord.

#### **Decision of the Tribunal and reasons for the decision.**

8. The Tribunal being fully satisfied that the Property has been refurbished and the relevant statutory certificates having been submitted to the Tribunal by the Landlord, the Tribunal determined that the Landlord has not failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 and has complied with the Direction dated 24 January 2019.

9. Accordingly, there is no requirement on the Tribunal to impose a Repairing Standard Enforcement Order.
10. This is decision is unanimous.

### **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.

### **Effect of Section 63**

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.

Karen Moore

Chairperson

19 June 2019