

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**Housing (Scotland) Act 2006 Section 24**

**Chamber Ref: FTS/HPC/RT/19/3405**

**Hewkemill, Sibbaldie, Lockerbie, DG11 2JY (“The House”)**

**The Parties:-**

**Dumfries and Galloway Council, Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries, DG1 2AD (“the Third Party Applicant”)**

**Mr Thomas Warbeck, residing at the House (“the Tenant”).**

**Balgray Estate, Balgray House, Lockerbie, Dumfriesshire, DG11 2JT (“the Landlord”).**

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made such enquiries as it saw fit for the purposes of determining whether or not 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 the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.**

**Tribunal members:-**

**G McWilliams, Legal Member; and**

**M Links, Ordinary Member**

## **Background**

1. By Application, received by the Tribunal on 24<sup>th</sup> October 2019, the Third Party Applicant applied to the Tribunal for determination of whether or not

the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The Application stated that the Tenant and Third Party considered that the Landlord had failed to comply with their duty to ensure that the House meets the Repairing Standard. In particular, the Application stated that the Landlord had failed to ensure that the House is wind and watertight and in all other respects reasonably fit for human habitation, that 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, that 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, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, and that the House does not meet the Tolerable Standard.
3. The Application was accompanied by copy letter sent by the Third Party Applicant to the Landlord on 14<sup>th</sup> May 2019, with a list of works which the Tenant and Third Party considered were required to be carried out, and which formed the basis of the Application. The letter had an accompanying Schedule of Photographs with annotations regarding the stated issues and required works.
4. On 27<sup>th</sup> November 2019, the President of the Tribunal intimated a decision to refer the Third Party's application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and also of the date set for an Inspection and Hearing.
5. The Tribunal comprised Mr G McWilliams, Legal Member, and Mr M Links, Ordinary Member
6. The Tribunal Members inspected the House on the morning of 30<sup>th</sup> January 2020. They were admitted to the House by the Tenant and his wife. The Third Party Applicant was represented at the Inspection by Mr R. Rome and Mr A. Black. The Landlord was represented by Mr M. Fogdon and Mr M. Law of Savills, Estate and Letting Agents, 28 Castle Street, Dumfries DG1 1DG.
7. A Schedule of Photographs, taken at the Inspection, is attached to and forms part of this Statement of Decision.

### **The Hearing**

8. Following the Inspection, the Tribunal held a Hearing at Lochvale House, Georgetown Road, Dumfries. Mr Rome and Mr Black, and Mr Fogdon and Mr Law attended the Hearing. Messrs Fogdon, Law, Rome and Black gave oral evidence regarding the issues raised in the Application. At the Hearing the Third Party's representatives submitted a copy of an Electrical

Installation Condition Report (“EICR”) which had been intimated to them by the Landlord’s representatives and which they accepted was in satisfactory terms.

9. The Tribunal considered all of the evidence it had obtained at the Inspection and noted at the Hearing.
10. The Repairing Standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended:

A House meets the repairing standard if:-

- (a) The House is wind and watertight 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,
- (f) The House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The House has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

### **Findings of fact**

11. Having considered all of the evidence the Tribunal made the following findings of fact:
  - i) The House is a rural cottage with attached Mill. The House comprises two bedrooms, a kitchen and dining room, kitchenette, living room and WC/bathroom. There is garden ground and other outbuildings around the House.
  - ii) At the time of the Application and Inspection and Hearing the Mill was included in the Tenant’s tenancy. It is proposed that the Mill be resumed from the tenancy by agreement of the Tenant and Landlord. This has yet to be done. The Mill is in a state of significant disrepair. There are various holes in the roof. Sections of the roof have collapsed and structural timbers are rotten. The Landlord intends to repair the roof within this year 2020.
  - iii) The gutters at the rear elevation at the House are full of vegetation and blocked. Sections of the guttering there are broken.

- iv) The Landlord has repaired the front door of the House and this is now watertight.
- v) Windows which were jammed closed at the rear of the property have been replaced. Four new windows, with PVC frames and double glazing, have been installed to the satisfaction of the Tenant and the Third Party Applicant.
- vi) The chimneyhead at the northmost gable of the House has been successfully removed. The chimneyhead at the southmost gable has been repaired but still requires some pointing work. The Landlord intends to carry out the pointing work when the weather improves in the next few months. The Third Party Applicant and Tenant are satisfied with these works and proposed works.
- vii) The Landlord has inserted a new outflow pipe which is connected to the external septic tank at the House. The septic tank has been registered with SEPA to the satisfaction of the Tenant and the Third Party Applicant.
- viii) The Landlord has produced an EICR in satisfactory terms.
- ix) The WC within the House had been repaired by the Landlord shortly prior to submission of the Application, so that it had an appropriate flush, to the satisfaction of the Tenant and the Third Party Applicant.
- x) Smoke and Heat detectors had also been installed within the House shortly prior to the submission of the Application. A CO monitor was also installed at that time

#### **Decision**

12. The Tribunal found, on a balance of probabilities, that the defects to the Mill, guttering and southmost chimneyhead had been established. The defects were accepted by all representatives. The Tribunal considered whether or not the defects brought the property below the Repairing Standard in terms of the said Act, as amended. The Tribunal considered matters and also found, on a balance of probabilities, that the Mill is not wind and watertight and in all other respects reasonably fit for human habitation, and that the structure and exterior of the house (including drains, gutters, and external pipes) are not in a reasonable state of repair and in proper working order.
13. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act in respect of the issues relating to the Mill, guttering and southmost chimneyhead.
14. The Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO"), as required by Sections 24 (1) and 24 (2) of the Act, in the following terms:-
  - a) The Landlord is to carry out such works as are required to ensure that the House is wind and watertight and in all other respects reasonably fit for human habitation, all in terms of Section 13(1)(a) of the said Act. Specifically the Landlord has to repair the roof, internal beams and timbers in the Mill to ensure that the Mill is safe for habitation; and
  - b) The Landlord is to carry out such works as a required to ensure that 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 all in terms of Section 13(1)(b) of the said Act. Specifically the Landlord has to clear the blocked gutters and repair the broken sections of the guttering at the rear of the property and carry out the necessary pointing work to the southmost chimneyhead; and
- c) In view of the nature of the failure to meet the Repairing Standard as defined in the said Act, as amended, the Tribunal determined that the RSEO requires to be complied with by 31<sup>st</sup> December 2020.

### **Reasons for Decision**

15. The Tribunal made its findings based on what found at the Inspection and having considered the representations and the evidence of the Landlord's representatives and the Third Party Applicant's representatives.
16. The Mill still forms part of the tenancy and requires repair. Accordingly the Tribunal were concerned with the carrying out of the repairs given that the Mill presently forms part of the tenancy. It was accepted at the Hearing by the Landlord's representatives and the Third Party's representatives that it would be reasonable to afford the Landlord a sufficient period of time to not only complete the legal process to resume the Mill from the tenancy but also to carry out the required repairs. The Landlord's representatives indicated that the Landlord intended to begin carrying out the works in the summer of 2020, and all representatives agreed that it would be reasonable if the Landlord were to be afforded a period of some eleven months, to the end of 2020, to successfully complete the required repairs to the Mill. The Tribunal determined that these works had to be carried out so that the House will meet the Repairing Standard and found that it was reasonable to afford the Landlord sufficient time to carry out the required works.
17. All representatives at the Hearing also accepted that the guttering at the rear of the House is blocked and requires to be cleared, and that sections of the guttering there are broken. It was also accepted that the chimneyhead at the southmost gable end of the property required to be pointed. The Landlord's representatives indicated that the Landlord intended to clear the gutters in early course and to carry out the pointing works when the weather became more clement, in the course of the next few months. The Tribunal determined that these works had to be carried out so that the House will meet the Repairing Standard and found that it was reasonable to afford the Landlord sufficient time to carry out the required works.
18. It was accepted by all of the representatives at the Hearing that the remaining issues and works stated as being required in the Application had been completed to the satisfaction of all parties, in particular the Tenant and the Third Party Applicant. Accordingly the Tribunal determined that these works had been completed satisfactorily and that it was not necessary to include further orders in the RSEO.
19. The Decision of the Tribunal was unanimous.

## **Observation**

20. The Tribunal observed that the CO Monitor in the living room of the House requires to be relocated closer to the log fire within that room. It is not currently located at an appropriate, short distance from the fire, The Tenant and all representatives agreed that this should be done by the Landlord as soon as possible.

## **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.**

G McWilliams

Signed.....

Legal Member

Date: 4<sup>th</sup> February 2020