

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**Variation of Repairing Standard Enforcement Order (“RSEO”): Housing (Scotland) Act 2006 Section 25**

**Chamber Ref: FTS/HPC/RT/18/0534**

**Re: Flat 4, Globe House, Ecclefechan, Lockerbie, DG11 3DF**

## **The Parties:-**

**Miss Janice Mckendrick, Flat 4 Globe House, Ecclefechan, Lockerbie, DG11 3DF (“the Tenant”)**

**Mr Amir Rasool, Denebank, High Street, Ecclefechan, Lockerbie, DG 11 3DF (“the Landlord”)**

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

**Flat 4, Globe House, Ecclefechan, Lockerbie, DG11 3DF part of Title Number DMF16169 (“the Property”).**

**Tribunal Members: Martin J. McAllister, solicitor, legal member and Kingsley Bruce, surveyor, ordinary member.**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) having determined on 22<sup>ND</sup> January 2019 that the repairing standard enforcement order (RSEO) relative to the Property dated 22<sup>nd</sup> June 2018 should be varied, the said **RSEO is hereby varied** with effect from the date of service of this Notice in the following respects:-

**The period allowed for the completion of the work required by the order is extended to 22<sup>nd</sup> March 2019.**

Subsection 25(3) of the Housing (Scotland) Act 2006 as amended does apply in this case.

**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.**

In terms of Section 63 of the Act, 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 the house at any time during which an 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 are executed by Martin Joesph McAllister, solicitor, legal member of the Tribunal, at Kilwinning on 28<sup>th</sup> January 2019 in the presence of Audrey Boylan, 83 Main Street, Kilwinning.

A Boylan

M McAllister

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**Determination: Housing (Scotland) Act 2006: Section 25**

**Case Reference FTS/HPC/RT/18/0534**

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

**Flat 4, Globe House, Ecclefechan, Lockerbie, DG11 3DF part of Title Number DMF16169 (“the Property”).**

**Tribunal Members: Martin McAllister (Legal Member) and Kingsley Bruce, surveyor, (Ordinary Member)**

## **Background**

1. By application received by the Tribunal on 9<sup>th</sup> March 2018, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act.

2. On 22<sup>nd</sup> June 2018 the Tribunal made a repairing standard enforcement order in the following terms:

- 1. The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who either is employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an**

**accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1<sup>st</sup> December 2016 together with copies of documentary evidence in support of the checklist.**

**The 2006 Act Section 13(1)(c)**

- 2. The Landlord is to produce a Fire Risk Assessment relating to the Property and the common access area from a suitably qualified and experienced individual or company and to implement any recommendations contained within the Assessment.**

**The 2006 Act Section 13(1)(a)**

- 3. The Landlord is to ensure that there are sufficient and appropriate smoke detectors and, in particular, replace or repair the detector in the bedroom. The fire detection system in the Property requires to comply with current regulations.**

**The 2006 Act Section 13(1)(f)**

- 4. The fixed heating appliances in the Property require to be functioning.**

**The 2006 Act Section 13(1)(c)**

**The Landlord required to comply with the repairing standard order within eight weeks of its service on him.**

The surveyor member of the Tribunal reinspected the Property on 14<sup>th</sup> September 2018 and found that some works had been done:

- A heat detector had been installed in the kitchen area. The smoke detector in the bedroom had not been replaced and it was found that the heat and smoke detectors were not inter-linked.
- A smoke detector had been installed in the shared entrance area. Electric heaters in the kitchen/living room and bedroom had been replaced and neither were hard wired.
- An Electrical Installation Condition Report (EICR) dated 13<sup>th</sup> July 2018 was before the members of the Tribunal. The Report stated that some items examined were considered to be categorised C3s (Improvement Recommended)

The Tribunal considered matters. It noted that some matters required by the repairing standard enforcement order had not been complied with. Some progress had been made in implementing the repairing standard enforcement order but the Tribunal required to consider whether or not such progress was satisfactory. An EICR had been obtained but some items were considered to require improvement. The tribunal considered that the layout of the Property and a neighbouring property (also subject to an application to the Tribunal) was such that there were serious issues of safety which had not been dealt with. It considered making a rent relief order and issuing a decision of non-compliance but decided, on balance that it was important to have the work done to the Property to ensure that it meets the repairing standard. This was clearly in the interest of the Tenant.

In the particular circumstances of the Property it considered that the Landlord be required to comply with the recommendations contained within the EICR. It was a matter of concern that the Fire Risk Assessment had not been carried out.

The Tribunal considered that the following elements of the repairing standard enforcement order still require to be completed:

1. The Landlord is to provide evidence that the heaters in the kitchen/living room are operational.
2. The landlord is to produce the Fire Risk Assessment and implement any of its recommendations.
3. The Landlord is to ensure that there are sufficient and appropriate smoke detectors.
4. An EICR produced with no items noted as requiring improvement.

The Tribunal determined that the repairing standard enforcement order be varied as follows:

The repairing standard enforcement order requires to be complied with by 22nd March 2019.

**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.**

M McAllister

Martin Joseph McAllister,  
Solicitor, legal member of  
Tribunal.  
28<sup>TH</sup> January 2019