

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Repairing Standard Enforcement Order  
Housing (Scotland) Act 2006 : Section 24**

**Case Reference FTS/HPC/RT/18/0527**

**Mr Krzysztof Konkol, Flat 3 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 3, 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)**

## **NOTICE TO**

**Mr Amir Rasool,**

Whereas in terms of their decision dated 22<sup>ND</sup> June 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (the 2006 Act) and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation; 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 and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the tribunal now makes a repairing standard enforcement order (RSEO) and requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of Section 13 of the said Act and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the following:

- 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 a heat detector in the kitchen. 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)**
- 5. The stairwell requires to have a banister and lighting and be without trip hazard.  
The 2006 Act Section 13 (1) (a)**

- 6. The electric shower isolating switch requires to be replaced or made safe.**
- 7. The 2006 Act Section 13 (1) (c)**

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

**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.**

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 a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents are signed at Kilwinning on 22<sup>nd</sup> June 2018 by Martin J. McAllister, legal member of The First-tier Tribunal for Scotland before Kayleigh Guthrie, 83 Main Street, Kilwinning.

M McAllister

K Guthrie

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Case Reference FTS/HPC/RT/18/0527**

**Mr Krzysztof Konkel, Flat 3 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 3, 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. The application by the Third Party stated that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: The Property is not wind and watertight and in all other respects reasonably fit for human 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 in proper working order, any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order, any furnishings provided by the Landlord under the tenancy are not capable of being used safely for

the purpose for which they are designed and the Property has not got satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The Third Party Applicant refers in the application to a letter sent to the Landlord dated 26<sup>th</sup> January 2018 and 2<sup>nd</sup> June 2017 which detailed findings of a property inspection conducted by the Third Party.

This letter and a checklist attached referred to specific issues which the Third Party considered meant that the Property did not meet the Repairing Standard. These are detailed as follows:

- I. There was rising or penetrating damp on the exposed concrete floor of the circulation area between flats 3 and 4 and the letter states that this could cause a slip hazard to tenants and their visitors and that the constant dampness in this access area may be detrimental to the tenant's health.
- II. Absence of a current Electrical Installation Condition Report (EICR) for the Property.
- III. Velux type windows in the main bedroom and adjoining hallway are showing signs of water ingress and a lack of maintenance leading to wood rot.
- IV. The access to the flat is by an unlit staircase with no source of natural light and there is a trip hazard at the top of the stair with a raised piece of timber in the door threshold.
- V. The fixed electric heaters do not appear to be working and the tenant has used plug in heaters in a way as to pose a potential fire risk. There is an unsupported electric panel heater balanced on its edge, on the living room carpet, which is designed to be wall mounted and which could be the source of a fire if it were to fall flat onto the carpet. There is a free standing heater in the bedroom which is plugged into a coiled drum extension cable along with three other appliances, which will overload the cable and create a potential fire. There is a free standing electric heater on the floor of the bathroom within touching distance of the bath.
- VI. There are two broken light switches in the living room.
- VII. The electric shower isolating switch in the hallway is loose from the wall.
- VIII. The smoke detector unit in the living room does not function.
- IX. The smoke detector unit in the hallway does not function.
- X. There is no smoke detector in the enclosed stairwell
- XI. There is no smoke detector in the communal access on the ground floor.
- XII. There is no heat detector in the kitchen.
- XIII. The Property has no working heat or smoke detectors.

3. On 2<sup>nd</sup> May 2018 parties were advised that a legal member of the Tribunal, acting under delegated powers, had referred the application to a tribunal for determination. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.

4. The members of tribunal attended at the House on 7<sup>th</sup> June 2018 for an inspection. The Landlord was present and the Tenant was not present. Mr Rome and Mr Black of Dumfries and Galloway Council were present. The accommodation comprises a two bedroom flat accessed from a common area. The common area also gives access to Flat 4 Globe House which is owned by the Landlord and is subject to another application considered by the tribunal on the same day (FTS/HPC/RT/18/0534). A schedule of photographs by the ordinary member is attached.

## 5. Inspection

5.1 Access to the Property is by a staircase leading from a common access area which also gives access to Flat 4. The staircase has no natural light and no electric light. It has no banister and there is a piece of timber below the door, forming a threshold at the top of the stairs.

5.2 The fixed electric heaters supplied by the Landlord seemed not to be functioning. A number of free standing electric radiators were stored in a cupboard. A heater in the bedroom was plugged into an extension bar with other appliances.

5.3 The velux windows showed signs of water staining and deterioration of decorative finishes. No decay was evident and the windows appeared weathertight.

5.4 There is a heat detector in the kitchen.

5.5 There are interlinked smoke detectors in the inner hallway and living space..

5.6 There is no smoke detector in the stairwell giving access to the Property.

5.7 The floor of the common area had been freshly painted and there was no immediate evidence of dampness, although readings taken with an electronic moisture meter to lower walls indicated possible dampness.

5.8 There is an electric cooker in the kitchen positioned beneath a worktop.

5.9 There was a non functioning gas boiler in the common area.

5.10 The electric shower isolating switch in the hallway is detached from the wall.

5.11 The broken light switches in the living room have been repaired.

5.12 The general condition of the Property was poor.

## 6. The Hearing

Following the Inspection, a Hearing took place at Lochvale House, Georgetown Road, Dumfries,  
Mr Rome, Mr Black and the Landlord were present.

## 7. Evidence

Mr Rasool said that he would produce an Electrical Installation Condition Report and that it had been organised. It was stressed to Mr Rasool that such a Report requires

to be prepared by an electrician who is suitably qualified and registered with a body such as N.I.C.E.I.C. or SELECT. Mr Rasool said that he understood that.

Mr Rasool said that the central heating boiler had not been functioning since he bought the Property in 2005. He said that there was no gas supply to the boiler because there was no mains gas in Ecclefechan and he assumed that the boiler had previously used bottled gas or LPG from a tank. Mr Rome said that his department had contacted the Landlord on a number of occasions to try and get necessary work done and he referred the tribunal to letters to the Landlord from his department dated 2<sup>nd</sup> June 2017 and 26<sup>th</sup> January 2018 which had been lodged with the application.

## 8. The Issues

Sections 13(1) (a), (c), (d), (e) and (f) of The 2006 Act provide that the house must be wind and watertight and in all other respects reasonably fit for human habitation, the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order, any fixtures, fittings and appliances provided by the landlord under the tenancy must be in a reasonable state of repair and in proper working order, any furnishings provided by the landlord under the tenancy must be capable of being used safely for the purpose for which they are designed and the house must have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The specific issues which the tribunal required to address were those detailed in the application.

## 9. Findings

The tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the House fails to meet it.

The tribunal had concerns about the fire safety of the Property. Normally there would be no requirement for a smoke detector in a common area but in the particular layout of the Property and Flat 4 Globe House it may be required. There were also issues about escape from Flats 3 and Flat 4. The tribunal considered it appropriate for a fire risk assessment to be obtained by the Landlord and for him to implement any recommendations.

There is no EICR and this should be provided and also appropriate portable appliance testing. For avoidance of doubt, the tribunal considered that this testing should include the cooker.

The heating system provided by the Landlord is not functioning properly and should be repaired or replaced.

There is insufficient provision of smoke detectors.

There is no immediate evidence of significant rising or penetrating dampness in the common area.

The heating system/heaters provided by the Landlord are not functioning properly or safely, and fixed heater in the living/kitchen area is not working.

There are significant safety concerns about the staircase and stairwell. There should be lighting and a banister in the stairwell, which appeared to the members of the

tribunal to be non compliant and the threshold at the top of the stairwell could constitute a trip hazard.

#### 10. Reasons

The tribunal had regard to what it had found at the inspection, the evidence of Mr Rome and the Landlord.

#### 11. Determination

The tribunal determined to make 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.  
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- 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.  
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- 6. The electric shower isolating switch requires to be replaced or made safe.**
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**The Landlord requires to comply with the repairing standard order within eight weeks of its service on him.**

**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.**

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M McAllister

Martin Joseph McAllister,  
Solicitor, legal member of  
Tribunal.  
22<sup>nd</sup> June 2018



















