

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Case Reference FTS/HPC/RT/18/0534

**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 McAllister (Legal Member) and Kingsley Bruce, surveyor,
(Ordinary Member)**

NOTICE TO

Mr Amir Rasool,

Whereas in terms of their decision dated 22ND 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 1st 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 requires to comply with the repairing standard order within eight weeks of its service on the Landlord.

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 22nd June 2018 by Martin J. McAllister, legal member of The First-tier Tribunal for Scotland before Kayleigh Guthrie, 83 Main Street, Kilwinning.

Martin McAllister

K Guthrie

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Case Reference FTS/HPC/RT/18/0534

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 McAllister (Legal Member) and Kingsley Bruce, surveyor, (Ordinary Member)

Background

1. By application received by the Tribunal on 9th 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 26th January 2018 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. Damage to the external door to the rear of The Property which has been temporarily repaired and taped up but which is neither secure nor wind and watertight.
- IV. Missing key for the rear door.
- V. The electrical storage heater in the main living/kitchen area has not worked for the previous two years.
- VI. A heat detector in the kitchen area has been disabled and is no longer giving protection.
- VII. The smoke detector in the bedroom is constantly beeping indicating a fault.
- VIII. The Property has no working heat or smoke detectors.

3. On 2nd 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 7th 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 3 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/18/0527). A schedule of photographs by the ordinary member is attached.

5. Findings on Inspection

5.1 The rear door has been repaired.

5.2 There is a functioning heat detector in the kitchen.

5.3 The bedroom leads off the kitchen/ living area and has a smoke detector which was not functioning and which was emitting a warning sound indicating that it was faulty.

5.4 There is a storage heater in the kitchen/living area and the Landlord indicated that it was not working and that he was having it replaced.

5.5 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.

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

5.7 There were fixed electric heaters to each room in the property.

5.8 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 or can comply with the conditions set out in Government guidelines. 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 2nd June 2017 and 26th 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 3 Globe House it may be required. There were also issues about escape from both Flat 3 and Flat 4. The tribunal considered it appropriate for a fire risk assessment for the Property including the common area to be obtained by the Landlord and for him to implement any recommendations.

There is no EICR and this should be provided and should include appropriate portable appliance testing.

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

There is insufficient provision of smoke detectors.

The rear door is functioning.

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

11. Reasons

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

12. 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 1st 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.**

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

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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Martin McAllister

Martin Joseph McAllister,
Solicitor, legal member of
Tribunal.
22nd June 2018













