

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Sections 26 and 27 of the Housing (Scotland) Act 2006

Property: 139 Burntscarthgreen, Locharbriggs, Dumfries DG1 1XW (“the Property”/ “the house”)

Chamber Reference: FTS/HPC/RT/19/3253

Parties:

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

Miss Shannon Bolton, 139 Burntscarthgreen, Locharbriggs, Dumfries DG1 1XW (“the Tenant”)

Mr Kenneth Irvine, 10 Corberry Mews, Dumfries DG2 7AX (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Mike Links (Ordinary Member/Surveyor)

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 the Landlord has complied with the Repairing Standard Enforcement Order made by the Tribunal on 28 January 2020, determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority and to Police Scotland. The Tribunal also decided to make a Rent Relief Order.

Background

On 28 January 2020, the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) made a Repairing Standard Enforcement Order (“the Order”) in respect of the Property. The Order required the landlord to:

1. Carry out such repairs as are necessary to the central heating boiler to ensure the control is in proper working order and is maintaining adequate pressure.

2. Engage a suitably qualified Gas Safe registered heating engineer to repair the gas fire in the living room, or to replace it.
3. Thereafter, provide the Tribunal with a satisfactory current Gas Safety Certificate for the Property, issued by a Gas Safe registered engineer.
4. Provide the Tribunal with an Electrical Installation Condition Report (EICR) in respect of the entire electrical installation within the Property issued by a SELECT, NAPIT or NICEIC registered electrician and containing no C1 or C2 items of disrepair
5. Relocate the carbon monoxide monitors in the living room and rear front bedroom to ensure they are compliant with all relevant regulations and Scottish Government guidance.
6. Instruct a suitably qualified contractor to carry out such repairs as are necessary to return the kitchen window to a wind and water tight condition and in proper working order.
7. Repair the damage to the rear entrance door to ensure it is wind and water tight, or replace it.
8. Instruct a suitably qualified contractor to provide a report to the Tribunal on the cause of water ingress to the first-floor bathroom ceiling and to carry out all necessary repairs to ensure the Property is wind and water tight.
9. Carry out such work as is necessary to secure the toilet in the first-floor bathroom to the floor and the wall.
10. Secure the shower screen in the first-floor bathroom and investigate the cause of damage to the kitchen ceiling below and carry out such remedial work as is necessary to the kitchen ceiling.
11. Instruct a suitably qualified contractor to examine the shower unit in the first-floor bathroom and to carry out such works as are necessary to ensure that temperature fluctuations do not occur and the shower unit is in proper and safe working order.
12. Repair or replace the left hand (looking from the inside) Velux window in the attic bedroom so that it is wind and water tight and in proper working order.
13. Carry out such repairs as are necessary to the wooden floorboards on the first-floor landing to ensure they are even and safe.
14. Carry put such repairs and reinstatement to the shower unit in the attic as are necessary to ensure it is in safe and proper working order.
15. Carry out such repairs to the defective cement rendering at the kitchen window lintel and the cracking and broken roughcasting adjacent to the

rear entrance door as are necessary to ensure the Property is wind and water tight.

16. Supply and install smoke and heat detectors to comply with all relevant regulations and with Guidance issued by the Scottish Government.
17. Carry out all making good and decoration associated with the completion of the foregoing works.

The Tribunal ordered that the work required by the Order should be completed and the documentation required by the Order provided within six weeks of the date of service of the Order.

As a result of the restrictions imposed following the COVID-19 outbreak, the Tribunal has been unable to inspect the Property to determine whether the work required by the Order has been satisfactorily carried out and the Tribunal was and remains concerned that a number of the items of disrepair it has identified and the documents it has requested in the Order have potential health and safety implications for the Tenant. Accordingly, on 7 September 2020, the Tribunal issued a Direction to the Landlord to provide it with an update as to the progress of the work required by the Order and with the documentation required by the Order.

This Direction required the Landlord to provide the Gas Safety Report and Electrical Installation Condition Report and contractor's report detailed as a requirement at Items 3, 4 and 8 of the Order to the Tribunal no later than midday on 23 September 2020. The Direction advised the landlord that it was possible that the Tribunal would draw an inference from the failure to provide these reports that there has been a failure to carry out the work required by Items 1, 2, 5, 8, 14 and 16 of the Order. If the Landlord disputed this inference, then evidence of works to, for example in the form of photographs, must be provided to the First-tier Tribunal. If no such evidence was produced, the First-tier Tribunal was likely to make the inference stated. The Tribunal also directed the Landlord to provide, no later than midday on 23 September 2020, evidence, by way of photographs, invoices or contractors' receipts that the remaining works required by the Order have been carried out, failing which the Tribunal might draw an inference that the works have not been carried out.

The Landlord did not comply with the Direction and made no written representations to the Tribunal. The Tenant did not make any written representations to the Tribunal but the Third Party Applicant emailed the Tribunal on 8 September 2020, to advise that the Landlord had been sequestered on 9 January 2020. The Third Party Applicant also understood from the Tenant that the Landlord has not commissioned any of the works required by the Order.

Summary of the issues

The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 28 January 2020 and, if not, whether a Rent Relief Order in respect of the Property should be made.

Reasons for the Decision

The Tribunal determined that, based on the information provided by the Third Party Applicant and the failure of the Landlord to comply with the Tribunal's Direction of 7 September 2020, it was reasonable to infer that the Landlord has failed to comply with the Repairing Standard Enforcement Order. Accordingly, the Tribunal determined that he had failed to comply with the Order and that, in terms of Section 26(2) of the 2016 Act, the failure must be reported to the local authority. The Tribunal also decided to make a Rent Relief Order in terms of Section 27 of the Act. The Landlord has not carried out any of the works required by the Order and, whilst the Tribunal understands that his sequestration may have impacted on his ability to instruct and pay for work, he has not made any representations to that effect. Having taken into account all the circumstances of which it is aware, the Tribunal decided that a Rent Relief Order for 50% of the rent was just, equitable and proportionate.

Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. Accordingly, the Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

The decision of the Tribunal was unanimous.

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 Clark

Signed:

Legal Member/Chair

Date: 6 October 2020

