

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 25 of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RP/23/3753

Re: Property at 5/102 Elfin Square, Edinburgh EH11 3BF registered in the Registers of Scotland under Title Number MID214715 (“**the Property**”)

The Parties:

Ms. Emma Mulgrew and Mr. Callum Miller both residing at the Property (“the Tenants”)

And

Spindlehawk limited, having a place of business at Block D, Universal Square, Manchester, M12 6JH (“the Landlord”)

Tribunal Members:

Karen Moore (Chairperson) and Robert Buchan (Ordinary and Surveyor Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) varies the Repairing Standard Enforcement Order (RSEO) imposed by it on 18 April 2024.

Background

1. By application received between 25 October 2023 and 7 December 2023 (“the Application”), the first-named Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), and 13(1) (h) of the Act.
2. The Application was referred to the Tribunal. An Inspection of the Property and a Hearing were fixed for 22 March 2024 and intimated to the Parties. The outcome of the Inspection and Hearing was that the Tribunal determined that the Landlords had failed to comply with the duty imposed by section 14(1)(b) and so made the following RSEO as required by Section 24 (1) of the Act:

“The Landlord must on or before 20 June 2024 carry out all of the following:-

- 1. Carry out all works necessary to bring the structure and exterior of the house (including drains, gutters and external pipes) into a reasonable state of repair and in proper working order and so ensure that the Property is dampness free, wind and watertight and in all other aspects reasonably fit for human habitation*
- 2. Carry out all incidental and decorative works occasioned by the works necessary to comply with this Order to leave the Property in the condition required by the Repairing Standard.”*
3. By letter dated 1 May 2024, the Landlord made an application for permission to appeal from the Landlord (“the PTA”) in respect of a Decision and RSEO (“the Decision”) made by the FtT on 18 April 2024. The wording of the PTA recognised that the PTA was not truly an application to appeal on a point of law but was an application to seek the review of the terms and time limit set in the RSEO.
4. The Tribunal wrote to the Parties to ask if there might be agreement to allow the RSEO to be varied without formal procedure. The Tenants responded that they wished to oppose the PTA. The Landlord took the view that they did not wish to withdraw the PTA.
5. Therefore, the Tribunal required to give consideration to the PTA and refused the PTA.

Issues for the Tribunal

6. Having refused the PTA, the Tribunal had regard to the real purpose of the PTA which was not to appeal on a point of law but was to seek further time to comply with the RSEO.

7. The Tribunal had regard to Section 25 of the Act which states

“(1) Where the First-tier Tribunal has made a repairing standard enforcement order, it may, at any time (a) vary the order in such manner as it considers reasonable, or (b) where it considers that the work required by the order is no longer necessary, revoke it.

(2) Where subsection (3) applies, the First-tier Tribunal must vary the repairing standard enforcement order in question (a) so as to extend, or further extend, the period within which the work required by the order must be completed, and (b) in such other manner as it thinks fit.

(3) This subsection applies where (a) the First-tier Tribunal considers, on the submission of the landlord or otherwise, that the work required by a repairing standard enforcement order has not been, or will not be, completed during the period within which the order requires the work to be completed, and (b) the First-tier Tribunal (i) considers that satisfactory progress has been made in carrying out the work required, or (ii) has received a written undertaking from the landlord stating that the work required will be completed by a later date which the First-tier Tribunal consider satisfactory.”

8. The Tribunal took the view that the Landlord’s PTA was a submission in terms of Section 25(3) of the Act and so proceeded to consider the PTA on that basis.

Decision of the Tribunal and reasons for the decision.

9. The Tribunal's decision is based on the Landlord's PTA and the written submissions of the Tenants in response.
10. The Tribunal had regard to the fact that the Landlord is reliant on third parties and sub-contractors to investigate the cause of the water ingress and accepts that the Landlord is taking action in this regard. The Tribunal accepts, that whilst the inconvenience to the Tenants continues, it may take some time to effect the repair.
11. The Tribunal's view is that, in all the circumstances, the RSEO should be varied to allow the Landlord further time to comply in full with the RSEO.
12. The decision is unanimous.

Appeal

13. 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.

Signed

K Moore

Karen Moore, Chairperson

30 May 2024

