



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Reference number: FTS/PRHP/RT/16/0310

Re: Property at 1/7 Southhouse Square, Edinburgh EH17 8DN (“the Property”)

Title No: MID30943

The Parties:

Mr Robert Sliminski, 1/7 Southhouse Square, Edinburgh EH17 8DN (“the Tenant”)

Private Rented Services Department, City Council of Edinburgh Council, City Chambers, 249 High Street, Edinburgh EH1 1YJ (“the Third-Party Applicants”)

Chercor Limited, incorporated in Scotland SC351405 and having their registered office at 1 Broomieknowe, Lasswade EH18 1LN, and Ms Lynn Anderson, 1 Broomieknowe, Lasswade, Edinburgh EH18 1LN (“the Landlord”)

**Tribunal Members: George Clark, Legal Member
David Godfrey, Ordinary (Surveyor) Member**

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with a Repairing Standard Enforcement Order made on 23 February 2017 (“RSEO”) made under Section 24(1) of the Housing (Scotland) Act 2006 determined that the Landlords have failed to comply with the RSEO, which, therefore, remains in place along with a Rent Relief Order made on 19 December 2017.

Background

1. On 23 February 2017, the Tribunal made a Repairing Standard Enforcement Order requiring the Landlords:
 - (i) To repair or replace the windows of the living room to ensure that they are wind and water tight.

- (ii) To repair or replace the door and door frame leading from the living room to the balcony to ensure that it is wind and water tight.
 - (iii) To carry out all necessary repairs to ensure that the window of the living room is fully functional.
 - (iv) To replace the flashing at the foot of the exterior wall of the balcony to ensure that the property is wind and water tight.
 - (v) To re-point the exterior face of the brick infill below the living room window to ensure that the property is wind and water tight.
2. Following a reinspection on 19 May 2017, the Tribunal found that the balcony decking had been partially painted with water proof sealant but, otherwise, none of the work required by the RSEO had been carried out.
 3. Following a further inspection and a Hearing on 11 December 2017, the Tribunal made a Failure to Comply Decision and also made a Rent Relief Order (“RRO”) for 75% of the monthly rent. The RRO was dated 19 December 2017.
 4. On 13 December 2019, the Tribunal inspected the Property again and found that the living room windows could now be opened and closed but, otherwise, none of the outstanding work required by the RSEO had been carried out.
 5. On 8 March 2020, The Tribunal directed the Landlords to produce evidence of all repairs to the window of the living room, the living room door leading to the balcony, the exterior wall of the balcony and the external wall of the living room, together with a certain amount of contemporaneous photographic evidence. This Direction was reissued on 1 August 2020, as the Landlords advised the Tribunal that they had not received the Direction of 8 March 2020.
 6. At a Hearing on 21 September 2020, the Landlords stated that they had vouching for all the works carried out and that they could provide a technical report from an independent surveyor which would support their position that the water penetration was caused by defects to the guttering and downpipes and required a common repair, which they could not control. The Tribunal directed the Landlords to produce evidence of all repairs to the living room, living room window, living room door to the balcony, the balcony and any other relevant works, plus an independent report from a suitably qualified technical expert, showing the source of dampness in the Property.
 7. The Landlords did not provide any documentation to the Tribunal in response to either of its Directions and, on 7 December 2020, the Tribunal determined that the Landlords continued to fail to comply with the terms of the RSEO and that the RSEO and RRO remained in effect.

The Inspection

8. Having been advised by the Landlords that the work required by the RSEO has been carried out, the Tribunal Members reinspected the Property on the morning of 9 December 2024 and were admitted by the Tenant’s partner. The Third-Party Applicants were not present or represented. The Landlords were represented

by Mr James Anderson. A Reinspection Report is appended to and forms part of this Statement of Decision.

9. At the inspection, the Tenant's wife confirmed that she and her husband had replaced the living room window and door to the balcony, entirely at their own expense.

The Hearing

10. A Hearing was held by way of a telephone conference call on the afternoon of 9 December 2024. The Third-Party Applicants were not present or represented.
11. Mr Anderson told the Tribunal, that he had had a telephone call from Mr Ross of City of Edinburgh Council, who had agreed to progress possible repairs to the roof and guttering. Mr Anderson remained of the view that the water penetration comes from the roof, over the fascia and into the cavity wall. The view of the Tribunal was that, were that the case, evidence of water penetration would be expected at a higher level in the Property, not just below the living room window.

Reasons for Decision

12. The Tribunal is satisfied that the works required by items (i), (ii) and (iii) of the RSEO have been carried out but noted that this had been entirely at the expense of the Tenant. The Tribunal noted the high damp readings in the brick infill below the living room window and rotten flooring adjacent to the window. The view of the Tribunal is that items (iv) and (v) of the RSEO have still not been complied with, and that the RSEO and RRO must remain in place and cannot be discharged.
13. The Tribunal noted that the Landlords still insist that the problem lies with the guttering above the balcony. They have, however, failed to produce any evidence to support their view, despite asserting on 21 September 2020 that they could provide a report from an independent surveyor. The view of the Tribunal is that the Landlords can complete the RSEO works outstanding without waiting for roof repair works to be agreed and carried out. The Landlords would have to instruct a suitably qualified specialist to examine the rot in the living room floor adjacent to the balcony wall, carry out such repairs as the specialist recommends, replace the flashing at the foot of the exterior wall of the balcony and properly re-point the exterior face of the brick infill below the living room window. It would be for the Landlords to decide whether they also wished to pursue with City of Edinburgh Council, who still own a number of flats in the block, the matter of common repairs to the roof and guttering, but the onus is on the Landlords to comply with the RSEO and the Tribunal has indicated how this may be achieved independently of such common repairs, thus providing an earlier resolution, enabling the Tribunal to discharge the RSEO and the RRO and restoring the Tenant and his family to full enjoyment of the Property.
14. The Tribunal's Decision was unanimous.

Right of Appeal

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.

G Clark

Legal Member

9 December 2024
Date

Housing and Property Chamber

First-tier Tribunal for Scotland



Reinspection report and schedule of photographs



Property: Flat 7, 1 SOUTHOUSE SQUARE, EDINBURGH EH17 8DN

Ref No: FTS/HPC/RT/16/0310

Tribunal members: Mr G Clark & Mr D Godfrey

Purpose of inspection

The purpose of the inspection is to confirm that the works specified in the Repairing Standard Enforcement Order have been completed and prepare an updated photographic record of the condition of the property.

Access

The above Tribunal Members attended the property at 10:00 on 9th December 2024.

Mr Slominski (Tenant) was not present however his partner Ms Zietek provided access to the property.

Chercor Ltd (Landlord) was represented by James Anderson who is a Director of the company.

Repairing Standard Enforcement Order

The tribunal now requires the landlords to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard 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 landlords:-

- 1. To repair or replace the windows of the living room to ensure that they are wind and water tight.*
- 2. To repair or replace the door and door frame leading from the living room to the balcony to ensure that it is wind and water tight.*
- 3. To carry out all necessary repairs to ensure that the window of the living room is fully operational.*
- 4. To replace the flashing at the foot of the exterior wall of the balcony to ensure that the property is wind and water tight.*
- 5. To re-point the exterior face of the brick infill below the living room window to ensure that the property is wind and water tight.*

The tribunal order that the works specified in this Order must be carried out and completed within the period of 42 days from the date of service of this Notice.

General Remarks

The property was initially inspected on Friday 10th February 2017 by Simone Sweeney and David Godfrey. The first re-inspection of the property was carried out by David Godfrey on Friday 19th May 2017. A second re-inspection was carried out by David Godfrey on Monday 11th December 2017. A third re-inspection was carried out by David Godfrey on Friday 13th December 2019.

Works in Repairing Standard Enforcement Order carried out prior to fourth reinspection

1. The windows of the Living Room have been replaced and are now wind and watertight.
2. The door and door frame leading from the living room to the balcony have been replaced and are now wind and watertight.
3. The windows of the Living Room have been replaced and are now fully operational.

Works in Repairing Standard Enforcement Order outstanding following fourth reinspection

1. The flashing at the foot of the exterior wall of the balcony has not been replaced satisfactorily. Moderate to high Protimeter (damp meter) readings were recorded in the wall adjacent and the flooring adjacent was found to be affected by rot.
2. The exterior face of the brick infill below the living room window has not been repointed.

David Godfrey MRICS
Ordinary (Surveyor) Member
First-tier Tribunal for Scotland

Appendix 1

Schedule of photographs taken during the reinspection on 09/12/2024.



The windows of the Living Room have been replaced.



The door and door frame leading from the living room to the balcony have been replaced.



High Protimeter (damp meter) readings were recorded in the wall adjacent to the balcony.



The exterior face of the brick infill below the living room window has not been repointed.



The flashing at the foot of the exterior wall of the balcony has not been replaced satisfactorily.