

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 Section 28 of the Housing (Scotland) Act 2006

Chamber ref: The Property

192 Deanswood Park, Livingston EH54 8QG (“the Property”)

The Parties:-

West Lothian Council (“the Third Party Applicant”)

Anwar UL Haq, 7 Fulmar Brae, Ladywell West, Livingston EH54 8DQ and/or 1A Tweed Drive, Craigshill, Livingston EH54 5LS (“the Landlord”)

Tribunal Members: George Clark (Legal Member/Chair) and Donald Wooley (Ordinary/surveyor Member)

Decision

The First-tier Tribunal 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 (“the Order”) in respect of the Property made on 10 January 2017, determined, in terms of Section 28(1) of the Housing (Scotland) Act 2016 (“the Act”) that the Landlord has failed to comply with the Order and, under Section 28(5) of the Act, that the Landlord has re-let the Property when an RSEO has effect in relation to it. The Tribunal decided that its determination should be reported to the local authority and to the Police Scotland for possible prosecution under the Act.

Background

1. By application received on 8 September 2016, the Third Party Applicant applied to the Private Rented Housing Panel (now the Tribunal) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).

2. On 10 January 2017, following an inspection and hearing, the Tribunal made a Repairing Standard Enforcement Order in respect of the Property. The Order required the Landlord to carry out such work as was 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 the Order was made good.
3. The Order required the Landlord to instruct a suitably qualified electrical contractor to install in the Property mains-wired and interlinked smoke detectors in the living room, downstairs hallway and upper floor landing of the Property and a heat detector in the kitchen of the Property, all in accordance with the Revised Domestic Technical Handbook guidance and the Scottish Government revised statutory guidance on the requirements for smoke alarms.
4. The Tribunal ordered that the works specified must be carried out and completed within the period of six weeks from the date of service of Notice of the Order.
5. The Ordinary/surveyor Member of the Tribunal reinspected the Property on 4 April 2017. Following the reinspection, The Tribunal determined that the Landlord had failed to comply with the Order and issued a Statement of Decision to that effect. The Decision was reported to West Lothian Council and to Police Scotland. The Tribunal also made a 90% Rent Relief Order.
6. The Ordinary Member of the Tribunal subsequently undertook a re-inspection of the Property on 30 April 2019 on behalf of the Tribunal in relation to a separate RSEO which had been served on the building in 16 July 2016. On that date access was provided by a Mr Daniel McKim who stated that he was renting the house despite there being two separate RSEOs on the Property. During that re-inspection, as a general observation, it was identified that within the Property a number of significant health and safety issues remained. There was an inadequate provision of smoke detectors and heat alarms, with the only fitted appliance being a single, battery operated, smoke detector. There was no evidence of a suitably positioned carbon monoxide detector within the Property despite the presence of a wall mounted gas fired boiler.
7. In connection with the present application, a second re-inspection of the Property was arranged for Friday 6th March 2020 at 2.00pm and was timeously intimated to the Landlord. The Ordinary member of the Tribunal reported that he had been unable to gain access and, at the time of inspection, the Property was unoccupied, although it appeared to be inhabited, as a light was on in the upper floor bathroom, a bedroom window was open and items were clearly visible on the upper floor window sills. The ground floor blinds were drawn. A neighbouring occupier confirmed that the property was currently being lived in and from information supplied by the neighbouring occupier it appeared that the same tenant may still be in occupation as was there in April 2019. A copy of the reinspection report is attached to and forms part of this Statement of Decision.

Summary of the issues

The issues to be determined were whether the Landlord has carried out the works required by the Order and has, therefore, complied with the Order.

Reasons for the decision

8. The Landlord has not at any time engaged with the Tribunal in connection with the application. The work required by the Order had not been carried out by April 2019 and the Landlord has not advised the Tribunal that the work has been carried out and did not arrange for access to be given for the second re-inspection on 6 March 2020. The view of the Tribunal is that, on the balance of probabilities, it is reasonable to draw the inference that the work has still not been carried out.
9. The failure to comply with the Order means that any occupants of the Property are in danger of being unaware that a fire has started in the Property. There is, therefore, a direct risk to life.
10. Section 28(5) of the Act states that a landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house. The Tribunal believes that the Landlord has re-let the Property despite the Order being in force.

Decision

The Tribunal determined, on the balance of probabilities, that the Landlord has failed to comply with the Order made by the Tribunal on 10 January 2017 and that the Landlord has re-let the Property when the Order has effect in relation to it.

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.

SignedG Clark.....

Legal Member/Chair

Date: 11 August 2020