

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier

Tribunal for Scotland (Housing and Property Chamber) under Sections 14 & 22(1A) of the Housing (Scotland) Act 2006

CERTIFICATE OF COMPLETION

Under Section 60 of the Housing (Scotland) Act 2006

Chamber Ref: Reference number: FTS/HPC/RP/21/0512

Property: 18 Luss Brae, Hamilton, ML3 9UP ("The property")

Parties:

Graham Millar and Denise Millar, residing together at 18 Luss Brae, Hamilton, ML3 9UP ("the Applicants")

Gary Jamieson, residing at 2 Ryelands Cottage, Strathaven, ML10 6QF ("the Respondent")

Tribunal Members:

Paul Doyle (Legal Member)

Nick Allan (Ordinary Member)

Unanimous Decision of the Tribunal

The First-tier tribunal for Scotland (Housing and Property Chamber)('the tribunal') certifies that the work required by the Repairing Standard Enforcement Order relative to the Property made on 3 November 2021 has been completed insofar as reasonably possible. Accordingly, the said Repairing Standard Enforcement Order relative to the property has been discharged.

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. IN WITNESS WHEREOF these presents consisting of this and the preceding page are signed by me, Paul Doyle, at Edinburgh on 23 November 2021 before Emma Doyle, residing at 252 Gorgie Road, Edinburgh

P Doyle

3 November 2021

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF DECISION of the First-tier tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006

Chamber Ref: Reference number: FTS/HPC/RP/21/0512

Property: 18 Luss Brae, Hamilton, ML3 9UP (“The property”)

Parties:

Graham Millar and Denise Millar, residing together at 18 Luss Brae, Hamilton, ML3 9UP (“the Applicants”)

Gary Jamieson, residing at 2 Ryelands Cottage, Strathaven, ML10 6QF (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Nick Allan (Ordinary Member)

Unanimous Decision of the Tribunal

The First-tier tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) certifies that the work required by the Repairing Standard Enforcement Order relative to the Property made on 3 November 2021 cannot be completed. Relying on s.16(4) of the Housing (Scotland) Act 2006, the said Repairing Standard Enforcement Order relative to the property is discharged.

Reasons for decision

1. On 3 November 2021 the First-tier Tribunal for Scotland (Housing and Property Chamber) issued a decision requiring the Landlord to comply with a repairing standard enforcement order made by the Committee on 3 November 2021.
2. The Repairing Standard Enforcement Order (“RSEO”) required the Landlord to
 1. Repair or replace the shower door
 2. Dismantle and remove the wooden garage
 3. Repair or replace the rear door to the property

All within 6 weeks.

3. The RSEO was served on the parties on 15 November 2021. That same day, the respondent's representative emailed the applicants confirming that arrangements were being made for all of the works required by RSEO, and asking for access on Thursday 18. November to examine the wooden garage to determine how to dismantle it.

4. The same day, in response, the applicants emailed the respondent's representative, saying

there is an outstanding £900 payment due from the rental tribunal you will not get any access until that is paid in full. Then you can arrange an alternative structure to the garage to accommodate my belongings before dismantling it.

5. It is obvious to tribunal members that the applicants are not satisfied with the RSEO, and believe that they can impose their own conditions on performance of the RSEO.

6. The respondent's representative immediately responded by asking

Are you refusing the access and refusing to remove the contents?

7. The applicant's terse response was

can you read.

8. Following that email exchange, the respondent made representations to the Tribunal on 15 November 2021 to which the applicants responded on 18 November 2021.

9. This application has some history. There were initially 16 heads of complaint raised by the applicants. Throughout the turgid procedural history of this application, the landlord demonstrated a will to carry out repairs, resulting in an RSEO with only three requirements. Throughout the course of the application, each party made accusations about the other party's conduct. At the inspection of the property, when the applicant thought that tribunal members were out of earshot, it was obvious that the applicant spoke in a quiet but hostile tone to the respondent's representative.

10. Section 16(4) of the housing Scotland act 2006 says

16 Exceptions to landlord's repairing duty

(4) A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.

11. The email exchange between the applicants and the landlord's representative clearly demonstrates that the respondent has tried to comply

with the RSEO, but the applicant has denied access in an attempt to use the RSEO as a bargaining chip to further separate disputes between the parties.

12. As early as the first case management discussion this case, the parties were reminded of the terms of section 16(4) of The Housing (Scotland) Act 2006. In the face of notice of the consequences of refusing access, the applicant has clearly refused a reasonable request for access and made unreasonable demands of the respondent.

13. Tribunal members are well aware of the history of this application and the conduct of the parties to this application. The applicants have allowed separate disputes between the parties to cloud their judgement. The refusal of access is a serious matter. The attempt to use the RSEO as leverage in separate disputes is something which cannot be ignored by the tribunal.

14. This tribunal has already commented positively on the respondent's willingness to carry out repairs. The lingering dispute between the parties relates to an external wooden garage which, arguably, the applicant now finds useful. The remaining repairs required by the RSEO have already been instructed by the respondent.

15. One of the purposes of the RSEO was to resolve the dispute between the parties. Instead, the RSEO has been used by the applicant to further another dispute between the parties.

16. It is time to bring the dispute contained within this application to an end. The tribunal therefore decided to issue a certificate of completion of works in terms of s. 60 of the Housing (Scotland) Act 2006.

17. 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.

18. 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
Legal Memt

P Doyle

23 November 2021