

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

CERTIFICATE OF COMPLETION under section 60 of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/15/0340

Subjects at 45b Culloden Road, Arbroath, DD11 1LH under Title Number ANG98827 (“the Property”)

The Parties:-

Linda Brennan, formerly resident at 45b Culloden Road, Arbroath, DD11 1LH (“the former Tenant”)

Stobsmuir Enterprises Limited, 69 Victoria Street, Dundee, DD4 6EA (“the former Landlord”)

MNA Property (Dundee) Limited, having its registered office at 67 Wemyss Crescent, Monifieth, Dundee, DD5 4RA (“the Landlord”)

The Tribunal comprised:-

Mrs Ruth O’Hare - Legal Member
Mr David Godfrey - Ordinary Member

The First-Tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) hereby certifies that the work required by the Repairing Standard Enforcement Order relative to the house dated 19 April 2016 has been completed. Accordingly the said Repairing Standard Enforcement Order relative to the property has been discharged.

A landlord, tenant or third party applicant 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 typewritten are executed by Ruth O'Hare, Legal Member of the Tribunal at Aberdeen on 6th December 2018 before this witness:-

I Dawson

R O'Hare

Witness

IONA DAWSON, c/o ABERDEENSHIRE
COUNCIL, WOODHILL HOUSE,
WESTBURN ROAD, ABERDEEN

✓

Legal Member

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**Statement of Decision under section 60(4) of the Housing (Scotland) Act 2006
("the 2006 Act")**

Chamber Ref: PRHP/RP/15/0340

**Subjects at 45b Culloden Road, Arbroath, DD11 1LH under Title Number
ANG98827 ("the Property")**

The Parties:-

**Linda Brennan, formerly resident at 45b Culloden Road, Arbroath, DD11 1LH
("the former Tenant")**

**Stobsmuir Enterprises Limited, 69 Victoria Street, Dundee, DD4 6EA ("the
former Landlord")**

**MNA Property (Dundee) Limited, having its registered office at 67 Wemyss
Crescent, Monifieth, Dundee, DD5 4RA ("the Landlord")**

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr David Godfrey - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the works required by the Repairing Standard Enforcement Order ("RSEO") had been completed and resolved to issue a Certificate of Completion of Work.

Background

1. Reference is made to the determination of the Private Rented Housing Committee ("the Committee") dated 19 April 2016 which concluded that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in that he had failed to ensure that the property met the Repairing Standard.

On the same date the Tribunal issued an RSEO in respect of the property. The works required by the RSEO were:-

- (a) Investigate and repair the source(s) of water penetration to the property and render the property wind and watertight;
- (b) Carry out such works as are necessary to repair the ceilings in the bedroom and bathroom;
- (c) Install smoke/heat detectors in the house in accordance with the Scottish Government Statutory Guidance currently in force; and
- (d) Carry out all works required to make good decoration in the property following the above works.

The RSEO gave the Landlord three months to carry out the works.

2. In terms of its decision of 1 November 2016 the Committee agreed to vary the terms of the RSEO to give the Landlord additional time to take all reasonable steps to comply with the terms of the order. The decision was based on the Landlord's submission that he had been prevented from complying with the order by the owner of the upstairs property who had refused or delayed in cooperating with the necessary repairs to the roof of the building. The variation gave the Landlord six weeks to produce satisfactory evidence of his attempts at carrying out the works required by the order. The Landlords subsequently produced correspondence with a neighbouring owner requesting a meeting to discuss the ongoing problems with the roof.
3. On 1 December 2016 the Tribunal assumed jurisdiction for the application.
4. On 20 February 2017 the Tribunal held a hearing at Caledonian House, Dundee. Aileen Taylor ("the Landlord's Representative") attended the hearing as the Landlord was unwell. Having heard submissions from the Landlord's Representative, the Tribunal concluded that the Landlord had failed to make reasonable progress in carrying out the works required by the RSEO. By decision dated 7 March 2017, the Tribunal determined that the Landlord had failed to comply with the RSEO and that a notice of the failure be served on the local authority in whose area the property was situated.
5. On 18 September 2018 the Tribunal carried out a title check and noted that the property had transferred ownership on 25 September 2017 to the Landlord. The Tribunal wrote to the Landlord to advise them of the terms and effect of the RSEO.
6. On 26th October 2018 the Landlord emailed photographs to the Tribunal to evidence works that had been carried out to the property. The Tribunal therefore arranged a further re-inspection at the property to inform its determination as to whether the Landlord had complied with the RSEO.

7. The re-inspection took place on 14th November 2018. The Ordinary Member attended the property and was allowed access by Mr Vinod Kumar. Mr Kumar confirmed he was the tenant of the property. The Landlord was not represented. The Ordinary Member noted that the bathroom and bedroom ceilings had been repaired and redecorated and the source of water penetration appeared to have been addressed as the property was wind and watertight. However the smoke detectors fitted had been disabled by Mr Kumar and did not comply with the Scottish Government Statutory Guidance currently in force. Photographs were taken at the property and a copy of the re-inspection report is appended hereto.
8. Having regard to the findings of the re-inspection the Tribunal considered it would require to have sight of an up to date Electrical Installation Condition Report ("EICR") for the property in order to satisfy itself that the smoke detectors were in proper working order. The Tribunal subsequently emailed the Landlord to request that they provide this. By email dated 26 November 2018 the Landlord submitted a Domestic Electrical Installation Certificate ("EIC") dated 24 November 2018 which noted the smoke detectors were in safe working order.

Reasons for the decision

9. The Tribunal determined the application having regard to the findings of the re-inspection and the representations from the Landlord. The Tribunal considered it had sufficient information on which to make a decision.
10. The Tribunal was satisfied on the basis of the re-inspection and the subsequent written representations from the Landlord that the works required by the RSEO had all been completed. Whilst the Tribunal had requested an EICR, the EIC produced by the Landlord was sufficient to address the outstanding issues with the smoke detectors. Accordingly the Tribunal determined that a certificate of completion should be issued.
11. The Tribunal would however wish to highlight serious concerns that the property had been re-let by the Landlord despite the presence of the RSEO. The Tribunal would remind the Landlord that such action is a criminal offence and the Landlord should be mindful of this should they find themselves in a similar position in future.
12. The decision of the Tribunal was unanimous.

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the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

R O'Hare

Signed

Ruth O'Hare
Chairperson

6 December 2018