

# **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 26 (1) of the Housing (Scotland) Act 2006**

**Property: 75 Loretto Street, Carntyne, Glasgow G33 3 BX ("the  
Property"/ "the house")**

**Chamber Reference: PRHP/G33/82/12**

**Ian Allan, 75 Loretto Street, Carntyne, Glasgow G33 3BX ("the Tenant")**

**Stephen McCulloch, 105 Gartcraig Road, Riddrie, Glasgow G33 3BX  
("the Landlord")**

**Tribunal Members – George Clark (Legal Member/Chairperson) and  
Kingsley Bruce (Ordinary Member/Surveyor)**

#### **Decision**

The First-tier Tribunal for Scotland (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 in respect of the Property made on 28 September 2012, determined that the Landlord has failed to comply with the Order and that notice of the failure should be served on the local authority under Section 26(2) of the Act. The Tribunal further determined that the Rent Relief Order in respect of the Property, made on 11 February 2013, should remain in force.

#### **Background**

1. On 21 May 2018, the Sheriff of the Sheriffdom of Glasgow and Strathkelvin at Glasgow quashed a Decision of the Private Rented Housing Committee dated 19 November 2015.
2. The effect of the Sheriff's decision was that a Repairing Standard Enforcement Order ("the Order") in respect of the Property made on 28 September 2012 and a Rent Relief Order made on 11 February 2013 remained in force.
3. By the time of the Sheriff's decision, the jurisdiction of the Private Rented Housing Panel had been taken over by the First-tier Tribunal for Scotland

Housing and Property Chamber and the Tribunal decided to reinspect the Property and thereafter hold a hearing to determine the matter.

4. The Tribunal inspected the Property on the morning of 26 October 2018. The Tenant was present at the inspection, as was his representative, Ben Christman of Legal Services Agency. The Landlord was not present or represented at the inspection.
5. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

### **The Hearing**

6. Following the inspection, the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Tenant was present and was represented at the hearing by Mr Christman. The Landlord was not present or represented at the hearing.
7. The Tenant told the Tribunal that the only matter outstanding from the Order related to the front windows of the Property, the other matter contained in the Order, namely replacement of the defective wc pan and toilet seat, having been carried out. The Landlord had varnished the outside of the windows and had replaced a small piece of timber, but the windows were no better than they had been in 2012. One window was screwed shut, as its handle did not work. The Landlord had told the Tenant that he intended to sell two properties and to use the funds to repair the windows but had given no firm commitment to do so. The Tenant stated that he just wanted the outsides of the windows fixed and the windows properly draught-proofed. There was a gap in the window of the bedroom that was not screwed shut and the curtains and blinds moved in windy weather.

### **Reasons for the decision**

8. The Tribunal noted that, on each occasion that the Property had been inspected by the Private Rented Housing Panel or the Tribunal the weather had been flat-calm, with no wind. The Tribunal had, however, heard evidence from the Tenant that on windy days, the draughts through the windows were strong enough to cause the curtains to move. The Landlord was not present to challenge that evidence, nor had he chosen to be represented.
9. The Tribunal's view was that the windows fitted reasonably well, with no excessive gaps, but the windows were a number of years old, showing signs of deterioration and in need of repair. Ideally, they would be replaced, but the Tribunal did not have the power to require anything to be done apart from the windows being made to meet the repairing standard

by being wind and water tight and capable of being opened and closed properly.

10. The Tribunal was of the opinion that the failure to meet the repairing standard was marginal, but was persuaded by the Tenant's evidence regarding draughts, that consequently, the windows were not wind and water tight, so determined that the Landlord had failed to carry out the work required by the Repairing Standard Enforcement Order.
11. The Tribunal observed that, when the Property had been reinspected in 2015, the then Private Rented Housing Panel had considered that the repairing standard had been met, but it had commented on the condition of the windows. There was no evidence of any work having been done in the intervening period, during which weathering and deterioration consistent with age had continued. Accordingly, viewed at the present inspection, the windows did not meet the repairing standard.
12. The Tribunal also decided that the failure to comply with the Order should be intimated to the local authority, so that they were aware that the result of the Sheriff's decision to quash the Decision made on 19 November 2015 was that the Order remained in force.
13. 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.**

**G Clark**

Signed

Date: 26 October 2018

..... Legal Member/Chairperson

*This is the Schedule of Photographs referred to  
in the findings Statement of Decision*  
G Clark *Legal Clerk/Chair*

*26 October 2017*

## **Housing and Property Chamber First-tier Tribunal for Scotland**

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### **Schedule of Photographs:**

**Property: 75 Loretto Street, Carntyne, Glasgow G33 3 BX Flat 3**

**Chamber Reference: PRHP/G33/82/12**

**Date of Inspection: 26 October 2018**

**Livingroom and front bedroom windows (18 pictures)**





















