

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision under Section 26(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/18/0266

Sasine description: ALL and WHOLE the westmost basement Flat of Tenement 10 Garland Place, Dundee, on Lot of ground, II described in a Feu Contract to which William Henderson Tosh was a party recorded in the Division of the General Register of Sasines for the County of Angus on 16th April 1870.

**Property at B/1 10 Garland Place, Dundee, DD3 6HE
("the Property")**

The Parties:-

**Mrs Moira Kane formerly residing at B/1 10 Garland Place, Dundee DD3 6HE
("the Tenant")**

**Barn Properties Limited, Melville House, Monimail, Cupar, Fife, KY15 7RJ
("the Landlord")**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee
DD1 3BA
("the Third Party Applicant")**

Tribunal

**Morag Leck – Legal member and Chairperson
Robert Buchan – Ordinary member (Surveyor)**

Background

1. On 17th May 2018, the Tribunal found that the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 ("the Act") and issued a statement of decision. The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property on the same date. The RSEO required the Landlord to carry out the works specified therein within three months from date of service of the RSEO.

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2. The RSEO required the Landlord to:-

- (a) instruct a suitably qualified Damp Proofing Specialist to investigate the cause of dampness in the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the works have been completed satisfactorily in order to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) instruct a suitably qualified Timber Specialist to investigate the floorboards in the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the works have been completed satisfactorily in order to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and to ensure that the floor is in a reasonable state of repair and proper working order;
- (c) instruct a suitably qualified contractor to repair or replace the panel heater located in the south bedroom of the Property to ensure it is in a reasonable state of repair and in proper working order;
- (d) instruct a certified Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) which report should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor, and carry out such works as are necessary to rectify any identified issue in the EICR and provide the Tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
- (e) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government Guidance for the satisfactory provision for the detection and warning of fires and current building regulations and exhibit a Building Warrant and Completion Certificate from Dundee City Council in respect of the installation of same; and
- (f) instruct a suitably qualified contractor to clear the rear drying green to ensure it is in a reasonable state of repair.

3. Following the expiry of the time limit for work to be carried out as stated in the RSEO, the Tribunal agreed that a re-inspection of the Property be scheduled. This was set for 12th September 2018.

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4. Mr Robert Buchan, the Ordinary Member (Surveyor) attended at the Property on the scheduled date. The Landlord was not present and no access could be gained. The Property appeared to be vacant. Thereafter the Tribunal agreed to reschedule the re-inspection. A date was fixed for 20th December 2018 and this date was intimated to the Landlord by Sheriff Officers.
5. The Ordinary Member (Surveyor) carried out a re-inspection of the property on that date when access was provided by Mr Mark Evans, a tradesman who had attended a prior hearing as a representative of the Landlord. He was in attendance during the re-inspection and advised that the Tenant had vacated the Property on or around 31st July 2018.
6. Following the re-inspection, the Ordinary Member prepared his report, a copy of which is annexed hereto. The re-inspection disclosed that the works specified in the RSEO had been partially completed in so far as item (f) had been dealt with and items (c), (d) and (e) had been partially completed as set out in the report. No specialist reports or certificates have been provided to the Tribunal as required by the RSEO.
7. The Landlord was provided with a copy of the re-inspection report on 21st December 2018 and given an opportunity to comment thereon. No representations were received during the period for representations on the report to be submitted. The Landlord was contacted again by the Tribunal and afforded a further opportunity to respond. He has failed to do so.

Decision

8. The Tribunal takes the view that the Landlord has had ample time to carry out the works. The Tribunal noted that in terms of the application itself, the Third Party Applicant had first written to the Landlord about the required works on 3rd October 2017. The Landlord was given an opportunity to comment on the Ordinary Member's re-inspection report but failed to respond.
9. Accordingly, the Tribunal is of the view that the Landlord's failure to carry out the works required by the RSEO amounts to a breach of the RSEO. In accordance with the relevant provisions of section 26 of the Act, the Tribunal required to consider whether a Rent Relief Order should be made. However since the Tenant had vacated the Property then no Rent Relief Order could be made.
10. 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 RSEO relative to the Property, determined that the Landlord had failed to comply with the RSEO in

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terms of section 26(1) of the Housing Scotland Act 2006 and that a notice of the failure be served on the Local Authority in which the Property is situated.

11. 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.

M Leck

Signed

..... Chairperson

Date

10/4/19
.....

*This is the report
referred to in the
foregoing decision*

CM Leck

10/4/19

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First-tier Tribunal for Scotland (Housing and Property Chamber) Housing (Scotland) Act 2006 Property Re-inspection Report



Property address: B/1, 10 Garland Place, Dundee, DD1 3BA

Chamber Reference Number: FTS/HPC/RP/18/0266

Date of re-inspection: 20th December 2018

Surveyor: R Buchan, FRICS

Circumstances of inspection: The weather was dry. The flat was vacant.

In attendance: Mr. Mark Evans, a tradesman, who was carrying out works to the property and who allowed access to the interior of the property. Mr Evans had attended a prior hearing as a representative of the landlord. He advised that the tenant had vacated the property in or around the 31st July, 2018.

Repairing Standard Enforcement Order (RSEO)

An RSEO was served on the Landlord, Barn Properties Limited following an inspection and hearing of the Tribunal on the 18th April 2018.

The Landlord was required to carry out the following work under the terms of the RSEO:

- (a) instruct a suitably qualified Damp Proofing Specialist to investigate the cause of dampness in the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the works have been completed satisfactorily in order to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and to ensure that the floor is in a reasonable state of repair and proper working order;
- (b) instruct a suitably qualified Timber Specialist to investigate the floorboards in the property and to provide a report to the Tribunal, carry out any works recommended in the report, and provide evidence that the works have been completed satisfactorily in order to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (c) instruct a suitably qualified contractor to repair or replace the panel heater located in the south bedroom of the Property to ensure it is in a reasonable state of repair and in proper working order;
- (d) instruct a certified Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) which report should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor, and carry out such works as are necessary to rectify any identified issue in the EICR and provide the Tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
- (e) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government Guidance for the satisfactory provision for the detection and warning of fires and current building regulations and exhibit a Building Warrant and Completion Certificate from Dundee City Council in respect of the installation of same; and
- (f) instruct a suitably qualified contractor to clear the rear drying green to ensure it is in a reasonable state of repair

Works carried out

The Landlord has undertaken the following work since the inspection and hearing:

- i) The heater in the south bedroom has been removed.
- ii) A notice attached to the electrical consumer unit indicates that the electrical system was tested on the 18th April, 2018, the day of the original inspection and hearing.
- iii) A smoke and heat detector have been installed but at the time of the re-inspection, the smoke detector had been removed and the heat detector was broken. Mr. Evans advised that the tenant had damaged both of the detectors.
- iv) The rear drying green has been cleared.

Outstanding works

1. With regards to (a) and (b) of the works required in the RSEO, no report has been submitted and no associated treatment of dampness and rot has been undertaken. High instrumental moisture meter readings were noted in the front bedroom and living-room. Rot was evident in the floors of both of these rooms.
2. No replacement heater has been provided in the south bedroom.
3. No Electrical Installation Condition Report has been received by the Tribunal nor any Building Warrant for installation of the smoke and heat detectors.

Photographs were taken and are attached to this report.

This report will be submitted to the relevant parties for their consideration and comment. Once their submissions, if any, have been received, the Tribunal will determine whether the Repairing Standard Enforcement Order has been complied with and what further action is appropriate.

R Buchan

R Buchan, FRICS
20th December 2018

**Schedule of photographs attached to re-inspection report
B/1, 10 Garland Place, Dundee, DD1 3BA**



Dampness in front bedroom



Dampness in living-room

**Schedule of photographs attached to re-inspection report
B/1, 10 Garland Place, Dundee, DD1 3BA**



Rotten flooring



Consumer unit

**Schedule of photographs attached to re-inspection report
B/1, 10 Garland Place, Dundee, DD1 3BA**



Broken heat detector



Missing smoke detector

**Schedule of photographs attached to re-inspection report
B/1, 10 Garland Place, Dundee, DD1 3BA**



Drying green



Leakage on front wall