

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 of the Housing (Scotland) Act 2006

Property: Flat 2/2, 110 Lochdochart Road, Glasgow G34 0DF ("the Property")

Title No: GLA38224

Chamber Reference: FTS/HPC/RT/18/2978

Ejehiokhin Ibhaze, sometime Flat 2/2, 110 Lochdochart Road, Glasgow G34 0DF ("the Tenant")

Gillian McKechnie, 235 Crofthill Road, Glasgow G44 5NW ("the Landlord")

Tribunal Members – George Clark (Legal Member/Chairperson) and Mike Links (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 made by the Tribunal on 15 January 2019, determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority and to the police. The Tribunal decided not to make a Rent Relief Order.

Background

By application received on 2 November 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the 2006 Act").

The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard.

Following an inspection and hearing held on 15 January 2019, the Tribunal made a Repairing Standard Enforcement Order ("the Order"). The Order

required the Landlord to complete the following within a period of five weeks from the date of service of the Order:-

(1) to carry out such works as are necessary to the central heating boiler and system to ensure it is in proper working order, or alternatively, to replace the boiler, the work to be undertaken by a Gas Safe registered engineer, and thereafter to exhibit an up to date Gas Safety Certificate after completion of the repair/renewal.

(2) to clean off mould throughout the Property and make good any decoration.

(3) to carry out such repairs as are necessary to ensure the ceiling pendant lights throughout the Property and the fluorescent light in the kitchen are in proper working order, the work to be carried out by an electrical contractor who is registered with NICEIC, SELECT or NAPIT, and thereafter to produce to the Tribunal a satisfactory Electrical Installation Condition Report which must also cover the electric shower in the bathroom.

(4) to carry out such repairs as are necessary to restore the door to the balcony is in proper working order and is capable of being locked and unlocked and

(5) to investigate the cause of a water leak from the bathroom into the flat below the Property and carry out such repairs as are necessary.

The Ordinary Member of the Tribunal attempted to reinspect the Property on 3 April 2019 but was unable to gain entry. The front door of the Property was boarded up and it appeared to be unoccupied. The Tenant had advised the Tribunal by e-mail on 1 February 2019 that he and his family had lawfully vacated the Property. The Landlord was advised of the date and time for a further inspection and Hearing.

The Tribunal arrived to reinspect the Property on the morning of 16 September 2019 but was unable to gain entry. The front door remained boarded up and the Landlord was not present or represented. A photograph of the front door, taken at the attempted reinspection is annexed to and forms part of this Statement of Decision.

The Hearing

Following the attempt to reinspect the Property, the Tribunal held a Hearing at Glasgow Tribunals Centre. The Landlord was neither present nor represented. The Tenant, having vacated the Property, is no longer a Party to the proceedings.

Summary of the issues

The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 15 January 2019 and, if not, whether a Rent Relief Order in respect of the Property should be made.

Reasons for the decision

The Tribunal was unable to determine whether any of the works required by the Repairing Standard Enforcement Order had been carried out, but determined that the Landlord had failed to comply with the Order as the documentation required by the Order, namely a Gas Safety Certificate and an Electrical Installation Condition Report, had not been exhibited or produced. The Tribunal was, therefore bound, in terms of Section 26(2) of the 2006 Act, to serve notice of the failure on the local authority and to decide whether to make a Rent Relief Order.

The Tribunal noted that the Property appeared to be unoccupied, so was unable to make a Rent Relief Order.

Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence.

The Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

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.

Signed G Clark

Date 16 September 2019

F55/HPC/121/18/2978

This is the photograph
referred to in the foregoing
Statement of Deena
G Clark

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16 September 2019

