

Housing and Property Chamber First-tier Tribunal for Scotland



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

AMENDED STATEMENT OF DECISION: Housing (Scotland) Act 2006 section 26(1)

Chamber Reference FTS/HPC/RP/17/0343

Title number: Subjects registered in the Land Register of Scotland under title number ANG13795

House address: G/L, 44 Main Street, Dundee, DD3 7HN ('the House')

The Parties

Mr Akhtar Mohammad, formerly residing at G/L, 44 Main Street, Dundee, DD3 7HN ("The Tenant")

Mr Ghulam Qadar and Mrs Zahida Qadar, 367 Clepington Road, Dundee, DD3 8ED ("The Landlords")

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr David Godfrey (Ordinary Member)

Background

1. On 19th April 2018, the Tribunal issued a determination that the Landlords had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act'). On the same date, the Tribunal issued a Repairing Standard Enforcement Order ('RSEO') in respect of the House. The RSEO required the Landlords to:
 1. Take reasonable steps to investigate the leak in the bathroom ceiling; and to have said leak repaired;
 2. Investigate and resolve the situation in relation to the dampness within the walls adjacent to the mutual close, and the condensation dampness within the House;

3. Repair or replace the windows throughout the House to ensure that they are in a reasonable state of repair and in proper working order, ensuring that:
 - (a) all windows open and close in a proper manner;
 - (b) all double-glazing units are effective;
 - (c) all weathered timber components are in a reasonable state of repair;
4. Repair or replace the washing machine to ensure that it is in a reasonable state of repair and in proper working order;
5. Produce a satisfactory gas safety certificate from a Gas Safe Registered Engineer.

The Tribunal ordered that the works specified in the RSEO were to be carried out within a period of 12 weeks from the date of service of the RSEO.

2. A re-inspection of the House was scheduled to take place on 1st August 2018 and the Landlords were notified. The Landlords responded by email on 23rd July 2018, stating:

We have decided we will not be renting out the flat again once we have sufficient funds we will carry out repairs and then put it up for sale you will be welcome to view the property before we put it on the market. We will not be able to attend the hearing as I have other appointment to attend.

3. On 25th July 2018, the Landlords were informed by email by the Tribunal that there was no hearing scheduled and that access would be required for the re-inspection. On 28th July 2018, the Landlords responded by email, stating:

Sorry I won't be able to provide access as I have other commitments plus as I have stated we are still saving funds to carry out the repairs. There is no change since the Tribunal last inspection.

4. By email dated 31st July 2018, the Landlords were informed by the Tribunal that the re-inspection would take place on 1st August 2018, and that access must be provided.
5. Re-inspection of the House was undertaken by the Ordinary Member of the Tribunal on 1st August 2018. A copy of his re-inspection report dated 1st August 2018 is attached as a schedule to this Statement of Decision. The Ordinary Member found that there was no evidence, from an external inspection, to suggest that any of the works had been completed.
6. The Landlords were provided with a copy of the re-inspection report and given an opportunity to make comments. No response was received from the Landlords.

Decision

7. The Tribunal considered that, on the balance of probabilities, and taking account of the terms of the Landlords' email correspondence, it was unlikely that any of the works required by the RSEO had been carried out by the Landlords.
8. The Tribunal considers that the Landlords have had sufficient time to carry out the works. The Tribunal noted that the former Tenant notified the Landlords of the defects on 7th November 2017. The Landlords were given the opportunity to comment upon the re-inspection report but failed to do so. The Landlords failed to attend, or provide access for, the re-inspection.
9. Accordingly, the Tribunal takes the view that the Landlords' failure to implement 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 determine whether a Rent Relief Order should be made. As the House was not occupied at the time of the Tribunal's first inspection on 6th April 2018, and the former Tenant had confirmed that the tenancy had come to an end, the Tribunal could not make such an order.
10. The Tribunal, having made such enquiries as are fit for the purposes of determining whether the Landlords have complied with the RSEO, determined that the Landlords have failed to comply with the RSEO in terms of section 26(1) of the Act and that a notice of the failure be served on the Local Authority for the area in which the House is situated.
11. The decision of the Tribunal is unanimous.

Right of Appeal

12. **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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed 
H Forbes

Legal Member and Chairperson
Date: 12th October 2018