

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 Sections 26 and 27 of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/21/0126

Re: Property at 42 Dykehead Place, Dundee DD4 6TL (“the Property”)

Parties:

Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee DD1 3BA (“the Third Party Applicant”)

Ms Alison Williamson, sometime 42 Dykehead Place, Dundee DD4 6TL (“the Tenant”)

Mr Ghulam Qadar and Ms Zahida Qadar, 367 Clepington Road, Dundee DD3 8ED (“the Landlord”)

Tribunal Members:

George Clark (Legal Member/Chair) and Robert Buchan (Ordinary/surveyor Member)

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 28 July 2021, determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority. The Tribunal also decided to make a Rent Relief Order.

Background

1. On 28 July 2021, following a Hearing on 15 July 2021, the Tribunal decided 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 made a Repairing Standard Enforcement Order (“RSEO”) in respect of the Property.
2. The RSEO required the Landlord, within the period of two months from the date of service of the RSEO:

- a) To repair or replace the kitchen cupboard doors and underboards to ensure that the doors all open and close properly.
 - b) To obtain a report from a reputable firm of timber specialists in respect of damp/water ingress in the kitchen and provide the Tribunal with a copy of said report and details of any work carried out subsequent to the report, which work must satisfactorily remove the dampness, repair any damage to the floor and replace the floor below the boiler.
 - c) To provide the Tribunal with an Electrical Installation Condition Report prepared by a member of SELECT, NICEIC or NAPPIT and dated after the date of this order. The report must include reference to the provision and operation of the smoke, heat and carbon monoxide detectors, and to the safety of the power points below the sink and behind the washing machine.
 - d) To provide the Tenant with a replacement shower screen or curtain in the bathroom of the Property.
3. The Tribunal, following later reinspections, decided that it was satisfied that Items a), c) and d) of the RSEO had been dealt with. The Tribunal granted two Variations of the RSEO, giving the Landlord additional time to comply with Item b).
 4. The Tribunal reinspected the Property on 19 July 2022 and found that whilst it appeared that the kitchen floor had been inspected by a specialist and a quotation obtained for work to be carried out, no work had been done. Dampness was noted on the floor as shown by a moisture meter. The floor below the boiler has not been repaired and a loose-fitting cover has been placed above it. A copy of the Reinspection Report was sent to the Parties for comment, but neither Party responded in relation to the outstanding item in the RSEO.

Summary of Issues

5. The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 10 February 2022 and, if not, whether a Rent Relief Order in respect of the Property should be made.

Reasons for Decision

6. The Landlord has had more than a year within which to comply with the RSEO and the ongoing delay is not acceptable. The Tribunal determined, therefore, that the Landlord has failed to comply with the Repairing Standard Enforcement Order and that, in terms of Section 26(2) of the 2016 Act, the failure must be reported to the local authority.

Rent Relief Order

7. Having decided that the Landlord has failed to comply with the RSEO, the Tribunal then had to decide whether to make a Rent Relief Order in terms of Section 27 of the Act. The view of the Tribunal was that the Tenant's enjoyment of the Property is materially affected, as the outstanding defects have resulted in the floor being damp, with draughts and possibly vermin coming into the Property below the boiler, and as the Landlord has not remedied the problems more than a year after the RSEO was made. Accordingly, the Tribunal decided that it would be appropriate to make a Rent Relief Order. The Tribunal decided this should be at the level of £50 per month.
8. 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.
9. 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: 31 August 2022

