

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Notice of Failure to Comply with Repairing Standard Enforcement Order in terms of Section 26 of the Housing (Scotland) Act 2006 ("the Act")

Parties :

Dumfries and Galloway Council, Landlord Registration, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD per their employee Robert Rome ("the third party applicant")

Abdul Muhit, residing at 41, Loganbarns Crescent, Dumfries, DG1 4BX ("the landlord")

and

Otylia Dutczak, residing at 11, Airds Drive, Dumfries, DG1 4EW, ("the tenant")

Property: 11, Airds Drive, Dumfries, DG1 4EW, registered in the Land Register for Scotland under Title Number DMF18830 ("the Property")

Chamber reference: FTS/HPC/RT/17/0044

Tribunal Members:

Karen Moore (Legal Member and Chairperson)

Andrew Taylor (Ordinary Member)

This Notice should read in conjunction with:

Statement of Decision and Repairing Standard Enforcement Order both dated 19 April 2017

Decision

The tribunal, having carried out such enquiries as are appropriate, determined that the landlord has failed to comply with the Repairing Standard Enforcement Order issued by it and dated 19 April 2017 and directed that notice of that failure should be served on Dumfries and Galloway Council being the local authority for the area in which the Property is situated. The tribunal determined further not to make a Rent Relief Order.

Background

1. By application paperwork received between 6 February 2017 and 9 February 2017 ("the Application"), the third party applicant applied to the First-tier Tribunal for Scotland for a determination that the landlord had failed to comply with the duty imposed on him by Section 14 (1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(c), 13(1)(d), 13(1)(e), 13(1)(f) and 13(1)(g) of the Act. An Inspection and Hearing for 5 April 2017 at 11.00 a.m. and 12.30 p.m. respectively following which the tribunal determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act and imposed a Repairing Standard Enforcement Order ("RSEO"), as required by Section 24 of the Act as follows:-

" The Landlord must on or before 30 May 2017:-

1. *Instruct a gas safe engineer to carry out a full inspection of the gas central heating system and to repair or renew any parts which require to be renewed or repaired to ensure the installation and system is fully functioning and meet current regulatory standards and provide a gas safety certificate to the tribunal;*
2. *Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICR to the tribunal ;*
3. *Provide and install sufficient smoke detectors, heat detectors and carbon monoxide detectors to comply with current regulatory standards and*
4. *Make good any décor damaged as a result of these works."*

Re- Inspection

2. The Ordinary Member re-inspected the Property on 5 July 2017. The tenant and her husband were present at the re-inspection. The landlord was not present at the Inspection. The Ordinary Member inspected the matters specified in the Repairing Standard Enforcement Order and found that none of the matters specified had been complied with. At the re-inspection the Tenant advised the Ordinary Member that she would be vacating the Property as she had purchased a property.
3. The Ordinary Member's re-inspection report, a copy of which is annexed hereto, was intimated to the parties for comment. The third party applicant replied by email on 13 July 2017 advising that "the Property is the subject of a rent penalty notice following removal of the landlord from the landlord registration on that date". There was no response from the landlord.

Matter for determination by the Tribunal.

4. Having been satisfied that the works required by the RSEO had not been carried out fully, the matter before the tribunal was how to proceed further.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

5. The tribunal had regard to Section 25(1) of the Act which states:-

“(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”

6. With regard to Section 25(1)(a), the tribunal gave consideration to the facts of the case and, in particular, gave weight to the fact that none of the works had been carried out and that there had been no indication from the landlord that he intended to carry out the works. Accordingly, the tribunal took the view it was not appropriate to vary the RSEO.
7. The tribunal had regard to Section 25(1)(b) and again gave consideration to the facts of the case. The tribunal gave weight to the facts that none of the works had been carried out, that there had been no indication from the landlord that he intended to carry out the works and that the matters required by the RSEO all related to the health and safety of the occupants of the Property. The tribunal noted that the current tenant is vacating the Property but held the view that the likelihood of a future tenancy could not be disregarded and that safeguarding the occupants of the Property is of paramount importance. Accordingly, the tribunal was not of a mind to revoke the RSEO.
8. The tribunal then had regard to Section 26(1) of the Act which states that it is for the first-tier tribunal to decide whether a landlord has complied with a repairing standard enforcement order. The tribunal had regard to the terms of Section 26(2) of the Act which states that failure to comply with a repairing standard enforcement order must be notified to the local authority and also had regard to the fact that a failure to comply with a repairing standard enforcement order is a criminal offence. The tribunal weighed up the consequences for the landlord of a finding of failure to comply with serious health and safety nature of the works required by the RSEO and determined that as the landlord had made no attempt to comply with the RSEO, a finding of failure to comply was appropriate.

9. The tribunal next had regard to Section 26(2) of the Act which states that it is for the first-tier tribunal to decide whether to make a Rent Relief Order. As the tribunal accepts that the tenant will vacate the Property shortly the tribunal determined that there is no necessity to make a Rent Relief Order.

10. The decision of the tribunal is 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

Karen Moore, Chairperson

Date 26 July 2017



Re-Inspection Report



26/7/2017
This is the Reinspection
report referred to in
the foregoing Decision
dated of even date

K Moore

Property – 11 Airds Drive, Dumfries, DG1 4EW

Reference- FTS/HPC/RT/17/0044

Surveyor – Andrew Taylor, MRICS

Previous Inspections – Full Tribunal – 5th April 2017

Re-inspection – 11.00am, 5th July 2017

Weather – Dry, overcast

In Attendance – Mr and Mrs Dutczak, Tenant and husband.

Purpose of Re-inspection - To establish if the work required under the Repairs Standard Enforcement Order had been completed.

RSEO – In terms of the RSEO issued on 19th April 2017 the Landlord was required to carry out such work as was necessary to ensure that the house meets the repairing standard and in particular the following specific areas: -

1. Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection, report and service on the gas fire, back boiler, heating and hot water supply installation including all radiators, valves, thermostats and other parts of the installation. Follow the recommendations of that report to ensure that the entire system is safe and in

proper working order. On completion of the works, provide a valid CP12 Gas Safety Certificate to the interested person and the First-tier Tribunal.

2. Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property. Follow the recommendations of that report to ensure that the entire system is safe and in proper working order. Provide a copy of the EICR to the interested person and the First-tier Tribunal.
3. Supply and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.
4. Supply and install Carbon Monoxide detection compliant with the Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing.
5. Make good any décor damaged as a result of these works.

Works In RSEO Carried Out

Nil

Works in the RSEO Outstanding

Items 1-5 above

Photographs



No smoke detector, Living Room - July 2017



No heat detector, Kitchen - July 2017



No smoke detector, Hall - July 2017

Comments

This Report will be distributed to the Third Party, Dumfries and Galloway Council, and Landlord for comments and will be referred to the Tribunal of the Housing and Property Chamber, First-tier Tribunal For Scotland for their consideration and further action.

Andrew Taylor MRICS

Surveyor Member, Housing and Property Chamber, First-tier Tribunal For Scotland

7th July 2017