

Housing and Property Chamber First-tier Tribunal for Scotland



Rent Relief Order in terms of Section 27 of the Housing (Scotland) Act 2006

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

Chamber reference: prhp/rp/15/0262

Parties : Miss Lisa Craig ("the Tenant's Representative"), on behalf of her mother, Mrs. Mary Craig

Mrs. Mary Craig ("the Tenant"), residing at 33 Bon Accord Street, Shotts, ML7 4EA and

Mr. Andrew Alexander Sneddon, residing at 9, Stanmore Gardens, Lanark ML11 7RZ ("the Landlord")

Property: 33 Bon Accord Street, Shotts, ML7 4EA registered in the Land Register of Scotland under Title Number LAN140092 ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Andrew Taylor (Ordinary Member)

NOTICE TO:

Mr. Andrew Alexander Sneddon, residing at 9, Stanmore Gardens, Lanark ML11 7RZ ("the Landlord")

In terms of its decision dated 21 August 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal ") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 ("the Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the Property made by the tribunal (then the Private Rented Housing Committee). The tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the Property by an amount of 75% of the monthly rent (being a reduction of £75.00 per calendar month of the current monthly rent of £100.00, thus reducing the current monthly rent to £25.00) which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed.

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 21 August 2017

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 26 of the Housing (Scotland) Act 2006 ("the Act")

Parties : Miss Lisa Craig ("the Tenant's Representative"), on behalf of her mother, Mrs. Mary Craig

Mrs. Mary Craig ("the Tenant"), residing at 33 Bon Accord Street, Shotts, ML7 4EA and

Mr. Andrew Alexander Sneddon, residing at 9, Stanmore Gardens, Lanark ML11 7RZ ("the Landlord")

Property: 33 Bon Accord Street, Shotts, ML7 4EA registered in the Land Register of Scotland under Title Number LAN140092 ("the Property")

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Tribunal Members

Karen Moore (Chairperson)

Andrew Taylor (Ordinary Member)

This determination should be read in conjunction with:-

Decision and Repairing Standard Enforcement Order dated 28 January 2016;

Decision and Variation of Repairing Standard Enforcement Order dated 7 July 2016;

Decision and Variation of Repairing Standard Enforcement Order dated 23 November 2016

and Decision and Variation of Repairing Standard Enforcement Order dated 20 March 2017

Background

1. By application dated 25 September 2015, ("the Application"), the Tenant's Representative on behalf of the Tenant applied to the Private Rented Housing Panel (now the First-tier Tribunal) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), (b), (c), (d) and (f) of the Act. An Inspection and Hearing were held on 13 January 2016 at 10.00 a.m. and 11.00 a.m., respectively, following which the Committee (now the tribunal) determined that the Property did not meet the Repairing Standard in respect of the Act and imposed a Repairing Standard Enforcement Order ("RSEO").

2. A further Inspection and Hearing took place on 22 June 2016 following which the Committee (now the tribunal) again determined that the Property did not meet the Repairing Standard in respect of the Act and varied the RSEO.
3. A third Inspection took place on 9 November 2016 following which the Committee (now the tribunal) again determined that the Property did not meet the Repairing Standard in respect of the Act and varied the RSEO further.
4. A fourth Inspection took place on 7 February 2017 at which the Ordinary Member attended alone and found that although some works required by the RSEO as varied had been carried out, some were outstanding. Following that Inspection, the Landlord submitted the EICR and the Gas Safety Certificates to the tribunal. The tribunal varied the RSEO further as follows:-

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

1. *Refurbish or replace all windows in the property (including rear porch) to ensure that they are wind and watertight, capable of opening, secure and in proper working order. Include all ancillary works, pointing, making good and decoration.*
2. *Carry out works to ensure that the electrical installation is safe, functional and in proper working order. These works should include the repairing or replacing the bathroom instantaneous shower.*
3. *Provide a Domestic Electrical Installation Certificate for the works carried out.*
4. *Engage a suitably qualified, and Gas Safe registered, heating engineer to repair or replace the gas fire and back boiler installation; repair and/or replacing radiators as necessary to ensure that the fire/back boiler and remainder of the heating installation is safe, functional and in proper working order.*
5. *Refurbish or replace existing cast iron gutters to the property and leave in proper working order.*
6. *Carry out such works as are necessary to ensure that the external timber garage is wind watertight and fit for use, including replacing roof covering and timbers as necessary and refurbishing access doors and*
7. *Carry out all ancillary works, making good and decoration."*

5. A fifth Inspection took place on 1 June 2017 at which the Ordinary Member attended alone and found that none of the works required by the RSEO as varied by the tribunal's Decision dated 20 March 2017 had been carried out.

6. At the Tenant's request, a Hearing took place on 2 August 2017 at Wellington House, 134- 136, Wellington Street, Glasgow, G2 2XL at 10.00 a.m. The Tenant was present. Neither the Tenant's Representative nor the Landlord was present. The Tenant advised the tribunal that there had been no contact from the Landlord since the Inspection on 1st June 2017 and no works had been carried out.

Findings of Fact

7. From the Inspection on 1st June 2017 and the Hearing on 2 August 2017, the tribunal noted that although the original RSEO has been complied with in part, no works had been carried out since the RSEO was varied on 20 March 2017.

Decision of the tribunal

8. The tribunal's decision was based on the Inspection on 1st June and the Hearing on 2 August 2017. The tribunal was disappointed that, having carried out a significant amount of the works required by the original RSEO, Landlord had failed to carry out the remaining works as required by the RSEO as varied and dated 20 March 2017 and had had no further contact with either the Tenant or the tribunal.
9. Having been satisfied that the works required by the RSEO as varied and dated 20 March 2017 had not been carried out, the matter before the tribunal was how to proceed further.

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

10. 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."

11. With regard to Section 25(1)(a), the tribunal gave consideration to the fact that the Landlord had carried out a significant amount of the works required by the original RSEO. However, the tribunal noted that the Landlord had not carried out the remaining works as required by the RSEO as varied and dated 20 March 2017 and had not provided the tribunal with an explanation for this failure. The tribunal considered that the Landlord had been given ample time and opportunity since the original Decision and Repairing Standard Enforcement Order dated 28 January 2016 to ensure that the Property meets the Repairing Standard and had failed to do so. The tribunal was of the opinion that the Tenant's enjoyment of the Property has been diminished throughout this time. Accordingly, the tribunal took the view it was not appropriate to vary the RSEO further.
12. With regard to Section 25(1)(b), as the works required by the RSEO as Varied and dated 20 March 2017 were considerable and of a serious nature, the tribunal was not of a mind to revoke the RSEO.

13. 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 and 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. The tribunal also had regard to the fact that a failure to comply with a repairing standard enforcement order is a criminal offence. The tribunal had regard to the consequences for the Landlord of a finding of failure to comply and acknowledged that the Landlord had carried out some of the works required by the original RSEO dated 28 January 2016. However, the tribunal considered that the Landlord had been given ample time and opportunity since the original RSEO dated 28 January 2016 to ensure that the Property meets the Repairing Standard but had failed to do so. There was no evidence before the tribunal to suggest that the Landlord intended to complete the works required of him. Accordingly, the tribunal determined that a finding of failure to comply was appropriate.
14. Having determined that the Landlord had failed to comply with the RSEO as varied, the tribunal then had regard to Section 27 of the Act and whether it should make a Rent Relief Order in terms of that Section of the Act. The tribunal, having regard to the nature of the works required by the RSEO as varied and dated 20 March 2017, was of the opinion that these works affected the amenity of the Property and so had a significant detrimental effect on the Tenant's enjoyment of the Property. The tribunal determined that a Rent Relief Order was appropriate and that relief at the rate of 75% reflected the loss of amenity. The tribunal proceeded to make a Rent Relief Order to that effect.
15. The decision of the tribunal is unanimous.
16. The Tribunal draws the Landlord's attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence and to Section 28(5) of the Act which states that it is an offence for a landlord to enter into a tenancy or occupancy arrangement in relation to a house which is subject to a repairing standard enforcement order.

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.

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order will be treated as having effect from the day on which the appeal is abandoned or so determined

Signed

Karen Moore, Chairperson

Date 21 August 2017