

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25(1)(a) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0420

Title no/Sasines Description: GLA23599

Flat 2/1, 524 Paisley Road West, Glasgow, G51 1RN ("the house")

The Parties:-

Mrs Gullalai Miankhail, residing at the house ("the Tenant")

Ms Shabana Bakhsh, care of Etimon, Trident House, 175 Renfrew Road, Paisley, PA3 4EF ("the Landlord")

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 Repairing Standard Enforcement Order ("RSEO") relative to the House should be varied in terms of Section 25(1)(a) of the Housing (Scotland) Act 2006 ("the Act") in relation to the house, agreed that the RSEO should be varied.

The Tribunal comprised:-

Nicola Weir, Legal Member

Mike Links, Ordinary Member

Background

1. By Application received on 9 November 2017, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 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 following parts of the repairing standard in terms of Section 13 of the Act, namely that the house is wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a); that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d); and that the house has satisfactory provision for

giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1)(g) .

In particular, the Tenant stated "They have not fixed the dishwasher since we moved in, 2013 August. The kitchen door is broken and they are yet to fix it. There is water dripping from the ceiling in the bedroom. There is also water coming from the ceiling in Bedroom 2 and water is coming from the window in bedroom 2 and the living room. 3 kitchen drawers are broken. There are cracks in the ceiling and walls throughout the house. Also the paint." As regards the work which needs to be done, the Tenant also stated "They need to fix the dishwasher, the paintwork of the house, the carpets. The kitchen door. The water that is coming in the master bedroom, bedroom 2 and the living room. The cracks in the walls and ceilings. Under the kitchen drawers."

Apart from the application form, the Tenant also submitted as part of her Application copy Landlord notification of repair letter and certificate of posting of same dated 7 November 2017; copy letters from Govan Law Centre to Etimon Ltd ("the Landlord's agent") on her behalf regarding repairs issues dated 3 and 11 October 2017 and copy handwritten note dated 17 October 2017 regarding kitchen door repairs which appears to have been signed on behalf of the Landlord's agent. The Tenant's Application was unsigned and no tenancy agreement was included. She was written to regarding these matters and subsequently submitted a signed form, tenancy agreement and AT5.

2. On 10 January 2018, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 18 January 2018, stipulating that any written representations should be lodged with the Tribunal by 8 February 2018.
3. Following service of the Notice of Referral, written representations were submitted on behalf of the Landlord by the Landlord's agent, namely email dated 5 February 2018, to which was attached an earlier email dated 2 February 2018 to the Tenant from the Landlord's agent concerning the condition of the walls and the carpets and to which was attached an extract from an inventory inspection dated 26 July 2013, photographs showing some of the rooms in the House (undated) and a copy quotation from a contractor dated 1 February 2018 for plastering and painting works to the walls and ceilings. No written representations were submitted by the Tenant.
4. The Tribunal inspected the house on the morning of 26 February 2018. In addition to the Members of the Tribunal, Ms Molly Bell, Tribunal Clerk was present. The Tenant provided access to the house and was present throughout. She was joined by a female friend who arrived during the inspection but took no part in the proceedings other than as a supporter.

Mr Chris Thomas, Lettings Manager for the Landlord's agent was also in attendance.

5. Following the inspection of the house, the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. The same persons who had attended at the Inspection attended the Hearing.
6. Following the Hearing, the Tribunal proceeded to make an RSEO dated 14 March 2018 in relation to the House. In terms of the RSEO, the Landlord was required:- (1)To produce a report from a suitably qualified window installation company confirming that the living room and bedroom windows of the House are wind and watertight; and thereafter, if said report states that any of said windows are not wind and watertight, to repair or, as necessary, replace same to ensure that those windows are wind and watertight; (2)To repair or, as necessary, replace the three kitchen drawers, the wooden housing around the central heating boiler in the kitchen, the kitchen cupboard door handle and the kick plate under said kitchen cupboard to ensure that same are in a reasonable state of repair and in proper working order; (3)To make good the areas of the master bedroom ceiling, walls and cornice and the second bedroom ceiling which have been damaged and stained as a result of water penetration from roof defects by re-decoration or, as necessary, repair to give a satisfactory finish to ensure that the House is reasonably fit for human habitation; and (4)To install a carbon monoxide (CO) detection system, positioned in accordance with manufacturers' instructions and current Scottish government guidance, to ensure that the House has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The landlord was required to complete the work within 6 weeks of the date of service of the RSEO.
7. On 4 April 2018, the Landlord's agent emailed the Tribunal to advise that some of the works required by the RSEO had been carried out or were underway. However, the Tenant had recently vacated the House and general refurbishment works were planned, including upgrading of the kitchen and painting of the interior. The Landlord's agent explained that the outstanding works in terms of the RSEO would be covered by the general refurbishment works and wondered whether, rather than completing the relatively minor works required by the RSEO to comply with the timescale in the RSEO, they could just be completed as part of the general refurbishment. The Landlord's agent sent a further email to the Tribunal on 12 April 2018 and estimated that the refurbishment works would be completed within a further timescale of 6 to 8 weeks.
8. The Tenant was contacted by the Tribunal and confirmed by email on 23 April 2018 that the Tenant had indeed vacated the House at the end of March 2018.

Reason for decision

9. The Tribunal considered the request on behalf of the Landlord for additional time to complete the works required by the RSEO in conjunction with the general refurbishment works being undertaken in the House.
10. The Tribunal noted that the House is currently unoccupied, the Tenant having vacated at the end of March 2018. The Tribunal also noted that the Landlord appeared to have made some effort to comply with the RSEO by the time the request was made. The Tribunal considered the reason stated for the request and the timescale sought on behalf of the Landlord to be reasonable.
11. The Tribunal accordingly took the view that the RSEO should be varied by extending the time for completion of the work until 18 June 2018 and proceeded to issue a Variation of the RSEO.

Decision

12. The Tribunal accordingly determined that further time should be allowed for the work to be carried out and that the RSEO should be varied by extending the time for completion of the work until 18 June 2018.
13. The decision of the Tribunal was unanimous .

Right of Appeal

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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..... Date: 26 April 2018
Nicola Weir, Legal Member of the Tribunal

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Variation of Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 25

Chamber Ref: FTS/HPC/RP/17/0420

Title no/Sasines Description: GLA23599

Flat 2/1, 524 Paisley Road West, Glasgow, G51 1RN ("the house")

The Parties:-

Mrs Gullalai Miankhail, residing at the House ("the Tenant")

Ms Shabana Bakhsh, care of Etimon, Trident House, 175 Renfrew Road, Paisley, PA3 4EF ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') having determined on 23 April 2018 that the **Repairing Standard Enforcement Order** relative to the House dated 14 March 2018 should be varied, the said **Repairing Standard Enforcement Order** is hereby varied with effect from the date of service of this Notice in the following respects:-

1. The period allowed for the completion of the work required by the Order is extended until 18 June 2018.

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

A landlord, tenant or third party applicant 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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Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in

relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents typewritten on this and the preceding page are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 26 April 2018 in the presence of the undernoted witness:-

Nicola Weir

Legal Member

witness

FINLAY THOMAS WEIR name in full

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