

Housing and Property Chamber First-tier Tribunal for Scotland



VARIATION OF REPAIRING STANDARD ENFORCEMENT ORDER

Chamber Reference number: FTC/HPC/RT/18/3039

Parties:

1. Dumfries and Galloway Council per its employee Mr. Robert Rome, HMO Licensing and Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street. Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”) ;
2. Mr. Raymond Swan and Miss Marion Carruthers both residing at 7 Runic Place, Ruthwell, Dumfries, DG1 4NW (“the Tenants”) per their nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), Mr. Harry Dalziel residing at 6, Yarrow Court, Dumfries, DG2 9HG (“the Tenants’ Representative”) and
3. Mr. David Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN (“the Landlord”), together referred to as “the Parties”.

Property: 7 Runic Place, Ruthwell, Dumfries, DG1 4NW being the subjects more particularly described in Disposition in favour of Albert Fergus Dodds and recorded in the Division of the General Register of Sasines for the County of Dumfries on 26 May 1986 Search Sheet 26551, Volume 155, Folio 56.

Tribunal Members

Karen Moore (Chairperson)

Mike Links (Ordinary Member)

Notice to Landlord

Mr. David Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN

Whereas in terms of its decision dated [] September 2019, the First-tier Tribunal for Scotland determined to vary the Repairing Standard Enforcement Order dated [] the First-tier Tribunal for Scotland now varies the Repairing Standard Enforcement Order as follows:-

The Landlords must on or before 18 October 2019:-

1. Instruct a Royal Institution of Chartered Surveyors registered building surveyor (i) to carry out a full inspection of the roughcasting and all external parts of the Property and (ii) to provide a fully documented report on the roughcasting, the living room window, the roof tiles, the external doors and the guttering ("the External Survey Report"), the purpose of which External Survey Report is to recommend works to all parts of the Property, including replacement if necessary, to ensure that the dampness in the Property is eradicated and that the Property is made wind and watertight and in a reasonable state of repair;
2. Submit the External Survey Report to the Tribunal and provide a copy to the Tenants and the Third party Applicants;
3. Instruct a Scottish Building Federation registered building contractor capable of providing a 10- year guarantee repair to carry out the works recommended by the External Survey Report and confirm in writing to the Tribunal, the Tenants the Third party Applicants the identity of the building contractor, the date on which the works will commence and the estimated date for their completion and
4. Make good any décor damaged as a result of these works.

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

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the preceding pages are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 11 September 2019 before this witness, Norman William Moore, solicitor, Dunnswood House, 10 Dunnswood Road, Cumbernauld.

N Moore

Witness

K Moore

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 25 of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1A) of the Act

Chamber Reference number: FTC/HPC/RT/18/3039

Parties:

1. Dumfries and Galloway Council per its employee Mr. Robert Rome, HMO Licensing and Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street. Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act ("the Third -party Applicant") ;
2. Mr. Raymond Swan and Miss Marion Carruthers both residing at 7 Runic Place, Ruthwell, Dumfries, DG1 4NW ("the Tenants") per their nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Mr. Harry Dalziel residing at 6, Yarrow Court, Dumfries, DG2 9HG ("the Tenants' Representative") and
3. Mr. David Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN ("the Landlord"), together referred to as "the Parties".

Property: 7 Runic Place, Ruthwell, Dumfries, DG1 4NW being the subjects more particularly described in Disposition in favour of Albert Fergus Dodds and recorded in the Division of the General Register of Sasines for the County of Dumfries on 26 May 1986 Search Sheet 26551, Volume 155, Folio 56.

Tribunal Members

Karen Moore (Chairperson)

Mike Links (Ordinary Member)

Decision

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 20 March 2019.

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard and, in terms of Section 25 of the Act,

determined to vary the RSEO to allow the Landlord further time to comply and that for the reasons set out below.

Background

1. By application received on 9 November 2018 ("the Application"), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) 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 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d), 13(1) (e), 13(1) (f) and 13(1) (g) of the Act.
2. The Application was accepted by the Tribunal and an Inspection and Hearing were fixed for 21 January 2019 which Inspection and Hearing were postponed at the request of the Third -party Applicant due to their unavailability until 6 March 2019 at 10.00 a.m. and 11.30 a.m., respectively, following which Inspection and Hearing the Tribunal found that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d), 13(1) (e), 13(1) (f) and 13(1) (g) of the Act. The Tribunal imposed the following RSEO :-

"The Landlord must on or before 6 May 2019:-

1. *Instruct a Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection of the roughcasting and all external parts of the Property and (ii) to provide a fully documented report on the roughcasting, the living room window, the roof tiles, the external doors and the guttering ("the External Survey Report"), the purpose of which External Survey Report is to recommend works to all parts of the Property, including replacement if necessary, to ensure that the dampness in the Property is eradicated and that the Property is made wind and watertight and in a reasonable state of repair;*
2. *Submit the External Survey Report to the Tribunal and provide a copy to the Tenants;*
3. *Instruct a Scottish Building Federation registered building contractor capable of providing a 10- year guarantee repair to carry out the works recommended by the External Survey Report and confirm in writing to the Tribunal and the Tenants the identity of the building contractor, the date on which the works will commence and the estimated date for their completion;*
4. *Complete the installation of the kitchen to include the completion of the electrical installation and the relocation of the immerser switch to a location which is lower and so easier for the Tenants to access, the fitting of all kitchen unit doors, the repair or renewal of the hob control knob and the fitting of tiling or splash-backs at all kitchen work surfaces;*

5. *On completion of the kitchen installation, instruct a SELECT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord's appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) to ensure that the carbon monoxide detector in the Property is positioned to comply with current regulatory standards and*
6. *Make good any décor damaged as a result of these works."*
3. Following the imposition of the RSEO, the Tenants and the Tenants' Representative wrote to the Tribunal to advise that the works required by the RSEO had not been carried out. This correspondence was copied to the Landlord.

Re- Inspection

4. A Re-Inspection of the Property took place on 6 June 2019 at the Property. The Third -party Applicant was represented at the Inspection by Mr. Robert Rome and his colleague, Mr. Adam Black. Both Tenants were present and accompanied by the Tenants' Representative. The Landlord was present.
5. The Ordinary Member of the Tribunal inspected the parts of the Property and the works required by the RSEO, took dampness meter readings and digital photographs which photographs form the Re-Inspection Report which was circulated to the Parties for comment. The Re-Inspection Report showed that the works required by the RSEO had not been carried out. The Landlord requested a Hearing and so a further Inspection and Hearing were fixed for 28 August 2019 at 10.00 a.m. and 11.30 a.m.

Further Inspection and Hearing

6. A further Inspection took place at the Property on 28 August 2019. The Third -party Applicant was represented at the Inspection by Mr. Robert Rome and Mr. Adam Black. Both Tenants were present, although Mr. Swan took no part in the Inspection. The Tenants' Representative was not present. The Landlord was present. The Tribunal inspected the parts of the Property and the works required by the RSEO, took dampness meter readings and digital photographs. It appeared to the Tribunal that, although some works required by the RSEO had been carried out, the cause of the dampness and water ingress had not been investigated and determined and so works required to remedy this had not been instructed or carried out.
7. Thereafter, a Hearing was held at Lochvale House, Georgetown Road, Dumfries, DG1 4DF on the same day at 11.30 a.m. The Third -party Applicant was again represented at the Hearing by Mr. Robert Rome and his colleague, Mr. Adam Black. Miss Carruthers of the Tenants, the Tenants' Representative and the Landlord were all present.

8. At start of the Hearing, the Tribunal explained to the Parties its powers in terms of the Act being the power to vary the RSEO, the power to revoke or discharge the RSEO and the power to make a finding of failure to comply with the RSEO. Tribunal explained further that the outcome of a finding of failure to comply with the RSEO is that the Landlord would be referred for criminal prosecution and the Tribunal could make a rent relief order reducing the rent by up to 90%.
9. The Tribunal then invited the Landlord to comment on the works required by the RSEO and asked if he accepted that the works required had not been carried out in full. The Landlord accepted that this was so and explained that he had been unable to instruct a Royal Institute of Chartered Surveyors registered building surveyor as there were none available in Dumfries. He stated that the surveyors he contacted advised him that there is no "Royal Institute of Chartered Surveyors" as the body is the "Royal Institution of Chartered Surveyors" (emphases added) and that, in any event, none of those he contacted engaged building surveyors.
10. Miss Carruthers of the Tenants and the Tenants' Representative disputed the Landlord's position and advised the Tribunal that they contacted three local surveyor's firms by telephone all of whom had the ability to provide a building surveyor.
11. The Tribunal questioned the Landlord on which surveyor firms he had contacted, on what basis and when but the Landlord was unable to provide any definitive responses. The Landlord advised the Tribunal that he had "health issues" which caused memory loss, that he had panicked when he could not engage the appropriate surveyor and that, in hindsight, there were "deficiencies" in his actions. The Landlord was not prepared to elaborate or provide detail on his alleged "health issues".
12. The Tribunal questioned the Landlord as to whether he had contacted the Third-party Applicant in respect of progressing the work and the Landlord advised that he had spoken with one of the Third-party Applicant's colleagues. The Landlord advised the Tribunal that he had been made aware that a further application is to be made by or on behalf of the Tenants which includes asbestos removal works and that he was waiting for an asbestos survey in that regard. He stated that it was his intention to have the remainder of the works required by the RSEO carried out as part of the further works.
13. The Third-party Applicant explained to the Tribunal that the Landlord is known to them as a colleague in the employ of Dumfries and Galloway Council at the same workplace. They advised that as far as they knew the Landlord had spoken with another colleague who was not engaged in landlord/tenant work. They advised the Tribunal that the Landlord had not contacted them direct in relation to the Application or the RSEO. The Third-party Applicant explained to the Tribunal that a fresh application to the Chamber is in contemplation that it involves repair to floor tiles with a low asbestos content and so is not work which impacts on the RSEO or requires significant asbestos control.

14. The Landlord accepted that as no survey had been carried out, the works required by the RSEO to investigate and determine the cause of the dampness and water ingress had not been instructed or carried out. The Landlord advised the Tribunal that, now being aware that it was possible for him to instruct a building surveyor, he would do so immediately
15. With regard to the works required by the RSEO at paragraphs 4 and 5, the Parties agreed that these had been carried out, although the Third -party Applicant disputed that these works had been carried out to an acceptable standard. With regard to the works required by the RSEO at paragraph 6, the Landlord stated again that it was his intention to do these works himself when the floor tiling works had been carried out. With regard to the EICR, the Landlord produced an EICR dated 21 May 2019.
16. The Tribunal then turned to the options open to it and again advised the Parties that these were the power to vary revoke or discharge the RSEO and the power to make a finding of failure to comply with the RSEO which would result in criminal prosecution and a possible rent relief order reducing the rent by up to 90%. The Tribunal asked the Parties for their views.
17. The Landlord explained to the Tribunal that he had insufficient funds to pay for the works as he gave the rent received from the Tenants to his mother to mitigate financial losses she suffered as a result of the fraudulent actions of a family member. In response to questions from the Tribunal, the Landlord explained that he had not given his mother the rent received in recent months. He also explained that he had been let down by tradesmen who failed to turn up as planned and that the Tenants had frequently prevented tradesmen from entering the Property.
18. The Third-party Applicant advised the Tribunal that in their view, the Landlord had failed to comply with the RSEO and the progress made was unsatisfactory with no works being carried out between the date of the first Inspection on 6 March 2019 and the Re-Inspection on 6 May 2019. The Third-party Applicant advised the Tribunal to make a failure to comply finding and to grant a rent relief order.

Summary of the Issues

19. The issues to be determined by the Tribunal are whether or not the Landlord had failed to comply with the RSEO and how it should proceed further in terms of the Act.

Findings of Fact

20. From the further Inspection and Hearing on 22 August 2019, the Tribunal found that paragraphs 4 and 5 of the RSEO had been complied with but that paragraphs 1, 2, 3 and 6 had not been complied with and so the RSEO had not been complied with in full.

Decision of the Tribunal and reasons for the decision.

21. The Tribunal's decision is based on the further Inspection and Hearing.

22. The Tribunal, firstly, 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, secondly, 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 weighed up the consequences for the Landlord of a finding of failure to comply with the fact that the Landlord had carried out some of the works required by the RSEO. The Tribunal had regard to the Landlord's reasons for not instructing a survey as required by the RSEO and, although these reasons were barely credible, took the view that a finding of failure to comply was not appropriate at this time and stage in the proceedings.
23. The Tribunal then 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."*
24. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the terms of the RSEO which deal with health and safety. The Tribunal held the view that safeguarding the occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.
25. With regard to Section 25(1) (a), the Tribunal again gave consideration to the submissions of the Parties and whilst the Tribunal recognised the strength of the Third-party Applicant's position in respect of the Landlord's apparent disregard of the RSEO and the tribunal procedure, determined that as the benefit of having the Property surveyed and the dampness and water ingress remedied outweighed the consequence of criminal prosecution, it should vary the time to comply with the RSEO on this occasion.
26. The decision of the Tribunal is unanimous.
27. **The Landlord is reminded that the works to be carried out are all of those ordered by the RSEO and narrated in full at paragraph 2 hereof. The Tribunal draws the Landlord 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.**

Appeal

28. 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.

Effect of Section 63

29. 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

K Moore

Karen Moore, Chairperson

Date *11 September 2019*