

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

Property: 9 Malcolm Street, Dundee DD4 6SF (“the Property”/ “the house”)

Title No: ANG5639

Chamber Reference: FTS/HPC/RT/19/1631

Miss Alexandra Gorgan, 9 Malcolm Street, Dundee DD4 6SF (“the Tenant”)

Miss Auntra Rahim, represented by Balgay Property & Investment Services, 8 Westport, Dundee DD1 5EP (“the Landlord”)

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

Tribunal Members – George Clark (Legal Member/Chairperson) and Nick Allan (Ordinary Member/Surveyor)

Whereas in terms of their decision dated 16 August 2019, The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The Act”), the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord:

- (i) to carry out such repairs as are necessary to ensure the windows in the Property are wind and watertight, capable of being safely opened and closed and in a reasonable decorative condition, or to replace the windows;
- (ii) to carry out such work as is necessary to reinstate the front door fanlight to proper working order;
- (iii) to carry out such work as is necessary to ensure the bath seal is watertight;
- (iv) to instruct a suitably qualified electrical contractor to carry out such works as are required to ensure the light switch in the kitchen is in safe and proper working order and that all smoke detectors in the Property are ceiling-mounted and to exhibit to the Tribunal a satisfactory current Electrical Installation Condition Report, dated after the date of completion of the foregoing work, containing no C1 or C2 items of disrepair, the Report to be

issued by an electrical contractor who is registered either with NICEIC, SELECT or NAPIT; and
(v) to carry out such work as is necessary to ensure the security entry lock and door entry system to the Property are in proper working order.

The Tribunal orders that the works required by this Order must be carried out within the period of two months from the date of service of this Order and that the Electrical Condition Installation Report is exhibited within four weeks of said date of service.

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.

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 George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 16 August 2019, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

V Clark

..... Legal Member/Chair Witness

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 Section 26 (1) of the Housing (Scotland) Act 2006

Property: 9 Malcolm Street, Dundee DD4 6SF (“the Property”/ “the house”)

Title No: ANG5639

Chamber Reference: FTS/HPC/RT/19/1631

Miss Alexandra Gorgan, 9 Malcolm Street, Dundee DD4 6SF (“the Tenant”)

Miss Auntra Rahim, represented by Balgay Property & Investment Services, 8 Westport, Dundee DD1 5EP (“the Landlord”)

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

Tribunal Members – George Clark (Legal Member/Chairperson) and Nick Allan (Ordinary Member/Surveyor)

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 duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

- 1. By application, received by the Tribunal on 29 May 2019, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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”).**

2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, 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, that any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house meets the tolerable standard..
3. In the application and its supporting documentation, the Third Party Applicant stated that the windows in the Property were draughty, the kitchen window outer pane was cracked, the kitchen window hinge was loose, the kitchen light switch was faulty, the rear bedroom window hinge was loose, the rear bedroom east wall was mouldy, there was a leak into the rear bedroom from the flat above, the carpet strip between the living room and the hall was missing, the living room window was sealed shut, the living room smoke detector was not on the ceiling, the living room cupboard was mouldy, the living room carpet was badly stained, the front door fanlight was broken, the front bedroom window did not open, the toilet was leaking, the bath seal was defective, the shower curtain rail was falling down, the bathroom window was defective, the bathroom wall was mouldy, the electric hot water tank did not heat up, the security entry lock was missing, the system for detecting and giving warning of fires did not comply with current requirements and the Tenant had not been provided with an Electrical Installation Condition Report for the Property.
4. On 4 July 2019, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.
5. On 24 July 2019, the Tribunal received written representations on behalf of the Landlord, stating that all the repairs had been carried out apart from the windows, which were going to be replaced after the Tenant vacated the Property. The representations included a list of works carried out, namely the provision of a silicone seal around the bath, repairs to a toilet leak, fixing the issue of there being no hot water, cleaning and painting the rear bedroom and the living room cupboard, washing and shampooing the living room and hallway carpet, fixing the shower curtain and rail, cleaning and painting the bathroom, replacing the silicone seal around the wash hand basin and fitting bars over any doors where the threshold strip was missing. They also include an estimate dated 1 May 2019 for supplying and fitting 8 new windows.

6. The Tribunal inspected the Property on the morning of 16 August 2019 and was admitted by the Tenant. The Third Party Applicant was represented by Mr Lindsay Watson, Enforcement Officer. The Landlord was represented at the inspection by Mr Seng Say Li, Managing Agent of Balgay Property and Investment Services.
7. The Tribunal comprised George Clark (Legal Member/Chairperson) and Nick Allan (Ordinary Member/surveyor).
8. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

9. Following the inspection, the Tribunal held a Hearing at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee DD1 2HB. The Third Party Applicant was represented by Mr Lindsay Watson and the Landlord was represented by Mr Seng Say Li.
10. The Landlord's representative told the Tribunal that he accepted that the windows in the Property were too old to be repaired and he had two quotes for their replacement. This work would be done when the Tenant moved out over the following weekend. An electrician had been instructed to attend to the problem with the kitchen light switch on the following Monday. The living room carpet had been cleaned.
11. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of fact

12. The Tribunal makes the following findings of fact:
 - The Property is a second floor flat in a tenement block of flats built around 1902.
 - The Tenant is tenant of the Property.
 - The windows throughout the Property are in a very poor state of repair.
 - Moisture meter readings were taken at the inspection and no evidence was found of excessive moisture or mould on the rear bedroom east wall, in the living room cupboard or on the bathroom wall.
 - The light switch in the kitchen is held together with tape.
 - Moisture meter readings in the area where there had been a previous leak from the flat above were taken at the inspection, but no evidence of excessive moisture was found.

- The carpet strip between the living room and the hall has been replaced.
- The smoke detector in the living room is attached to the wall, not the ceiling.
- The living room carpet appears to have been cleaned and there is no evidence of staining.
- The fanlight above the front entrance door to the Property is broken.
- There is no evidence of an ongoing leak from the toilet.
- The sealant around the bath is not in satisfactory condition.
- A new shower curtain and rail have been fitted.
- The provision of hot water in the Property appears to be adequate,

Reasons for the decision

13. The Tribunal was of the view that the windows in the Property are beyond economic repair and that replacement is the practicable option. The Tribunal advised that the replacement windows should have trickle vents, to assist with air circulation. The light switch in the kitchen is clearly potentially dangerous and the smoke detector on the kitchen should be fitted to the ceiling rather than the wall. These matters will be covered in the Electrical Installation Condition Report that the Tribunal decided should be obtained when the work required by the Order it proposed to make had been carried out. Although no mould was found at the time of the inspection, the Tribunal would recommend that consideration be given to installing some form of ventilation in the bathroom. The sealant around the bath requires to be improved. The broken fanlight above the entrance door constitutes a potential danger to occupants from falling glass. The Tribunal accepts that the security lock and door entrance system are communal, but the safety and security of occupants is compromised. The Tribunal understands that local authority grants may be available if the installation is beyond economic repair.

14. The decision of the tribunal was unanimous.

Right of Appeal

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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..... Legal Member/Chairperson

Date: 16 August 2019