

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 Sections 26 and 27 of the Housing (Scotland) Act 2006

Property: 5 Royal Crescent, Edinburgh EH3 6PZ ("the Property")

Chamber Reference: FTS/HPC/RT/18/3063

Mr Ian Osborne, 5 Royal Crescent, Edinburgh EH3 6PZ, represented by Harmony Care and Support Service, 142A Ferry Road, Edinburgh EH6 4NX ("the Tenant")

Freeworld Holdings Limited, incorporated under the Companies Acts (SC187349) and having its Registered Office at 13 Castle Terrace, Edinburgh EH1 2DP ("the Landlord")

Third Party Applicant: City of Edinburgh Council

Tribunal Members – George Clark (Legal Member/Chairperson) and Sara Hesp (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 Repairing Standard Enforcement Order made by the Tribunal on 20 March 2019 , determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority and to the police. The Tribunal also decided to make a Rent Relief Order.

Background

By application, dated 12 November 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) 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 repairing standard.

Following an inspection and hearing held on 20 March 2019, the Tribunal made a Repairing Standard Enforcement Order ("the Order"). The Order required the Landlord to complete the following within a period of two months from the date of service of the Order:

- (1) to carry out such works as are required to ensure that the provision of smoke detectors and heat detectors within the Property complies with the Fire Protection in Rented Properties Guidance published by the Scottish Government on 7 February 2019, effective 1 March 2019 and available on the Scottish Government website.
- (2) to restore the door entry phone system in the Property to a good state of repair and proper working order.
- (3) to carry out such repairs to the windows in the master bedroom, office and kitchen of the Property as are necessary to ensure they are wind and watertight, in a good state of repair and in proper working order.
- (4) to carry out such repairs as are necessary to restore the dishwasher to proper working order.
- (5) to replace the vinyl flooring in the kitchen.
- (6) to carry out such work as is necessary to ensure the light under the kitchen wall units is in proper working order, including repairing the baton holder in the kitchen cupboard and
- (7) to exhibit to the Tribunal a satisfactory current Electrical Installation Condition Report, containing no C1 or C2 items of disrepair and covering the dishwasher and the smoke and heat detectors in the Property, the Report to be issued by an electrical contractor who is registered either with NICEIC, SELECT or NAPIT and, in the event that the dishwasher in the Property is deemed to be a portable appliance and not covered by the Electrical Installation Condition Report, to exhibit to the Tribunal a satisfactory PAT Test report in respect of the dishwasher.

The Ordinary Member of the Tribunal reinspected the Property on the morning of 19 June 2019. The Tenant was represented by Ms D Crespie of Harmony Care and Support Services. The inspection was also attended by Mr I Girot of Citizens Advice Scotland for the Tenant and by Mr D Ross of City of Edinburgh Council the Third Party Applicant. The Landlord was represented at the reinspection by two of their Directors, Mr and Mrs Das.

A copy of the Reinspection Report is attached to and forms part of this Statement of Decision.

The Ordinary Member reported that new smoke detectors have been installed in the hallway, kitchen and living room, but there is no heat detector in the kitchen. The door entry system was still in a state of disrepair. The windows in the master bedroom and kitchen have been repaired and the sash cords are in working order, but the office window is stuck in a closed position and cannot be opened. The cracking noted at the previous inspection remains evident and some minor cracking was noted to the kitchen window. The Tenant's representative confirmed that the dishwasher is now in working order, although the fascia panel is missing. The vinyl flooring in the kitchen has been replaced and the lights

under the kitchen units are now in working order. An updated Electrical Installation Condition report meeting the criteria specified in the Order has not been provided to the Tribunal.

A copy of the Reinspection Report was sent to the parties for comment. The Landlord's representative responded on 11 July 2019 in relation to the door entry system and the Tribunal accepted that it was now in working order.

Summary of the issues

The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 20 March 2019 and, if not, whether a Rent Relief Order in respect of the Property should be made.

Reasons for the Decision

The Tribunal determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order and that, in terms of Section 26(2) of the 20016 Act, the failure must be reported to the local authority. The Tribunal also decided to make a Rent Relief Order in terms of Section 27 of the Act.

Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence.

The Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

The decision of the Tribunal was 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.

G Clark

Signed

Date: 10 October 2019