

Housing and Property Chamber First-tier Tribunal for Scotland



Notice of a Decision to Vary a Repairing Standard Enforcement Order Ordered by the Private Rented Housing Committee

Chamber Ref : prhp/rp/15/0114

Parties: Deepkamal Kaur, having an address at 215 Glencoats Drive, Paisley PA3 1RR ("the Landlord").

Property: 215 Glencoats Drive, Paisley PA3 1RR ("the Property") registered in the Land Register for Scotland under Title Number REN77970

Tribunal Members

Karen Moore (Legal Member and Chairperson)

Kingsley Bruce (Ordinary Member)

Elizabeth Dickson (Ordinary Member)

NOTICE TO THE LANDLORD **Deepkamal Kaur ("the Landlord")** residing at 215 Glencoats Drive, Paisley PA3 1RR

Whereas in terms of their decision dated 26 July 2017, the First-tier Tribunal for Scotland determined that the Repairing Standard Enforcement Order as varied by Decision dated 9 October 2015 made by it in relation to the Property be varied further, the Tribunal hereby varies further the Repairing Standard Enforcement Order as follows:-

The time limit for compliance with the Repairing Standard Enforcement Order is extended to 21 January 2018.

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 page are subscribed by Karen Moore, solicitor, Glasgow Chairperson of the First-tier Tribunal, at Glasgow on 26 July 2017 before this witness, Norman William Moore, solicitor, 11 Muirfield Court, Cumbernauld, Glasgow.

W Moore

Witness

K Moore

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref : prhp/rp/15/0114

Parties: Deepkamal Kaur, having an address at 215, Glencoats Drive, Paisley PA3 1RR ("the Landlord").

Property: 215, Glencoats Drive, Paisley PA3 1RR ("the Property") registered in the Land Register for Scotland under Title Number REN77970

Tribunal Members

Karen Moore (Legal Member and Chairperson)

Kingsley Bruce (Ordinary Member)

Elizabeth Dickson (Ordinary Member)

Decision

The Tribunal determined to vary further the Repairing Standard Enforcement Order made by the Tribunal (then the Private Rented Housing Committee) dated 16 June 2015 and varied by Order dated 11 October 2016 in relation to the Property.

This decision should be read in conjunction with:

Statement of Decision and Repairing Standard Enforcement Order dated 16 June 2015;
Statement of Decision and Variation of Repairing Standard Enforcement Order dated 9 October 2015 and

Statement of Decision and Variation of Repairing Standard Enforcement Order dated 11 October 2016

Factual Background

1. On 31 March 2015, Allison McGill, then residing at the Property and, at that time, the tenant of the Property, lodged an application under Section 22 of the Housing (Scotland) Act 2006 ("the Act") against Victoria Carol Ronaldson or McEnroe or Taff, the landlord at the date of the application.
2. On 16 June 2015, the Private Rented Housing Committee, now the First-tier Tribunal for Scotland (Housing and Property Chamber), and hereinafter referred to as "the Tribunal", issued a determination that Mrs Taff had failed to comply with the duty imposed on her 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 Section 13(1)(c) and

Section 13(1)(d) of the Act and on the same date, issued a Repairing Standard Enforcement Order (RSEO) as follows:-

"The Landlord must on or before 24 July 2015:-

- 1. (a) Instruct a full inspection of the boiler and hot water installation by a suitably qualified gas engineer and (b) complete the resultant repairs or replacement, if necessary, to ensure that there is domestic hot water throughout the Property and ensuring that there is an even, effective flow of water through heating radiators;*
- 2. (a) Instruct an inspection by a suitably qualified electrician of both (i) the electrical installation in the Property and (ii) the adequacy of provision of fire and smoke detection in the Property and (b) carry out such works as are found necessary as a result of the inspection and*
- 3. (a) Instruct an inspection by a suitably qualified roofing contractor of the lead cover flashing at the front porch of the Property and (b) carry out such works as are found necessary as a result of the inspection."*

Re-Inspections

3. Following Re-inspections of the Property, the Tribunal varied the RSEO and further varied the RSEO and allowed further time, until 30 April 2017, for the works required by the RSEO to be carried out.
4. On 27 April 2017, the Landlord contacted the Tribunal by email in the following terms:
"i the owner of this property bought it outright to live in it, we have no intentions of renting it out in near future however i don't want this to effect the sale of the property in future in case we do intend to sell at later date. When we moved into this property we straightaway had to get the boiler replaced with British gas as we had an infant with us. i spoke to the caseworker and asked what other repairs are meant necessary for this order to be removed and he advised boiler, electric work/fire & smoke detector and red cover flashing at the front porch. i would like to request variation on the order if possible please as this is a family property and we don't require Fire and smoke detector in it. We are happy to let the surveyor in on 4 May and inspect the property as it is and advice us of any work that is mandatory to get this court order removed"
5. Accordingly, a Re-inspection was fixed for 4 May 2017. However, the Ordinary Member of the Tribunal was unable to gain access on that date and so could not determine if the works required by the RSEO as varied had, in fact, been carried out.
6. A further Re-inspection was fixed for 30 May 2017 on which date the Ordinary Member of the Tribunal gained access to the Property. The Landlord was not present at the Re-inspection. However, the Landlord's husband was present. At the Re-inspection, the Ordinary Member found that, although a new boiler appears to have been installed and some repair work has been carried out to the flashing at the front porch, the full extent of the works required by the RSEO as varied and as further varied had not been carried out. The Landlord's husband advised the Ordinary Member that although an electrician had been employed to carry out work in the kitchen, full electrical testing had not been undertaken and no EICR had been obtained. The Landlord's husband advised the Ordinary Member that he would re-instruct the electrician.

Matter for determination by the Tribunal.

7. Having been satisfied that the works required by the RSEO as varied and as further varied had not been carried out fully, the matter before the Tribunal was how to proceed further.

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

8. 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 facts that the Landlord had carried out some of the works required by the RSEO, her husband had advised the Ordinary Member at the Re-inspection on 30 May 2017 that he intended to re-instruct an electrician and that the Property appeared not to be subject to a current tenancy and took the view that, at this stage in the process, a finding of failure to comply was not appropriate.

9. 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."

10. The Tribunal had regard to Section 25(1)(b) first and gave careful consideration to whether it should revoke the RSEO. The Tribunal took account of the fact that the Landlord appeared to be residing in the Property and the Property appeared not to be subject to a current tenancy. The Tribunal had regard to that part of the Landlord's email of 27 April 2017 which states *"we have no intentions of renting it out in near future"*. The Tribunal, from its own professional knowledge, is aware that there are many privately rented properties of a similar type to the Property in the locality in which the Property is situated and so there is a private rental market for properties of this type. Accordingly, the Tribunal could not discount the fact the Property might be returned to the rental market. The Tribunal also gave weight to the fact that the Landlord had purchased the Property with the RSEO in place and, from her correspondence with the Tribunal, appeared to be aware of the effect of the RSEO. The Tribunal had regard to the RSEO at item 2, *"(a) Instruct an inspection by a suitably qualified electrician of both (i) the electrical installation in the Property and (ii) the adequacy of provision of fire and smoke detection in the Property and (b) carry out such works as are found necessary as a result of the inspection."*, which deals with health and safety. The Tribunal held the view that, although the Property is not tenanted at present, the likelihood of a future tenancy could not be disregarded and that safeguarding the occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.

11. With regard to Section 25(1)(a), the Tribunal again gave consideration to the facts of the case as narrated in paragraph 8, and, in particular, gave weight to the fact that some of the works had been carried out, that the Landlord's husband had stated that he intended to re-instruct the electrician and that the Property appeared not to be subject to a current tenancy. Accordingly, the Tribunal took the view it was appropriate to vary the RSEO to extend further the time allowed for the works required by the RSEO to be carried out. The Tribunal considered that a further 6 months is an appropriate extension of time. The Tribunal noted the Landlord's request in her email of 27 April 2017 that "*i would like to request variation on the order if possible please as this is a family property and we don't require Fire and smoke detector in it*". For the health and safety reasons set out in paragraph 10, the Tribunal declined to vary the content of the RSEO.
12. The decision of the Tribunal is unanimous.
13. 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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Signed

Karen Moore, Chairperson

Date 26 July 2017