

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Notice of a Decision to Vary: Housing (Scotland) Act 2006, Section 25

Chamber Ref: FTS/HPC/RP/17/0093

Sasine Description: ALL and WHOLE the northmost flatted dwellinghouse on the ground floor of the tenement forming Number Twenty Five Court Street North, Dundee described in Disposition by The City of Dundee District Council dated 29 December 1993 and recorded GRS (Angus) 21 January 1994.

**Property at 25A Court Street, Dundee, DD3 7NR
("The Property")**

The Parties:-

**MS RHONA MINTO, 25A Court Street, Dundee, DD3 7NR
(represented by Mr Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX)
("the Tenant")**

**MRS RACASNA SARWAR OR RASHID, 15 Duff Street, Dundee, DD4 7AN
(represented by Muir Myles Laverty, Solicitors, Meadowplace Building, Bell Street, Dundee, DD1 1EJ)
("the Landlord")**

The First-tier Tribunal for Scotland (Housing and Property Chamber ("the tribunal")) having determined on 31 October 2017 that the **Repairing Standard Enforcement Order** relative to the Property served on 4 July 2017 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 respect:-

The period allowed for the completion of the work required by the order is extended for a period 4 weeks.

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

A/

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the tribunal on a point of law only within 30 days of the date the decision was sent to them.

In witness whereof these presents type written on this and the preceding page(s) are executed by Miss Gillian Buchanan, Solicitor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, Legal Member and Chairperson of the tribunal at Dundee on 7 November 2017 before this witness:-

J Lynch

_____ witness

G Buchanan

Chairperson

JENNI LYNCH

name in full

% THORNTONS LAW LLP

WHITEHALL HOUSE

Address

33 YEAMAN SHORE

DUNDEE

DD1 4BJ

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006, Section 25

Chamber Ref: FTS/HPC/RP/17/0093

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("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 Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that the Landlord should be given an extension of 4 weeks to the period allowed for completion of the works required all in terms of Section 25(1) of the Housing (Scotland) Act 2006 ("the Act").

Background

1. Reference is made to the determination of the tribunal dated 29 June 2017 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that he had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - (i) To engage a reputable heating engineer to investigate whether the central heating and hot water systems in the Property, including the boiler and radiators, operate correctly and to carry out any works recommended by that heating engineer to ensure that the central heating and hot water systems, including the boiler and radiators, are in a reasonable state of repair and in proper working order and safe to use, and without prejudice to the foregoing

generality, the tribunal requires the Landlord to have the heating engineer prepare a report on any faults found and to exhibit this report to the tribunal.

- (ii) To repair or replace the gas fire in the living room.
- (iii) To repair or replace the toilet in the bathroom to ensure that the base is secured properly to the floor and is otherwise in a reasonable state of repair and in proper working order.
- (iv) To repair or replace the dilapidated base cupboard units in the kitchen situated to the left of the sink and the base drawer unit to ensure that they are in a reasonable state of repair and in proper working order.
- (v) To repair or replace the cooker hood to ensure that it is in a reasonable state of repair and in proper working order.
- (vi) To box in the exposed pipes beneath the boiler in the kitchen.
- (vi) To repair or replace the exterior letter box plate and the internal handle plate of the front door to ensure that they are in a reasonable state of repair and in proper working order.
- (vii) To repair or replace the livingroom and rear bedroom doors to ensure that they open and close correctly and are in a reasonable state of repair and in proper working order.
- (viii) To install a carbon monoxide detector to comply with the requirements of the relevant legislation.
- (ix) To produce a new Gas Safety Certificate confirming that all relevant gas installations, including the living room fire, are in proper working order, safe to use and comply with the relevant regulations. The Landlord is to exhibit such Gas Safety Certificate to the tribunal.

The RSEO gave the Landlord 10 weeks to carry out the works.

2. By email dated 6 July 2017 the Tenant submitted representations to the tribunal regarding her availability for works to be undertaken.
3. By e mails dated 13 and 16 July 2017 the Tenant submitted further representations to the tribunal regarding communications with and making allegations regarding the conduct of the Landlord's father.
4. By letter dated 31 August 2017 and sent by email dated 1 September 2017, Mr Peter Kinghorn of Dundee North Law Centre made representations to the tribunal regarding the garden fence.

5. On 18 September 2017, the tribunal received written representations from the Landlord to the effect that the works required by the RSEO had been completed.
6. On 20 September 2017 the Ordinary (Surveyor) Member of the tribunal, Mrs Geraldine Wooley, re-inspected the Property on behalf of the tribunal. The Tenant was neither present nor represented. The Landlord was neither present nor represented.

The Ordinary (Surveyor) Member could not obtain access into the Property. It appeared to the Ordinary (Surveyor) Member that some work had been carried out since the original inspection and issuing of the RSEO, namely that the exterior letter box plate had been repaired.

The Ordinary (Surveyor) Member could not establish the extent of any other works carried out internally.

7. By email dated 20 September 2017 and timed at 15.54 the Tenant made representations to the tribunal regarding access to re-inspect the Property, and issues with the windows, fence and radiators.
8. By email dated 29 September 2017 the Tenant made further written representations to the tribunal regarding issues with the windows, boiler and radiators, kitchen, bathroom, fence and rear bedroom door.
9. The tribunal, comprising Miss Gillian Buchanan, Legal Member and Chairperson and Mrs Geraldine Wooley, Ordinary (Surveyor) Member, inspected the Property on the morning of 31 October 2017. The Tenant was neither present nor represented. The Landlord was present. Access to the property was given by Mr Kris Boyle, a friend of the Tenant, who resides at 60 Court Street, Dundee, DD3 7NR. Photographs were taken and are attached. At the inspection the Landlord handed to the tribunal a report from Stephen Maddison, Dundee Gas Services, 21 Sutherland Crescent, Dundee, DD2 2HP dated 29 October 2017. Mr Boyle, on behalf of the Tenant, submitted to the tribunal that the radiator in the lounge does not heat properly.
10. On the day of the inspection it was dry and sunny.
11. Following the inspection of the Property the tribunal held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee, DD3 0AX and heard from the Landlord who was present and represented by her father, Mr Mohammed Sarwar. The Tenant was neither present nor represented.

12. The Landlord submitted as follows:-

- (a) That the report produced from Dundee Gas Services and dated 29 October 2017 confirmed the boiler and radiators operate correctly.
- (b) That whilst the gas fire in the lounge had been removed, if the tribunal considered it necessary for a fire to be re-instated this would be done.

(c) That a current Gas Safety Certificate was in existence and was with her solicitor, Mr John Muir of Muir, Myles Laverty and that arrangements would be made for a copy of the Certificate to be forwarded to the tribunal following the hearing.

(d) That there were difficulties gaining access to the Property due to the conduct of the Tenant.

13. The tribunal considered how to proceed in light of the Landlord's representations and submissions. The re-inspection revealed:

(i) That the gas fire in the lounge had been removed and the space in the fireplace where the fire used to sit had been boarded over.

(ii) That the toilet had been repaired and was now in a reasonable state of repair and in proper working order.

(iii) That the base cupboard and base drawer units in the kitchen had been repaired and were now in a reasonable state of repair and in proper working order.

(iv) That the cooker hood had been repaired and was now in a reasonable state of repair and in proper working order.

(v) That the exposed pipes in the kitchen had been boxed in.

(vi) That the exterior letter box plate and the internal handle plate of the front door had been repaired or replaced and were now in a reasonable state of repair and in proper working order.

(vii) That the living room and rear bedroom doors had been replaced and were now in a reasonable state of repair and in proper working order.

(viii) That a carbon monoxide detector had been installed in the kitchen in compliance with the relevant legislation.

14. The tribunal was also satisfied that the Landlord had obtained and produced to the tribunal a report from a reputable heating engineer who had investigated whether the central heating and hot water systems in the Property operated correctly and who confirmed that the systems are in a reasonable state of repair and in proper working order, all as required by the RSEO.

Decision

15. The tribunal considered that:-

(i) The removal of the gas fire in the lounge did not conform to the terms of the RSEO which required that the gas fire be repaired or replaced, the gas fire being a fixture within the Property as leased to the Tenant.

- (ii) Whilst a new Gas Safety Certificate had not yet been produced to the tribunal such a Certificate could not be obtained by the Landlord to the tribunal's satisfaction until the gas fire in the lounge had been repaired or replaced as required by the RSEO.
- (iii) In light of substantial works have being done in compliance with the RSEO and taking into account the Landlord's commitment to complete the required works, it was appropriate to give an extension to allow the Landlord to undertake the outstanding works required by the RSEO. The tribunal was of the view that an additional period of 4 weeks would be sufficient. The tribunal expects the required works to be completed within that period.

16. The decision of the tribunal was unanimous.

Observations

- 17. That with regard to the installation of the carbon monoxide detector on the upper part of the door frame of the kitchen, whilst strictly the detector had been installed in compliance with the relevant legislation, it would be preferable if it was affixed to the wall just above the door frame.
- 18. The Tenant is required to co-operate with the Landlord and tradesmen appointed by the Landlord to give reasonable access to the Property for outstanding works required in terms of the RSEO to be carried out during regular working hours. The Tenant is also required to ensure access to the Property is available to allow the Ordinary (Surveyor) Member of the tribunal to carry out a further inspection on expiry of the additional period of 4 weeks allowed for the outstanding works to be completed.

Right of Appeal

- 19. **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 tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**
- 20. **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,

G Buchanan

Date 7 November 2017

Chairperson & Legal Member

These are the photographs referred to in the foregoing 02/11/2017
decision of 7 November 2017

G Buchanan

7/11/17



Housing and Property Chamber
First-tier Tribunal for Scotland



25a Court St DD3 7NR

Inspection and Hearing 31 October 2017

1) Kitchen



1a) Drawers as at 22/06/17



1b) Drawers as at 31/10/17

1)Kitchen



1c) Cupboard doors
As at 22/06/17



1d) Cupboard doors as at 31/01/17



1e)Kitchen cooker hood
as at 22/06/17



1f)Kitchen cooker hood as at 31/10/17 –
in working order



1g) Kitchen: exposed pipes to base of boiler as at 22/06/17



1h) As at 31/10/17 – pipes boxed in

2) Internal doors



2a) Sitting room door as at 22/06/17 – door does not fit frame



2b) Sitting room door as at 31/10/17 – new door correctly fitted to frame

2) Internal doors



2c) Spare bedroom door as at 22/06/17 – door detached from hinges



2d) Spare bedroom door as at 31/10/17 – door correctly fitted to frame



2e) Spare bedroom door hinges refitted.

3) Gas fire



3a) As at 22/06/17 – disconnected



3b) As at 31/10/17 – fire removed and fireplace boarded up

4) Carbon monoxide alarm



4a) As at 22/06/17 –
Standing loose on fridge
so does not meet regulations



4b) As at 31/10/17 – fixed to door lintel –
just within regulations

8) Toilet



8a) As at 22/10/17 –
not secured to floor



8b) As at 31/10/17 – more securely fixed

9) Front door



9a) Internal door handle
as at 31/10/17



9b & c) New door handle and lock fitted



9) Front door



9c) Letter box as at 22/06/17



9d) As at 31/10/17 – new letterbox fitted.



DGS

Dundee Gas Services



Boiler Replacement • Servicing and Repairs • Powerflushing and Filters • Radiator Upgrades

29 October 2017

To whom it may concern,

RE: 25A Court Street, Dundee, GCH investigation

We were recently requested by Mrs Rashid to conduct an inspection of the boiler and radiators at the above property on Thursday, 26th October 2017 to determine that they were operating correctly and if necessary, to detail in a report, any faults that in our opinion needed rectifying to meet that criteria.

On our arrival, the boiler was switched on by selecting the heating mode. After a short time, the radiators were inspected to ensure that they were heating up as expected. The tenant highlighted her concerns regarding the cold spot at the bottom of the living room radiator but we reassured her that this was perfectly normally as the system reached working temperature (the radiator in the back bedroom took longest to heat up as it is a large radiator and is fed by 8mm microbore pipe). After a further period, it was noted that the CH system had reached temperature and all radiators were operating at a high temperature.

In our opinion, the central heating system, including the boiler and radiators, are in a reasonable state of repair and working properly.

In addition,

- A carbon monoxide detector is affixed in the kitchen, adjacent to the gas appliances
- The property has a valid Landlord Gas Safety certificate.

Yours faithfully,

Stephen Maddison
Partner

Dundee Gas Services
21 Sutherland Crescent, Dundee DD2 2HP

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