

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision under section 25(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/2716

**Property at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ
("The Property")**

The Parties:-

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

Mr Ryan Anderson, residing at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ ("the former Tenant")

Mr David Barn, Barn Properties, Melville House, Monimail, Cupar, KY15 7RJ ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Robert Buchan - Ordinary Member

Background

1. By application dated 15th October 2018 the Third Party Applicant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act. On 2 July 2019 the Tribunal made a Repairing Standard Enforcement Order requiring the Landlord to carry out the following works:-
 - (a) Investigate the source of damp in the bedroom and carry out any remedial works required to ensure the property is wind and watertight;
 - (b) Investigate the issue with the erratic shower temperature and repair or replace the unit to ensure it is in proper working order;
 - (c) Repair the living room window to ensure it can open and close and is wind and watertight; and
 - (d) Carry out any internal decoration required after the works at (a) to (c).

The Tribunal gave the Landlord a period of one month to complete the works.

2. On 5 December 2019 the Tribunal varied the RSEO to (i) require the Landlord to include the living room in the investigations into damp within the property and (ii) to extend the period of time for carrying out the works by a period of eight weeks.
3. A re-inspection was arranged for 14th February 2020. On 13th February 2020 the Landlord's Agent contacted the Tribunal to request a postponement due to further work being required to the roof. The Tribunal agreed the request and a further re-inspection was assigned for 6th March 2020.
4. On 2 March 2020 the Landlord contacted the Tribunal to request a further postponement of the re-inspection due to difficulties in repairing roof slates in inclement weather and to allow time for the property to dry out. The Tribunal duly agreed the request. At the same time the Tribunal agreed to vary the RSEO to allow a further six weeks for the work to be completed, having been satisfied that the Landlord was making reasonable efforts to address the outstanding issues. The Tribunal further noted that the property was currently unoccupied and that whilst the Repairing Standard Enforcement Order remained in place the Landlord would not be in a position to relet the property, it being a criminal offence to do so. Accordingly the Tribunal could see no prejudice to any party in allowing the Landlord a further period of time to complete the works and eradicate the damp from the property. Reference is made to the decision of the Tribunal dated 5 March 2020 in this regard.
5. Under normal circumstances, the Tribunal would have arranged for the Ordinary Member to carry out a re-inspection to assist in the decision by the Tribunal on compliance of a Landlord with a Repairing Standard Enforcement Order over the Property. However this was not possible, due to the continuing effects of the COVID-19 pandemic and the prohibition on property inspections. In the circumstances, a Case Management Discussion (CMD) was arranged, in order to discuss further procedure in the case and to ascertain if an inspection was required or if other evidence was available or could be agreed.

The Case Management Discussion

6. The Case Management Discussion took place on 19 January 2021. Mr Stuart Cuthill appeared on behalf of the Third Party Applicant. Mr Mark Whatley appeared on behalf of the Landlord.
7. Mr Cuthill advised that the Council's position remained the same. An inspection was required in order to confirm if the necessary works had been carried out. The property was still lying vacant. Mr Cuthill noted that inspections were not currently permitted due to the Covid-19 restrictions therefore he was supportive of a postponement to such time as inspections can resume.
8. Mr Whatley advised that the necessary works previously identified had been carried out to the roof back in March 2020 to repair missing slates. This should have resolved the damp issues at the property. However he did point out that the property has been lying empty for approximately ten months without heating. He

suspected there may therefore be a level of damp readings as a result. That was to be expected in an older style property. Mr Whatley explained that he had not been in the property for some months now. In response to questions from the Tribunal he advised that it would have been impractical for him to attend the property to turn the heating on in order to dry it out and he would have had safety concerns. He understood that some redecoration had been carried out following the roof works but couldn't recall exactly what had been done. He agreed that an inspection by the Tribunal would confirm whether the property was now wind and watertight.

9. Having considered the parties submissions the Tribunal concluded that it would require a further inspection of the property in order to satisfy itself that the RSEO had been complied with. The Tribunal had concerns regarding the level of damp that was previously evident in the property and could not be assured by Mr Whatley's account that the works undertaken by the landlord had resolved this. In their submissions both parties appeared to have no objection to such a course of action. In the circumstances, and given the Tribunal's statutory role, it decided that it was necessary to arrange a further re-inspection, at the earliest time at which that is possible, in order for the Tribunal to decide whether the RSEO had been complied with. In the meantime, the Tribunal made no further order.

The Reinspection

10. A reinspection took place on 23 July 2021 with both Tribunal members present. The property was vacant and the weather was dry following a generally dry spell of weather. Mr Whatley was in attendance on behalf of the Landlord. The Third Party Applicant was not present nor represented.
11. The Tribunal concluded from the reinspection that the dampness had not been eradicated. Mr Whatley advised that a slater had re-inspected the roof and had carried out work. However, although the original damp stain close to the front wall appeared to be drying out, there was significant dampness apparent on the ceiling and back wall. Although not part of the original application it was also noted that dampness was evident on the gable wall of the living room.
12. The reinspection report was issued to parties for comment. No responses were received.

Decision

13. The Tribunal determined to vary the Repairing Standard Enforcement Order dated 2 July 2019 to extend the period for carrying out the works by eight weeks from the date of this decision.

Reasons for Decision

14. In reaching its decision the Tribunal took into account the findings of the reinspection together with the representations from the parties at the Case Management Discussion and in recent correspondence. The Tribunal determined

that it did not require to fix a Hearing in order to reach a decision on the matter as there was no dispute between the parties as to the substantive facts before it.

15. The Tribunal was satisfied that efforts were being made by the Landlord to address the issues with dampness identified. It was clear that further investigation as to the source of the damp would be required in order to identify what further works were needed. The Tribunal was prepared to give the Landlord more time in order to undertake his work, taking cognisance of the fact that the property remained unoccupied and could not be relet whilst the RSEO remained in place. Accordingly the Tribunal determined to extend the period for completion of the works by a further eight weeks.

16. The decision of the Tribunal was unanimous.

A landlord, tenant or third party applicant 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.

Signed

Ruth O'Hare
Legal Member

29 September 2021