

Housing and Property Chamber

First-tier Tribunal for Scotland



Notice of a Decision to Vary a Repairing Standard Enforcement Order

Ordered by the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Chamber Ref: FTS/HPC/RP/17/0004

Title no/Sasines Description: FFE68141

5 Cherrybank, Dunfermline, Fife KY12 7RG ("the Property")

The Parties:-

Mr Kristian Dela Cour, formerly residing at 5 Cherrybank, Dunfermline, Fife KY12 7RG ("the Tenant")

Mr John Jenkins, 23 Fodbank View, Dunfermline KY11 4UA and 158 Halbeath Road, Dunfermline KY11 4LB ("the Landlord")

Your Move, 31A North Bridge Street, Bathgate, West Lothian, EH48 4PJ ("Agent for the Landlord")

Repairing Standard Enforcement Order against:

Mr John Jenkins, 23 Fodbank View, Dunfermline KY11 4UA and 158 Halbeath Road, Dunfermline KY11 4LB ("the Landlord")

The Tribunal having determined on 20 July 2017 that the Repairing Standard Enforcement Order relative the Property dated 13 March 2017 should be varied, the Tribunal hereby varies the Repairing Standard Enforcement Order to the effect that the period allowed for completion of the works required by the Repairing Standard Enforcement Order is extended until 31 August 2017.

Rights 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.

In witness, whereof these presents type written on this and the preceding page are executed by Susan Christie, solicitor, chairperson of the Tribunal at Glasgow on 20 July 2017 before this witness: -

S Christie

witness

Legal Member

George Harvey Christie name in full

5 Albert Drive, Glasgow, G73 3RT Address

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/17/0004

Title no/Sasines Description: FFE68141

5 Cherrybank, Dunfermline, KY12 7RG ("The Property")

The Parties:-

Mr Kristian Dela Cour, formerly residing at 5 Cherrybank, Dunfermline, Fife KY12 7RG ("the Tenant")

Mr John Jenkins, 23 Fodbank View, Dunfermline KY11 4UA and 158 Halbeath Road, Dunfermline KY11 4LB ("the Landlord")

Your Move, 31A North Bridge Street, Bathgate, West Lothian, EH48 4PJ ("Agent for the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprised: -

Susan Christie - Legal/Chairing Member

David Godfrey - Ordinary Member

Background

1. The Tribunal issued a Decision on 13 March 2017 requiring the Landlord to comply with the Repairing Standard Enforcement Order (RSEO) relative to the Property, issued by the Tribunal on 13 March 2013.
2. The RSEO required the Landlord to instruct a suitably qualified and reputable contractor to repair or replace the shower situated in the upper Shower Room of the property so as to ensure adequate temperature and pressure are consistently maintained during ordinary use and ensure the shower is in a

reasonable state of repair and in proper working order; and in the event that the works carried out include replacement of the central heating boiler in the property, the Landlord shall in addition exhibit to the Tribunal an unqualified Gas Safety Certificate.

The Tribunal ordered that the works specified in this Order must be carried out and completed within the period of six weeks from the date of service of the RSEO.

3. On 19 May 2017, the Surveyor member re-inspected the Property. He found that:

The works in Repairing Standard Enforcement Order which had been completed since original inspection were: the shower situated in the upper Shower Room of the Property had been repaired. The shower was operated and was found to provide adequate temperature and pressure and functions properly and safely and the shower is in a reasonable state of repair and in proper working order; the central heating boiler had been replaced. The kitchen cooker had also been replaced.

The work in Repairing Standard Enforcement Order which was outstanding following re-inspection was: an unqualified Gas Safety Certificate had not been provided, however a Gas Safe Register – Building Regulations Compliance Certificate submitted by Sean Brown Plumbing and Heating dated 1/5/17 was provided. A copy of the re-inspection Report is attached to this decision.

4. The re-inspection Report was issued to the Parties on 30 May 2017. The Landlord provided a written response on 2 June 2017. He agreed with the findings of the re-inspection Report and did not wish a hearing. He indicated the tenancy over the Property had terminated.
5. The Tribunal considered the documentation and considered that the Landlord might have mistaken the Gas Safe installation certificate as an unqualified Gas Safety Certificate. He was issued with a letter in clarification of what was required by the Tribunal on 16 June 2017 and afforded 7 days to reply.
6. On 21 June 2017, the Landlord responded by him sending into the Tribunal office a Domestic/Landlord Gas Safety Record dated 16 March 2017. This Certificate referred to the installation address as 158 Halbeath Road, Dunfermline, Fife, KY114LB, not the Property.
7. On 3 July 2017, a further letter was issued by the Tribunal to the Landlord advising him that the Certificate provided related to another address and not the Property address and the Landlord was provided with a further opportunity to respond.
8. On 4 July 2017, the Landlord provided a Gas Safety Certificate for the Property. However, the certificate provided dated 3 March 2017 showed that the external flue to the Glow-worm Space saver boiler required to be secured and that a Belling cooker within the Property was not safe to use. This

certificate related to the old boiler and cooker within the Property. The Landlord, by letter to the Tribunal of that date, requested an extension of time to allow him to comply with the only outstanding part of the RSEO, namely the production of an unqualified Gas Safety Certificate for the Property. He stated his plumber was now on annual leave and he had left a message for him to contact the Landlord on his return to provide the correct certificate for onward transmission to the Tribunal.

Decision

9. Having considered the request and having regard to the work already carried out in part implementation of the RSEO by the Landlord, the Tribunal considers that in all the circumstances it is reasonable to vary the RSEO to allow a further period as requested by the Landlord to allow him to produce an unqualified Gas Safety Certificate for the Property. The Tribunal accordingly varies the RSEO to extend the period for completion of the works for the Property for a further period of six weeks until 31 August 2017.
10. The decision of the tribunal was unanimous.
11. The Tribunal notifies the Landlord that if the Certificate is not provided by that date, it is likely to determine that the Landlord has failed to comply with the RSEO.
12. If the Tribunal determines that there has been such a failure to comply, it must serve notice of that failure on the local authority. In terms of section 28(1) and 28(7) of the Housing (Scotland) Act 2006, 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.

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.

Signed

Date 20 July 2017

Legal Member Susan Christie

Housing and Property Chamber

First-tier Tribunal for Scotland



RE-INSPECTION REPORT



Property: 5 CHERRYBANK, DUNFERMLINE, FIFE KY12 7RG

Ref no: FTS/HPC/RP/17/0004

Surveyor: David Godfrey

Inspection: The property was inspected at 1.00 pm Friday 19th May 2017.

Access: Mr John Jenkins (Landlord) was present and provided access to the property.

Mr Kristian Dela Cour (Tenant) no longer resides in the property and was neither present nor represented.

Repairing Standard Enforcement Order:

the tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the property 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: -

(a) To instruct a suitably qualified and reputable contractor to replace or repair the shower situated in the upper Shower Room of the property so as to ensure adequate temperature and pressure are consistently maintained during ordinary use and that the shower functions properly and safely; and in the event that the works carried out

include replacement of the central heating boiler in the property, the Landlord shall in addition exhibit to the Tribunal an unqualified Gas Safety Certificate.

*The tribunal order that the works specified in this Order must be carried out and completed within the period of **six weeks** from the date of service of this Notice.*

General Remarks:

The property was initially inspected at 10.00 am Wednesday 8th March 2017 by Susan Christie and David Godfrey.

Works in Repairing Standard Enforcement Order completed since original inspection:

1. The shower situated in the upper Shower Room of the property has been repaired. The shower was operated and was found to provide adequate temperature and pressure and functions properly and safely
2. The central heating boiler has been replaced.
3. The Kitchen cooker has been replaced.

Works in Repairing Standard Enforcement Order outstanding following re-inspection:

1. An unqualified Gas Safety Certificate has not been provided however a Gas Safe Register – Building Regulations Compliance Certificate submitted by Sean Brown Plumbing and Heating dated 1/5/17 was provided..

Photographs

1. Shower fitting
2. Central heating boiler
3. Gas safety certificate
4. Kitchen cooker



Shower Fitting



Central Heating Boiler

