

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Variation of Repairing Standard Order 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

The First-tier Tribunal for Scotland (Housing and Property Chamber ("the Tribunal") having determined on 3 February 2022 that the Repairing Standard Enforcement Order relative to the house made on 2 July 2019 should be varied, the said Repairing Standard Enforcement Order is hereby varied as follows:-

- (i) To extend the period of time for carrying out the works by a period of six months.

Section 25(3) applies in this case.

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.

R O'Hare

Ruth O'Hare
Legal Member

3 February 2022

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. Reference is made to the decision of the Tribunal dated 2 July 2019 and subsequent variations. The current period for completing the works expired on 18 November 2021.

The Reinspection

3. A reinspection took place on 11th January 2022 with both Tribunal members present. The property was vacant and the weather was dry following a generally wintry spell of weather. Mr Drape was in attendance on behalf of the Landlord and a representative was present on behalf of the Landlord's agent. The Third Party Applicant was not present nor represented.
4. The Tribunal concluded from the reinspection that the dampness had not been eradicated. Although works had been carried out and the gable wall of the bedroom appeared dry, dampness was still evident on the back wall of the bedroom with an obvious stain and confirmed by damp meter readings. Although not part of the order, dampness continued to be evident on the gable wall of the living room.
5. The reinspection report was issued to parties for comment. On 18 January 2022, the Tribunal received an email from the Landlord which highlighted the repairs that had been done, expressed frustration at the ongoing tribunal process and outlined the stress that had been caused to him as a result. He indicated that he now intended on selling the property given the toll it had taken on him and his health.

Decision

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

Reasons for Decision

7. In reaching its decision the Tribunal has taken into account the findings of the reinspection together with the recent correspondence from the Landlord. 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.
8. The Tribunal remains of the view that efforts have indeed been made by the Landlord to address the issues with dampness identified and the Tribunal does have some sympathy that these efforts have not yet resolved the issue. It is clear that there is still a damp problem which requires further investigation, and the roof in particular may require to be examined again. The Tribunal notes the Landlord's frustrations with the process, however ultimately the works required by the RSEO remain necessary and the Tribunal cannot contemplate the discharge of the order

until such time as it is satisfied that the property is wind and watertight, and suitable for occupation.

9. The Tribunal is however cognisant of the Landlord's intention to sell the property. Accordingly, the Tribunal has considered it appropriate to vary the order again to allow an extended period of time for the Landlord to carry out further works, or proceed with a sale of the property. Accordingly the Tribunal has determined to extend the period for completion of the works by a further six months.
10. In the meantime the Landlord should provide any updates on the sale of the property to the Tribunal, and, in the event that a purchaser is found, provide the necessary contact details to enable the Tribunal to correspond with the new owner regarding the RSEO.
11. 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

3 February 2022