

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Variation of Repairing Standard Enforcement Order ("RSEO") under section 25(1) of the Housing (Scotland) Act 2006 ("the 2006 Act")

Chamber Ref: FTS/HPC/RP/17/0084

Subjects being the top floor flat at 21 Court Street, Dundee, DD3 7QS registered under title number ANG10143

The Parties:-

Lynne Findlay, formerly residing at Top Floor, 21D Court Street, Dundee, DD3 7QS ("the former Tenant")

Samantha Whittington, formerly known as Samantha Hall, residing at Strathearn, Findon Road, Findon, Worthing, West Sussex, BN14 0RD ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	—	Legal Member
Mr Nick Allan	—	Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined on 16 November 2018 that the RSEO relative to the property dated 14 June 2017 should be varied, the said RSEO is therefore varied with effect from the date of service of this Notice in the following respects:-

The period allowed for the completion of the work required by the order is extended by a further four weeks from the date of service of this Notice.

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 date on which the appeal is abandoned or determined.

Please note that in terms of section 28(1) of the Act, 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 a 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.

R O'Hare

✓ Ruth O'Hare
Legal Member

16 November 2018

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)(a) of the Housing (Scotland) Act 2006 ("the 2006 Act")

Chamber Ref: FTS/HPC/RP/17/0084

Title no: Subjects being the top floor flat at 21 Court Street, Dundee, DD3 7QS registered under title number ANG10143

Property at Top Floor, 21D Court Street, Dundee, DD3 7QS ("The House")

The Parties:-

Lynne Findlay, residing at Top Floor, 21D Court Street, Dundee, DD3 7QS ("the former Tenant")

Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX ("the Tenant's Agent")

Samantha Whittington, formerly known as Samantha Hall residing at Strathearn, Findon Road, Findon, Worthing, West Sussex, BN14 0RD ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Nick Allan	-	Ordinary Member

Background

1. Reference is made to the determination of the Tribunal dated 14 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 she had failed to ensure the Property met the Repairing Standard. The works required by the RSEO were:-
 - (a) Instruct an independent chartered building surveyor to undertake a full survey report of the house to identify where possible the causes of water ingress and damp and carry out the works recommended in the report to ensure the house is watertight;
 - (b) Make good any internal decoration following completion of the works required at (a); and

- (c) Where the works required at (a) cannot be completed for any reason, provide evidence of reasonable steps taken to carry out the works;

The Tribunal required the works be completed within a period of three months from the date of service of the order.

2. Reference is further made to the decision of the Tribunal dated 13th February 2018 which determined to vary the RSEO to extend the period for the works by a period of six weeks to give the Landlord a further opportunity to undertake the survey report requested by the Tribunal.
3. On 25th February 2018 the Landlord emailed the Tribunal to advise that she was in the process of progressing an action to recover possession of the property and would have more confidence of gaining access to undertake the survey required by the RSEO once the former Tenant had vacated. The Tribunal responded and advised that the Tenant's departure from the property would not negate the need to instruct the report as required by the RSEO and therefore the Tribunal would expect a report from a chartered surveyor as required by the RSEO. The Tribunal further highlighted that a home report would not be sufficient to comply with the requirements of the RSEO.
4. On 27 March 2018 the Landlord emailed the Tribunal to advise of difficulties in gaining access to the property as a result of the former Tenant's failure to cooperate. The Landlord requested more time to carry out the survey after the former Tenant had left the property. The Landlord further requested the Tribunal's assistance in gaining access to the property. The Tribunal responded to advise that compliance with the order was separate from any ongoing repossession proceedings and whilst there was an appreciation that this may hinder the Landlord's efforts to gain access, nevertheless the Tribunal would expect reasonable efforts to be made to undertake the survey report. The Tribunal further advised the Landlord that he may be able to make a separate application to the Tribunal for assistance in gaining access and recommended he seek independent legal advice in this regard. The Tribunal also contacted the former Tenant's Representative to remind her of the duty to allow the Landlord access in order to carry out the survey report.
5. On 3rd April 2018 the Tribunal received email correspondence from the former Tenant. In summary the Tenant advised that the survey report had not been carried out and she was willing to allow access Monday to Friday after 3pm and Saturday up until 12pm. On 2 May 2018, the Tribunal received a letter from the Tenant's Representative reiterating that the works required by the RSEO had not been completed.
6. Having considered the written representations from both the Landlord and the former Tenant the Tribunal determined to hold a further hearing in the matter. The hearing was scheduled for 13th July 2018 at Dundee Carers Centre, Dundee.
7. On 20th June 2018 the Tribunal received email correspondence from the Landlord to advise that the survey report had been scheduled for 15th June

2018 at 3pm in accordance with the timescales proposed by the former Tenant however she had failed to allow access. The Landlord advised that they were unable to comply with the RSEO due to the former Tenant's actions.

8. On 22 June 2018 the Landlord contacted the Tribunal to request attendance at the hearing by way of a conference call. The Tribunal advised that the hearing venue did not have adequate facilities to accommodate the request however the Landlord would be able to submit written representations for the Tribunal to consider at the hearing.
9. On 5th July 2018 the former Tenant emailed the Tribunal to advise that she had vacated the property. On the basis that neither party would be in attendance at the hearing, the Tribunal determined to cancel the hearing scheduled for 13th July 2018 and to proceed on the basis of written submissions. On 12th July 2018 the Tribunal received further written submissions from the Landlord which detailed a history of attempts to contact the former Tenant in order to carry out the works. On 24th July 2018 the Landlord submitted photographs detailing the condition of the property following the former Tenant's departure.
10. On 6th September 2018, the Tribunal wrote to the Landlord seeking clarification as to whether the report as required by the RSEO had been carried out following the Tenant's departure and also whether the property was being marketed for sale. The Landlord responded to advise that an estate agent had been instructed to market the property and reiterated that the survey report had been instructed in June however the Tenant had failed to allow access. The Landlord also pointed out that the Tenant had caused significant damage to the property and was in rent arrears when she vacated the property.
11. On 12 November 2018 the Landlord contacted the Tribunal to advise that the property was due to be sold to a development company and they required the RSEO to be discharged. The Landlord further provided a copy of a home report for the property.
12. Having regard to the extensive written representations from the parties the Tribunal was satisfied that it had sufficient information to make a determination without the requirement for a further hearing.

Decision

13. The Tribunal having made such enquiries as it saw fit for the purpose of determining whether the Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that the RSEO should be varied so as to give the Landlord a further four weeks to complete the works required all in terms of Section 25(1) of the Housing (Scotland) Act 2006.

Reasons for the decision

14. The Tribunal determined the application having regard to the findings of the re-inspection and the written representations from the Landlord and the Tenant.
15. For the avoidance of doubt, the Tribunal accepts that the Landlord has made efforts to undertake the report required by the RSEO. The Tribunal accepts that the Landlord has faced difficulties throughout this process in ensuring compliance by virtue of the breakdown in the relationship between the parties and the animosity which ensued as a result.
16. Whilst the Landlord has suggested that the original claims by the Tenant were malicious, the Tribunal would point out that on both occasions upon its own inspection of the property excessive damp readings were found within. The Tribunal is bound by the provisions of the Housing (Scotland) Act 2006 and where it finds that there is a breach of the Repairing Standard, it must make a Repairing Standard Enforcement Order. Furthermore, it cannot discharge said order until it is satisfied that the necessary works have been undertaken to ensure the property meets the standard.
17. In this case the Tribunal cannot satisfy itself that the property complies with the Repairing Standard until the report as required by the RSEO is produced and considered, namely a full survey report from a Chartered Building Surveyor
18. The Tribunal is aware that the Landlord hopes to sell the property and is seeking the discharge of the RSEO in order to facilitate the sale. However the Tribunal cannot discharge the RSEO on that basis.
19. The Tribunal has therefore determined to vary the RSEO to allow the Landlord a final opportunity to undertake the survey report required by the RSEO. Whilst the Landlord has produced a home report for the property, the Tribunal has been clear in the past that given the defects found in the property a home report would not be sufficient and that a full survey by a Chartered Building Surveyor, as opposed to a survey for valuation purposes is required. The Tribunal remains of the view that the full survey report is necessary in order to identify the probable cause of the water ingress and provide the necessary assurances as to what works may be required to give the Tribunal confidence that the cause of the water ingress can be properly identified and resolved. Given the nature of the issues found by the Tribunal the survey should include the roof space and investigate the sources of dampness below the surface in the mirrored lounge press and former kitchen press which were previously recorded by the Tribunal and noted in previous re-inspection reports.
20. The Tribunal therefore considered that it would be reasonable to vary the RSEO under section 25(1)(a) to extend the period for the works by a further four weeks.

21. The Tribunal would request in the event that the property is sold that contact details for the new owner are provided to the Tribunal timeously.

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Signed

R O'Hare

Ruth O'Hare
Legal Member

16 November 2018