

Housing and Property Chamber

First-tier Tribunal for Scotland



VARIATION OF REPAIRING STANDARD ENFORCEMENT ORDER

Chamber Reference number: FTC/HPC/RP/17/0543

Parties: Elspeth Adair ("the Landlord") residing at 35, Parklands Oval, Glasgow, G53 7SZ per her agent, Ross Sales and Lettings, 116, Elderslie Street, Glasgow G13 7AW ("the Landlords' Agents")

Property: 40, Langton Road, Pollok, Glasgow G53 5DD registered in the Land Register of Scotland under Title Number GLA86822 ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Nick Allan (Ordinary Member)

Notice to Landlord

Elspeth Adair residing at 35, Parklands Oval, Glasgow, G53 7SZ per her agent, Ross Sales and Lettings, 116, Elderslie Street, Glasgow G13 7AW

Whereas in terms of its decision dated 16 October 2018, the First-tier Tribunal for Scotland determined that the Repairing Standard Enforcement Order imposed by it on 11 April 2018 be varied, now varies the Repairing Standard Enforcement Order as follows:

The time limit for compliance with the said Repairing Standard Enforcement Order is amended to **15 January 2019**.

In Witness Whereof these presents are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 16 October 2018 before this witness, Norman William Moore, solicitor, 1A, South Muirhead Road, Cumbernauld G67 1AX.

N W Moore

Witness

K Moore

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under Section 22(1A) of the Housing (Scotland) Act 2006 ("the Act")

Chamber Reference number: FTC/HPC/RP/17/0543

Parties: Elspeth Adair ("the Landlord") residing at 35 Parklands Oval, Glasgow, G53 7SZ per her agent, Ross Sales and Lettings, 116 Elderslie Street, Glasgow G13 7AW ("the Landlords' Agents")

Property: 40, Langton Road, Pollok, Glasgow G53 5DD registered in the Land Register of Scotland under Title Number GLA86822

Tribunal Members

Karen Moore (Chairperson)

Nick Allan (Ordinary Member)

This Decision should be read in conjunction with Statement of Decision and Repairing Standard Enforcement Order ("the RSEO") both dated 11 April 2018.

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that it cannot be satisfied that the Landlord has complied with the RSEO and so determines not to revoke the RSEO but to vary the RSEO to allow further time for completion of the works.

Background

1. By application received on 27 November 2017 ("the Application"), Gordon Barr formerly residing at 40, Langton Road, Pollok, Glasgow, G53 5DD as the tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property did not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b) and 13(1) (d) of the Act. The Application was referred to the Tribunal, and an Inspection and Hearing were held on 6 March 2018 following which the Tribunal determined that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act and imposed the RSEO as follows:-

"The Landlord must on or before 25 May 2018: -

1. *Instruct a Chartered Building Surveyor to carry out a full inspection of the Property to provide a fully documented report ("the Report") on the roof of the Property including the chimneys and chimney heads, the ridges, skews, flashings, gutters and the supporting beams and sub-structure the purpose of which is to identify the source, or sources, of the water ingress to the Property and to recommend works to the roof, including replacement if necessary, to*

ensure that the roof is made wind and watertight and the roughcasting and external parts of the Property including the down pipes the purpose of which is to recommend works to the roughcasting and external parts of the Property including replacement if necessary, to ensure that the Property is made wind and watertight and in a reasonable state of repair;

- 2. Submit the said Report to the tribunal and, at the same time, provide a copy to the Tenant;*
 - 3. Instruct a roofing contractor capable of providing a 30-year guarantee to carry out the works recommended by the Report in respect of the roof and confirm in writing to the tribunal and the Tenant the identity of the roofing contractor, the date on which the works will commence and the estimated date for their completion;*
 - 4. Instruct a Scottish Building Federation registered building contractor capable of providing a 10- year guarantee repair to carry out the works recommended by the Report in respect of the roughcasting and external parts and confirm in writing to the tribunal and the Tenant the identity of the building contractor, the date on which the works will commence and the estimated date for their completion;*
 - 5. Instruct a SELECT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that, given the extent of dampness in the Property, the electrical installation in the Property is safe and fit for purpose, and to prepare an electrical installation condition report ("EICR")(ii) to repair or renew any parts which require to be renewed or repaired to ensure the installation is fully functioning and meets current regulatory standards and submit a copy of the EICR to the tribunal and the Tenant;*
 - 6. Repair or renew the lock on the door at the top of the internal stairway to ensure that it is fully operative and*
 - 7. Make good any décor damaged as a result of these works."*
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2. Thereafter, the Tenant wrote to the Tribunal advising that he and his family had vacated the Property.
 3. On 25 May 2018, the Landlord wrote to the Tribunal by email to explain her progress in complying with the RSEO and submitted Electrical Installation Condition Report (EICR) dated 2 February 2016 and two reports by Graham + Sibbald, surveyors, namely Building Survey Report and Internal Inspection Report both dated 11 May 2018, ("the Reports") in part compliance with the RSEO. At the same time, the Landlord advised the Tribunal that the Reports had been intimated to Your Place, the property factor who manages the building of which the Property forms part, presumably for the property factor to arrange repair works relating to the roof, the roof forming part of the common property of the said building.
 4. The Landlord emailed the Tribunal on 7 June 2018 advising that the Property is "clean and dry". Therefore, the Tribunal arranged a Re-inspection of the Property.

First Re-inspection

5. The Ordinary Member of the Tribunal carried out a re-Inspection of the Property on 28 June 2018 which was attended by the Landlord and found that although some works required by the RSEO had been carried out at the Property, the Property remained affected by dampness. The Re-Inspection Report was issued to the Landlord who did not respond.
6. The Tribunal took the view that, as some works had been carried out and as the RSEO applied to works which might be works to common property, it should again re-inspect the Property and hold a Hearing to afford the Landlord an opportunity to address the Tribunal in respect of her compliance with the RSEO. Therefore, a further Re-Inspection and Hearing were fixed for 3 October 2018 at 10.00 a.m. and 11.30 a.m., respectively, proceeded.

Second Re- Inspection

7. The second Re-inspection took place on 3 October 2018 at 10.00 a.m. at the Property. Neither the Landlord nor any representative of the Landlord's Agents was present at the Inspection and the Tribunal were unable to gain access to the Property.

Hearing

8. Following the Inspection, a Hearing was held at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT on the same day at 11.30 a.m. Neither the Landlord nor any representative of the Landlord's Agents was present at the Hearing.
9. Subsequent to the Hearing, the Tribunal received an email from the Landlord dated 3 October 2018 stating that she had attended at the Property late for the Re-inspection and advising that she is in contact with the property factors of the building of which the Property forms part and that work for common repairs is being tendered. The Landlord submitted a letter from the property factor to this effect. The Landlord, in her correspondence to the Tribunal and at the first Re-inspection, indicated that she is in poor health.

Summary of the Issues

10. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or make a finding of failure to comply with the RSEO.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

11. As the Tribunal had not been able to carry out an inspection of the Property on 3 October 2018, and, notwithstanding the Landlord's email of 3 October 2018, as the Landlord had failed to attend or be represented at the Hearing, the Tribunal could not be been satisfied that the works required by the RSEO had been carried out in full. Therefore, the matter before the Tribunal was how to proceed further.
12. The Tribunal had regard to Section 26 of the Act which states: "*It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.*". The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO and having regard to the Landlord's health and the fact that the Property is not occupied by a tenant at present, considered that a finding of this nature was not appropriate at this stage.

13. The Tribunal then had regard to Section 25 (1) of the Act which states:- *"(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it."*
14. The Tribunal had regard to Section 25(1)(b) of the Act and gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the nature of the works required by the RSEO and the condition of the Property at the original and first Re-Inspection. All of the elements of the RSEO relate to the condition of the Property in respect of it being fit for human habitation and being in a condition which protects the health and safety of the occupants of the Property, both which are of paramount importance. As the Tribunal could not be satisfied that the Property meets these standards, the Tribunal was not of a mind to revoke the RSEO.
15. The Tribunal then considered Section 25(1)(a) of the Act, and again gave consideration to the nature of the works required by the RSEO and to the fact that the Landlord had evidenced that roof works are being contemplated. The Tribunal is mindful that some of the works required by the RSEO relate to common property. Although in the view of the Tribunal an option open to the Landlord is to carry out these works herself and thereafter recover the cost from her co-proprietors, the Tribunal acknowledges that the Landlord has made progress with the property factors and co-owners and so consider that, in fairness to the Landlord, it ought to allow a further time to comply and took the view that a further three months is a reasonable period. Accordingly, the Tribunal determined to vary the RSEO to allow further time to comply.
16. There being no evidence of a current tenant in the Property, the Tribunal did not require to consider the terms of Section 27 of the Act in respect of a rent relief order.
17. The decision of the Tribunal is unanimous.
18. The Tribunal draws the Landlord's attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence and to Section 28(5) of the Act which states that it is an offence for a landlord to enter into a tenancy or occupancy arrangement in relation to a house which is subject to a repairing standard enforcement order.

Review of tribunal's decision

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 First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Signed K Moore

Karen Moore, Chairperson

Date 16 October 2018