

Housing and Property Chamber
First-tier Tribunal for Scotland



STATEMENT OF DECISION TO ISSUE A NOTICE OF FAILURE UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006.

Chamber Ref: PRHP/RP/16/0258

Title no: GLA44908

The Property: 0/1, 174 Calder Street, Glasgow G42 7QR

The Parties:-

Ms Blaithin O'Connor, formerly residing at the property (applicant and tenant)

Mr Michael George Forsythe and Mrs Laura Elizabeth Forsythe, represented by their agents Grant Property Solutions Limited, 14 Coates Crescent, Edinburgh EH3 7AF (landlords)

THE TRIBUNAL

The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC)):

David M Preston, Legal Member and Mike Links, Ordinary Member

Decision:

The Committee, having made such enquiries as are fit for the purposes of determining whether the landlord had complied with the terms of the Repairing Standard Enforcement Order (hereinafter referred to as the "RSEO") dated 10 October 2016 as varied by Minute of Variation dated 7 February 2017 in terms of section 26(1) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") determined: that the landlord had failed to carry out the works specified in the RSEO; and that a Notice of Failure should be sent to the Local Authority in terms of section 26(2)(a) of the Act;

Background:

1. Reference is made to: the Statement of Decision of the Committee dated 10 October which decided that the landlord had failed to comply with the duty imposed by section 4(1)(b) of the Act; and the RSEO issued by the Committee on that date which required the landlord to carry out the works specified therein. In accordance with the Variation of RSEO, the said works were to be carried out and completed within 3 months from the date of service of the Minute of Variation which was effected on 10 March 2017.
2. On 12 June 2017, the Ordinary (Surveyor) Member of the tribunal carried out a re-inspection of the property and produced a report thereon of the same date, a copy of which is annexed hereto and referred to for its terms. A copy of the re-inspection report was sent to the landlord for comment.
3. By email dated 15 June 2017 the landlord advised that he was in hospital and having difficulty sorting things out. He sought advice and assistance from the tribunal as to what could be done for him and advising that he had informed: the City Council; the factoring agent; and the local councillor. Information was provided to the tribunal to the effect that the dampness problem in the bedroom is coming from the flat above and the way the occupant behaves.
4. The tribunal told the landlord in response that it was unable to provide advice but suggested that it might look favourably on a request for an extension of time within which the problem might be resolved and he would be able to obtain legal advice about his situation and the options available to him.
5. By email dated 22 June, the landlord responded to the tribunal but no request for a variation was made.

Reasons for Decision:

6. In the tribunal's view there are further steps open to the landlord to attempt to resolve the situation with his upstairs neighbour to prevent further ingress of water to the bedroom of his flat. Without resolution of that problem, the tribunal considers that the property continues to fail to meet the repairing standard and that it is the obligation of the tribunal to ensure so far as it can that such property should not be available for rent in the private housing sector.
7. The tribunal considered whether it might revoke the RSEO under section 25 of the Act; however it concluded that this was not possible as it considers that the work required by the RSEO remains necessary.
8. The tribunal also considered whether the landlord was unable to comply with the

order because of a lack of necessary rights (of access or otherwise) in terms of section 26(3) of the Act; however it has concluded that there are steps open to the landlord to acquire the rights to prevent his upstairs neighbour in behaving in a way which causes direct damage to the property.

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.

D Preston

Chairman

17 July 2017

Oban, 17 July 2017

This is the re-inspection report
referred to in the foregoing
Statement of Decision.

Housing and Property Chamber First-tier Tribunal for Scotland



D Preston Chairman

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

RE-INSPECTION REPORT



PROPERTY: Flat 0/1, 174 Calder Street, Glasgow G42 7QR

HPC REF No: RP/16/0258

SURVEYOR: Mike Links

IN ATTENDANCE: Chris Gardiner – (Allen and Harris, Landlords' selling agent)

WEATHER: Dry and overcast.

ACCESS: I re-inspected the property on Monday 12th June 2017 at 10am

GENERAL: This report should be read in conjunction with the re-inspection report dated 6th January 2017.

All photographs in this report were taken on 12th June 2017.

RSEO:

See report dated 6th January 2017.

VARIATION ORDER: The terms of a Variation Order, dated 7th February 2017, are as follows:

1. The period allowed for the completion of the work required by the order is extended for a further 3 months from the date of service of this Notice of Variation.
2. The steps which the tribunal require the landlord to take in complying with the order are amended to the effect of requiring the landlords to lodge with the tribunal a copy of the report from Richardson and Starling referred to in the landlord's response within one month from the date of service of this Notice of Variation.

WORKS IN RSEO UNDERTAKEN:

In addition to the works noted in the report dated 6th January 2017, timber specialist work has been undertaken to the gable wall of the Lounge.





This wall now appears to be free of dampness.



The re-plastered walls in the kitchen and lounge remain to be decorated.



Kitchen

WORKS IN RSEO OUTSTANDING:

Dampness previously reported in the Bedroom still remains.





RECOMMENDATION:

Once the re-inspection report is forwarded to the Landlords for comment the Tribunal will then decide what further action is required.

Mike Links

Ordinary Member (Surveyor)

Housing and Property Chamber

Date: 12th June 2017