

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION of the Housing and Property Chamber under 28 (1) of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/16/0240

47 Juniper Avenue, Edinburgh, EH14 5EE
("The Property")

The Parties:-

Ms Yanqing Lai residing at 47 Juniper Avenue, Edinburgh, EH14 5EE
("the Tenant")

Ms Rehana Hafeez residing at 67 East Craig Wynd, Edinburgh, EH12 8HJ
represented by their agent Ashley Puren c/o Pure Property Management, 141
Gilmore Place, Edinburgh, EH3 9PW
("the Landlord")

Decision

The First-tier Tribunal for Scotland ("the Tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order in respect of the Property made on 14 November 2016, determined that the Landlord had failed to comply with the Order and that the failure to comply should be reported to the local authority and the police.

Background

1. By application dated 08 July 2016 the Tenant applied to the Private Rented Housing Panel (which since 01 December 2016 has become the Housing and Property Chamber of the First Tier Tribunal for Scotland) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the Property meets the repairing standard.
3. By Minute dated 09 August 2016, the convener of the Private Rented Housing Panel referred the application to a Private Rented Housing Committee.

4. The Private Rented Housing Committee inspected the Property on the morning of 01 November 2016. The Committee comprised Graham Harding, Legal Chairman and David Lawrie, Surveyor Member.
5. Following the inspection of the Property, the Private Rented Housing Committee held a Hearing at Edinburgh and heard from the Landlord's representative, Ashley Puren.
6. Following the inspection and Hearing, the Committee issued a Repairing Standard Enforcement Order ("the Order") in respect of the Property.
7. The Order required the Landlord to obtain a damp and timber specialist report from a reputable firm of contractors and carry out such works as may be recommended in said report.
8. The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed by 31 December 2016.
9. The Surveyor Member of the Committee re-inspected the Property on 02 February 2017. The Landlord was present at the re-inspection. The Landlord indicated to the Surveyor Member that she was to be speaking with her solicitor regarding the potential sale of the Property before deciding whether or not to attend to the remedial works. The Property was empty at the time of the re-inspection.
10. A copy of the re-inspection report was sent to the Landlord who was given an opportunity to comment in writing on its contents. The Landlord did not make any written representations on the re-inspection report.
11. The jurisdiction of the Private Rented Housing Panel transferred to the Housing and Property Chamber of the First Tier Tribunal for Scotland on 01 December 2016.
12. As no representation was made by the Landlord, the Tribunal proceeded to make a decision in the Landlord's absence. The Tribunal considered the contents of the re-inspection report and noted that no works had been carried out to the Property following the service of the Repairing Standard Enforcement Order. It was noted that high damp meter readings still existed where previously recorded at the original inspection.

Summary of Issues

13. The issue to be determined was whether the Landlord had complied with the Order.

Findings of Fact

14. The Tribunal finds the following fact to be established:-

- The Landlord has failed to obtain a damp and timber specialist report from a reputable firm of contractors and has failed to carry out such works as may be recommended in said report. The Landlord did not request an oral hearing nor make any written representations to the Tribunal by way of offering a reasonable excuse for having failed to comply with the Order.

Reasons for the Decision

15. The Tribunal finds that the Property still does not meet the repairing standard. The Property is not wind and water tight and in all other respects reasonably fit for human habitation. Although the Property was free from mould and fungal growth having been recently redecorated, the high damp meter readings throughout the property indicate that it was likely that the damp proof course had failed or that there was no damp proof course and that therefore the problems with mould and fungal growth would occur again. There was also indication that there was a possibility of rot in the bathroom given the movement in the floor in that area.

Decision

16. The Tribunal accordingly determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order in respect of the Property and that this failure should be reported to the local authority and to the police. In terms of Section 28 (1) of the Act, a Landlord who, without reasonable excuse, fails to comply with the Repairing Standard Enforcement Order commits an offence.

17. The Tribunal was unable to make a Rent Relief Order in respect of the Property as the Tenant is no longer residing there.

18. The Decision of the Tribunal was unanimous.

Right of Appeal

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.

20. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the

appeal is abandoned or finally determined by upholding the decision, the decision and the Order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G Harding

Signed
Graham Harding, Legal Member

Date... 20/03/2017