

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Failure to Comply with Repairing Standard Enforcement Order: Housing (Scotland)
Act 2006 section 26**

Chamber Ref: PRHP/RP/15/0340

Title no: ANG98827

**Property at 45b Culloden Road, Arbroath, DD11 1LH
("The House")**

The Parties:-

**Linda Brennan, formerly residing at 45b Culloden Road, Arbroath, DD11 1LH ("the
former Tenant")**

and

**Stobsmuir Enterprises Limited, 69 Victoria Street, Dundee, DD4 6EA ("the
Landlord(s)")**

The Tribunal consisted of :-

Ruth O'Hare – Legal Member
David Godfrey – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order ("RSEO") determined that the Landlord had failed to comply with the terms of the RSEO and determined that a notice of the failure be served on the Local Authority in which the property is situated.

Background

1. Reference is made to the determination of the Private Rented Housing Committee ("the Committee") dated 19 April 2016 which concluded that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in that he had failed to ensure that the House met the Repairing Standard. On the same date the Tribunal issued an RSEO in respect of the property. The works required by the RSEO were:-
 - (a) Investigate and repair the source(s) of water penetration to the property and render the property wind and watertight;
 - (b) Carry out such works as are necessary to repair the ceilings in the bedroom and bathroom;

- (c) Install smoke/heat detectors in the House in accordance with the Scottish Government Statutory Guidance currently in force; and
- (d) Carry out all works required to make good decoration in the property following the above works.

The RSEO gave the Landlord three months to carry out the works.

2. Reference is then made to the determination of the Committee dated 1 November 2016 which agreed to vary the terms of the RSEO to give the Landlord additional time to take all reasonable steps to comply with the terms of the order. The decision was based on the Landlord's submission that he had been prevented from complying with the order by the owner of the upstairs property who had refused or delayed in cooperating with the necessary repairs to the roof of the building. The variation gave the Landlord six weeks from the date of the decision to produce satisfactory evidence of his attempts at carrying out the works required by the order.
3. The Landlord subsequently produced to the Committee a letter dated 26th October 2016 which he had sent to John Grimes, Ivy Leaf Homes. The letter requested a meeting to discuss the ongoing problems with the roof at 45B Culloden Road.
4. On 1 December 2016 the Tribunal assumed responsibility for the application.
5. On 20 February 2017 the Tribunal held a hearing at Caledonian House, Dundee. Aileen Taylor ("the Landlord's Representative") attended the hearing on behalf of the Landlord. As a preliminary matter she advised that Dr Mohammed El Bakary would ordinarily represent the Landlord in such hearings but was ill and unable to attend. The Tribunal confirmed that the Landlord was content to proceed with the hearing and for her to enter appearance.
6. The Tribunal heard submissions from the Landlord's Representative. She confirmed that John Grimes was the representative for the owner of the upstairs property. She confirmed that Mr Grimes had responded to the letter of 26th October 2016 and a meeting had taken place shortly after between Mr Grimes and the Landlord to discuss the repairs to the roof. Mr Grimes was in agreement in principle to getting the necessary works done. He had produced a quote for the works however the Landlord did not find it acceptable. Accordingly the Landlord's Representative had sought an estimate for the works from another contractor and hoped to receive this imminently. It was impossible to give any timescale for the works at this time as there was no guarantee that agreement would be reached with Mr Grimes as to a preferred contractor. The condition of the property had deteriorated further due to adverse weather conditions therefore it was in the Landlord's interest to get the works done. The Landlord had not approached a solicitor for advice as had been suggested by the Committee at the previous hearing nor had he approached the Council.

Reasons for decision

7. The Tribunal considered how to proceed in light of the Landlord's written representations and verbal submissions. The Members noted the RSEO had originally been imposed in April 2016. The Landlord had therefore had ten months to make reasonable progress in the completion of the works. In the view of the Tribunal, the Landlord had failed to evidence reasonable attempts at engagement with the neighbouring owner in order to facilitate the required works to the roof. The terms of the correspondence between the Landlord and Mr Grimes did not suffice and fell short of what the Tribunal would consider to be appropriate notice. Whilst there had been submissions from the Landlord's

Representative that some steps had been taken to progress matters by way of seeking an estimate for the works required to the roof, the Landlord had not been able to put anything before the Tribunal to persuade it that a further variation would be justified in view of the significant period of time which had passed since the imposition of the RSEO.

8. The Tribunal was therefore satisfied that nothing had been put before it to persuade Members that satisfactory progress had been made in respect of the works required by the RSEO. There was accordingly no duty on the Tribunal under section 25(3) of the Act to vary the terms of the order further to extend the time limit for carrying out the works. In the absence of any clear assurances from the Landlord or his representative, the Tribunal could not be satisfied that the works required by the RSEO which were significant and of a serious nature would be progressed.
9. The Tribunal therefore determined under section 26(1) of the Act that the Landlord had failed without reasonable excuse to comply with the RSEO. In terms of section 26(2) of the Act the Tribunal was aware that it was therefore obliged to serve notice of the failure on the local authority and resolved to do so.
10. The Tribunal also had to consider under section 26(2) whether to make a Rent Relief Order. In view of the fact that the house was presently unoccupied and there was no tenant residing therein, the Tribunal determined it would not be appropriate to make a Rent Relief Order.
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
Chairperson

7 March 2017