

Housing and Property Chamber First-tier Tribunal for Scotland



VARIATION OF REPAIRING STANDARD ENFORCEMENT ORDER

Chamber Ref: FTS/HPC/RP/21/1085

Re: Property at Flat 15, 3, Lochinvar Drive, Edinburgh EH5 1GJ registered in the Land Register for Scotland under Title Sheet Number MID95091 (“the Property”)

Parties:

Mr Duncan McNeill-McCallum and Mrs Emma McNeill-McCallum both residing at the Property (the Applicants and Tenants)

Mrs Jane Miller (the Respondent and the Landlord) per her representatives Messrs Elliot & Company, WS 8 Charlotte Street, Perth, PH1 5LL

Tribunal Members: Karen Moore (Legal Member) and Andrew Taylor (Ordinary Member)

Notice to Landlord

Mrs Jane Miller per her representatives Messrs Elliot & Company, WS 8 Charlotte Street, Perth, PH1 5LL

Whereas in terms of its decision dated 17 January 2022, the First-tier Tribunal for Scotland determined in terms of Section 25 of the Housing (Scotland) Act 2006 to allow further time to comply with the Repairing Standard Enforcement Order (the RSEO) now varies the RSEO as follows:-

The Landlord must on or before 28 February 2022: -

1. Engage a suitably qualified heating engineer to carry out an inspection of and report (“the Report”) on the operation and effectiveness of the electric heating and hot water supply installation including boiler, all radiators, valves, programmers and thermostats;
2. Follow any recommendations of the Report to ensure that the entire system is fully functioning, safe and in proper working order;
3. On completion of the works provide a copy of the Report and any receipted invoices for the work carried out to the Tribunal and the Applicants and Tenants;

4. Engage a suitably qualified joiner/window specialist to repair or replace the Juliet balcony bedroom door so that it is capable of being properly opened and closed, has intact seals and is wind and watertight;
5. Replace the badly fitting toilet seat in the en-suite shower room and
6. Carry out all making good and decoration associated with the completion of the foregoing works.

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.

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

In Witness Whereof these presents printed on this and the preceding page are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 17 January 2022 before this witness, Norman William Moore, solicitor, Muirfield Business Centre, 1A, South Muirhead Road, Cumbernauld, G67 1 AX

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 terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act
Chamber Ref: FTS/HPC/RP/21/1085**

Re: Property at Flat 15, 3, Lochinvar Drive, Edinburgh EH5 1GJ registered in the Land Register for Scotland under Title Sheet Number MID95091 (“the Property”)

Parties:

Mr Duncan McNeill-McCallum and Mrs Emma McNeill-McCallum both residing at the Property (“the Applicants”)

Mrs Jane Miller (“the Respondent”) per her representatives Messrs Elliot & Company, WS 8 Charlotte Street, Perth, PH1 5LL (“the Respondent’s Representatives”)

Tribunal Members: Karen Moore (Legal Member) and Andrew Taylor (Ordinary Member)

Decision

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 15 September 2021

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 the Landlord has not complied and so determines not to revoke the RSEO and determines to vary the RRO to allow the Landlord further time to comply and that for the reasons set out below.

Background

1. By application received on 7 May 2021 (“the Application”), the Applicants made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination that the Respondent has failed to comply with the duty imposed on her by Section 14(1)(b) of Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (c), 13(1) (d), and 13(1) (h) of the Act.). A Case Management Discussion was held on 6 July 2021 by telephone conference call, an Inspection of the Property was carried out on 8 September 2021 and a Hearing was held on 15 September 2021 by telephone conference call, following all of which the Tribunal determined that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Act and imposed the RSEO:-

“The Landlord must on or before 15 November 2021: -

1. *Engage a suitably qualified heating engineer to carry out an inspection of and report (“the Report”) on the operation and effectiveness of the electric heating and hot water supply installation including boiler, all radiators, valves, programmers and thermostats;*
2. *Follow any recommendations of the Report to ensure that the entire system is fully functioning, safe and in proper working order;*
3. *On completion of the works provide a copy of the Report and any receipted invoices for the work carried out to the Tribunal and the Applicants and Tenants;*
4. *Engage a suitably qualified joiner/window specialist to repair or replace the Juliet balcony bedroom door so that it is capable of being properly opened and closed, has intact seals and is wind and watertight and additionally, to inspect the threshold/sill to the Juliet balcony door and the lounge patio door unit and carry out any works required to make these areas wind and watertight.*
5. *Repair the leak under the en-suite shower room wash hand basin;*
6. *Replace the badly fitting toilet seat in the en-suite shower room and*
7. *Carry out all making good and decoration associated with the completion of the foregoing works.”*

2. The Parties provided the Tribunal with updates on the progress of the works required by the RSEO and a further Inspection of the Property took place on 2 December 2021. The Tribunal took photographs at the Inspection and the Tribunal’s Re-Inspection Report with the photographs was issued to the Parties for comment.

3. The Re-Inspection Report noted the following:-

“Works in RSEO Carried Out

- 1. A suitably qualified heating engineer has carried out an inspection of the heating system and has carried out repairs and replacements of components. Reports have been provided by way of narratives describing works carried out and supported by invoices. Missing from the report is any statement on the effectiveness of the works undertaken on the operation of the system and the effectiveness of the system as a whole.*
- 2. A suitably qualified joiner/window specialist has carried out works at the threshold of the lounge patio door and has inspected/adjusted the bedroom Juliet balcony door and threshold. The locking mechanism to this door is not working.*
- 3. The leak under the en-suite shower room wash hand basin has been repaired*
- 4. A temporary repair has been effected to the badly fitting toilet seat in the en-suite shower room.*

Works in RSEO Outstanding

- 1. Commentary, from the heating engineer, on the effectiveness of the overall heating and hot water system and any works required should the report indicate a lack of effectiveness.*
 - 2. Ensure that the bedroom Juliet balcony door is capable of being locked*
 - 3. Replace the toilet seat to the en-suite shower room.”*
4. The Parties both submitted written representations in response to the Re-Inspection Report. The Landlord’s written representations indicated that the outstanding works had been instructed. The Tenants’ written representations indicated that some of the outstanding works had been attempted.

Summary of the Issues

5. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part, if it should vary or revoke the RSEO and if it should impose a Rent Relief Order.

Findings in Fact

6. From the further Inspection on 2 December 2021 and the written representations, the Tribunal found that the RSEO had not been complied with in full.

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

9. The Tribunal's decision is based on all of the information before it whether referred to specifically or not.
10. The Tribunal 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.*”
11. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the terms of the RSEO which deal with condition of the Property. The Tribunal held the view that, although some works have been carried out, a significant part of the RSEO remains outstanding, and so, the Tribunal was not of a mind to revoke the RSEO.
12. With regard to Section 25(1)(a), and whether it should vary the RSEO further, the Tribunal had regard to the Parties' written representations and took the view that in all the circumstances, the Landlord should be allowed further time to comply with the RSEO in full. Accordingly, the Tribunal varied the RSEO.
13. The Tribunal then had regard to Section 27 of the Act which permits the Tribunal the discretion to impose a Rent Relief Order (RRO) if it makes a finding of failure to comply with an RSEO. As the Tribunal did not make a finding of failure to comply with the RSEO, the Tribunal was not required to consider making an RRO.
14. The decision is unanimous.

Appeal

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.

Effect of Section 63

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.

K Moore

Signed

Karen Moore, Chairperson

Date 17 January 2022