

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 26 (“the Act”)

Chamber Ref: FTS/HPC/RP/17/0098

Title no/Sasines Description: GLA180950

Flat 0/1, 341 Glasgow Harbour Terraces, Glasgow G11 6BH

(“the House”)

The Parties: -

Mr Robert Kilpatrick, 16 Torrance Avenue, East Kilbride G75 0RN

(“the Landlord”)

And

Mr Mark Dowdall, formerly of Flat 0/1, 341 Glasgow Harbour Terraces, Glasgow G11 6BH

(“the former Tenant”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) comprised: -

Susan Christie - Legal/Chairing Member

Andrew McFarlane- Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“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 (“RSEO”) dated 29 May 2017, in terms of Section 26(1) of the Act and taking account of all of the available evidence, determines that the Landlord has failed to comply with the RSEO. The Tribunal determined that a Notice of that failure should be served on the local authority in whose area the House is situated in terms of Section 26(2)(a) of the Act. The decision of the Tribunal is unanimous.

Background

1. By Application received on 13 March 2017 the former Tenant applied to the Housing and Property Chamber under section 22(1) of the Housing (Scotland) Act 2006 for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1) (b) of the Act. An Inspection and Hearing took place on 24 May 2017 following which the Tribunal determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Act, as the Landlord had failed to ensure that the House met the repairing standard in terms of Section 13(1) (c) and (d) of the Act and then imposed a Repairing Standard Enforcement Order ("RSEO ").Reference is made to the Decision of the Tribunal and RSEO both dated 29 May 2017 which were issued to the Parties on 9 June 2017.
2. The former Tenant quit the House around 24 May 2017.
3. The RSEO required the Landlord to undertake works as were necessary for the purposes of ensuring that the House concerned met the repairing standard and that any damage caused by the carrying out of work in terms of the said Order was made good.
4. In particular, the Tribunal required the Landlord to: -
 - a) To repair or replace the integral dishwasher so that it is in a reasonable state of repair and in proper working order,
 - b) To repair or replace the radiators in the lounge area of the open plan main living area so that they are in a reasonable state of repair and in proper working order,
 - c) To repair or replace the pipework in the kitchen cupboard which services a washing machine so that it is in a reasonable state of repair and in proper working order,
 - d) To repair or replace the intruder alarm so that it is in a reasonable state of repair and in proper working order,The Tribunal ordered that the works specified in the Order be carried out and completed within 6 weeks from the date of service of the Notice. That period has expired.

Re-Inspection and Reasons for Decision

4. The House was Re-Inspected on 28 March 2018 at 10am during a period of dull overcast weather with light rain.
5. The Re-Inspection was conducted by Andrew McFarlane Ordinary Member and attended by Mr Robert Kilpatrick the Landlord.
6. The Re-Inspection revealed: -
 - (a) The integral dishwasher has not been repaired or replaced. This was confirmed by the Landlord.

- (b) The heating system in the lounge area of the main open plan living area appeared to be operational and in a reasonable state of repair as far as could be established by visual inspection. The Landlord indicated that he would provide confirmation of this from the tradesperson involved.
 - (c) A washing machine has been installed in the kitchen cupboard which ordinarily services a washing machine. This could not be tested but the Landlord confirmed he had been using it during his occupation without incident and there were no contrary signs.
 - (d) The intruder alarm is not active. The Landlord indicated he has chosen not to activate given his personal circumstances.
7. A copy of the Re-Inspection Report including photographs that were taken during the Re-Inspection is attached to this decision and signed as relative hereto. A copy of the Re-Inspection Report was issued to the Parties on 12 April 2018 with responses required by 26 April 2018.
 8. The Re-Inspection revealed that work required under parts (a) and (d) had not been carried out in implementation of the Order. There was no evidence or documentation produced at the Re-Inspection by the Landlord to show that any rectification works had been carried out in implementation of parts (b) and (c) of the Order. The works specified in the Order had therefore not been completed in line with the requirements of the RSEO. No response or documentation was submitted by the Landlord thereafter to evidence any rectification works had been carried out nor has the Landlord made any other written representation or application to the Tribunal.
 9. The period within which the RSEO required the work to be completed ended and despite the Landlord suggesting that he had documentation to produce that would partly satisfy the terms of the RSEO, it was never in fact submitted. This is despite there having been ample time to do so to date and him having been issued with correspondence providing him with the opportunity to do so. In addition, no further information was submitted by him for consideration by the Tribunal which would justify affording the Landlord further time and opportunity to comply fully with the RSEO or indeed any other type of application to the Tribunal. Accordingly, the Tribunal determined that a failure to comply was appropriate. The Tribunal determined that Notice of that failure be served upon the local authority in whose area the House is situated.
 10. The Tribunal proceeded to serve a Notice on the local authority.
 11. 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 RSEO commits an offence.

Finding in fact

12. The Landlord has failed to comply with the RSEO of 29 May 2017.

Right of 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.

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 _____

Date 8 July 2018

Susan Christie, Legal Member

Housing and Property Chamber First-tier Tribunal for Scotland



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

Re-inspection Report

Chamber Ref: FTS/HPC/RP/17/0098

Property: Flat 0/1 341 Glasgow Harbour Terraces Glasgow G11 6BH



photograph 24 may 2017

The Property was re-inspected on 28 March 2018 at 10.00 during a period of dull overcast weather with light rain. The Property was occupied by the landlord at the time of the re-inspection.

The re-inspection was conducted by Andrew McFarlane Ordinary Member and attended by Mr Robert Kilpatrick the landlord.

Glasgow, 8th July 2018
This is the Re-Inspection Report, including photographs referred to
in the Decision of even date hereof in respect of Chamber
Reference FTS/HPC/RP/17/0098 and comprises 3 pages.

A Repairing Standard Enforcement Order was previously issued requiring the landlord :-

- a) To repair or replace the integral dishwasher so that it is in a reasonable state of repair and in proper working order,
- b) To repair or replace the radiators in the lounge area of the open plan main living area so that they are in a reasonable state of repair and in proper working order,
- c) To repair or replace the pipework in the kitchen cupboard which services a washing machine so that it is in a reasonable state of repair and in proper working order,
- d) To repair or replace the intruder alarm so that it is in a reasonable state of repair and in proper working order

A period of 6 weeks was given to complete the works. This expired on 21 July 2017.

As a result of the re-inspection the following was found:-

- a) The integral dishwasher has not been repaired or replaced. This was confirmed by the landlord.
- b) The heating system in the lounge area of the main open plan living area appeared to be operational and in a reasonable state of repair as far as could be established by visual inspection. The landlord indicated that he would provide confirmation of this from the tradesperson involved.
- c) A washing machine has been installed as illustrated in the attached photograph. This could not be tested but the landlord confirmed he had been using it during his occupation without incident and there were no contrary signs.
- d) The intruder alarm is not active. The landlord indicated he has chosen not to activate given his personal circumstances.

This report comprises this page, the preceding page and two photographs.

Andrew McFarlane FRICS
Ordinary Member
28 March 2018



1. Pipework for washing machine 24 May 2017



2. Washing machine installed 28 March 2018