

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Variation of Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 Section 25

Chamber Ref: PRHP/RP/16/0264

Title No GLA159323

**114a Terregles Avenue, Pollokshields, Glasgow, G41 4LJ
("The House")**

The Parties:-

**Mr. Martyn Clark and Mrs. Mary McDonough-Clark
("the Tenants")**

**Mr. Alexander Greaves and Mrs. Anne Leslie, care of Greaves Sports Limited,
23 Gordon Street, Glasgow, G1 3PW
("the Landlords")**

Represented by their agent:-

Parker Property, 49 Manse Road, Bearsden, Glasgow, G61 3PN

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having determined on 9 January 2017 that the Repairing Standard Enforcement Order ("RSEO") relative to the property dated 16 October 2016 should be varied, the said RSEO is hereby varied with effect from the date of service of this Notice in the following respects:-

1. The period allowed for completion of the work required by the RSEO is extended until 28 February 2017.

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

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.

In witness whereof these presents type written on this and the preceding page are executed by Patricia Anne Pryce, Solicitor, Chairperson of the tribunal at Glasgow on 10 January 2017 before this witness:-

_____ witness

JANE HANE name in full

1 ATLANTIC QUAY Address

GLASGOW,

P Pryce

chairperson

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 25(1)(a)

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Represented by their agent:-

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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 Repairing Standard Enforcement Order ("RSEO") relative to the property should be varied in terms of Section 25(1)(a) of the Housing (Scotland) Act 2006 ("the Act") agreed that the RSEO should be varied.

The Tribunal comprised:-

Mrs. Patricia Anne Pryce - Chairing Member

Ms. Lorraine Charles - Ordinary Member

Background

1. By application comprising all documents received between 8 August and 29 August, both 2016, from the Tenants, the Tenants applied to the Private

Rented Housing Panel for a determination as to whether the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Act.

2. The application stated that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard. The Tenants stated that the Landlords had failed to ensure that:-
 - (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
 - (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - (iii) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
 - (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - (v) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

The Tenants brought forward the following breaches:-

That the carbon monoxide detectors were only supplied in April 2016 and questioned the adequacy of these.

That the gas safety checks were routinely carried out late and adequate notice for these was not given.

That the gas cooker has two burners that are not reliable.

That the gas fire in the lounge is very difficult to turn on.

That the lighting fixtures under the kitchen cabinets are loose and need to be repaired regularly.

That the blinds supplied with the flat cannot be cleaned due to smoke residue from the previous tenant.

That the wall to wall carpets were stained with pet residue from the previous tenant and cannot be cleaned.

That the carpet on the stairs leading to the attic are dangerously worn.

That the carpet in the entryway is threadbare and growing algae/mildew and that water leaks under the front door there as there is no door seal/weather-strip.

That the occasional rugs supplied with the property are unusable.

That the tumble dryer supplied with the property does not work.

That the electricity supply has been of grave concern since 2013 as water drips into the supply where it enters the property.

That the external stairs leading to the front door are in a poor state of repair.

That the garage was unusable for the first two and half years of the tenancy due to a leaking roof.

That there are significant leaks in four rooms within the property due to water ingress which leads to mould and mildew.

That the property is not wind and watertight as when it rains water enters the property through the cupola located in the attic.

That the linoleum floor covering in the kitchen was damaged due to a leaking boiler in 2013 and remains in that state.

That there is mould on the bathroom ceiling, walls and cornice.

That the door leading to the stairs to the attic was broken.

3. By Minute dated 30 August 2016 the Convener of the Private Rented Housing Panel, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.
4. On 13 October 2016, the Private Rented Housing Committee ("the Committee") inspected the house. The Tenants and the Landlords' agents, Parker Property, were present at the inspection. The Landlords were not present but were represented by both Lindsey Raybould and Elisabeth Margaret Parker of Parker Property.
5. Following the inspection, the Committee held a hearing at Wellington House, Wellington Street, Glasgow. The Tenants and Parker Property attended the hearing.
6. Following the hearing, the Committee proceeded to make an RSEO in relation to the house. In terms of the RSEO the Landlords were required:-
 1. To carry out all necessary repairs to ensure that the roof is wind and watertight and in reasonable condition including, but not limited to, all slipped, missing and damaged slates to be replaced and all roof details.
 2. To make good any decoration in all rooms affected by water ingress, whether current or historical water ingress.
 3. To repair the large crack at the top of the external stairs of the property to ensure that the structure and exterior of the house are in a reasonable state of repair and in proper working order.
 4. To repair or replace the light fittings located under the cupboards in the kitchen so that they are in a reasonable state of repair and in proper working order.
 5. To produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment supplied by the Landlord and located within the property.
 6. To replace the carpet in the dining room (presently used by the Tenants as their bedroom) of the property.
 7. To repair or replace the linoleum in the kitchen so that it is capable of being used safely for the purpose for which it was designed.
 8. To replace the carpet located within the entrance vestibule the front door of the property.
7. On 13 October 2016, the Surveyor Member of the Committee re-inspected the property and found that all works required by the RSEO had been completed with the exception of the repair of the wall of the lounge together with re-decoration of same.
8. From the date of the hearing onwards, substantial representations have been received by the Tribunal from both the Tenants and the Landlords' agents, all of which have been considered by the Tribunal in respect of the request for a variation of the RSEO. Specifically, on 30 December 2016, the Landlords' agents wrote to the Tribunal enclosing a Survey Report by Wise Property

Care dated 13 December 2016. The agents requested a variation of the RSEO to allow further time to complete the works required by the RSEO, that is, to carry out the redecoration of the lounge. The agents advised that the dampness from previous water ingress takes time to dry out, especially in winter time. The report by Wise Property Care revealed that plastering would require to be carried out with a platform being erected. The report advised that "...all fixtures, fittings, floorcoverings..." would require to be removed before work could commence. The Tenants' emails in response to the request for a variation of the RSEO have been fully considered by the Tribunal. The Tenants are of the opinion that the issue of damp/water ingress has not been dealt with by the Landlords and that the works still to be carried out could be injurious to their health if they were present in the property. They advise that they have offered to move out of the property to allow those outstanding works to be carried out. The Tenants believe that there is still significant dampness within the property which is a view which is at odds with the re-inspection report of the Ordinary Member and the report by Wise Property Care. The re-inspection report of the Ordinary Member of the Tribunal states that there was evidence of lower moisture readings in the kitchen, lounge and in bedroom two. She states clearly that the moisture readings have dropped, albeit they remained within the red range. This accords with the view of the report provided by Wise Property Care. The Landlords have also produced invoices from contractors confirming the various works which have been completed, including works to the roof of the house.

9. The Tribunal considered the Landlords' request for further time to complete the work. The Tribunal noted that the Landlords have carried out the majority of the works required by the RSEO. The Tribunal notes that the Landlords have made efforts to comply with the RSEO. The Tribunal also notes and acknowledges the frustration experienced by the Tenants who see this as a further delay in the repairs being completed.
10. However, on balance, the Tribunal accordingly took the view that the RSEO should be varied by extending the time limit for completion of the work until 28 February 2017 and proceeded to issue a Variation of the RSEO.

Decision

11. The Tribunal accordingly determined that further time should be allowed for the work to be carried out and that the RSEO should be varied by extending the time for completion of the work until 28 February 2017.
12. The decision of the Tribunal was unanimous.

Right of Appeal

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.

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P Pryce

Signed
Chairing Member

Date 9 January 2017

