

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(1)**

Chamber Ref: PRHP/RP/16/0331

286B London Road, Glasgow, G40 1PT
("The property")

The Parties:-

Miss Jacqueline Hendry, Mr Thomas McPhee, residing together at 286B
London Road, Glasgow, G40 1PT
("the tenants")

Gareth Bruce, Flat 3/2, 10 Wood Street, Dennistoun, Glasgow, G31 3BY
("the landlord")

Tribunal Members:

Adrian Stalker (Chairperson) and Mike Links (Ordinary Member)

Decision

The Committee having considered the representations of the Landlord and Tenants, hereinafter described, determines that it is reasonable, under section 25(1)(a) of the Housing (Scotland) Act 2006, to vary the Repairing Standard Enforcement Order ("RSEO") of 23 January 2017. The RSEO is varied as follows:

The works detailed in the RSEO must be carried out by 30 June 2017.

Reasons for Decision

1. The tribunal made an RSEO in relation to property on 23 January 2017 requiring works as specified in the Order to be completed within six weeks from the date of service of the RSEO.
2. Since the making of the Order, the Landlord has been in email and telephone communication with the tribunal caseworker. The terms of that communication have been related to the members of the tribunal. The landlord has described his difficulties in obtaining access to parts of the building at 286B, in order for the necessary work to be carried out.

3. The property was re-inspected by the ordinary member, Mr Links, on 30 March. On that date, he found that the works required by the RSEO had not been carried out.
4. By letters dated 12 April, the tribunal provided a copy of Mr Links' re-inspection report to both parties. The letter pointed out that under clause (FIFTH) of the Deed of Conditions applicable to the building (which can be accessed through the Land Register title sheet), proprietors are bound to allow access to other proprietors, and their tradesmen, for the purpose of executing repairs. Furthermore, a statutory right of access is set out in section 17 of the Tenements (Scotland) Act 2004. It is a matter for the landlord to seek legal advice as to the enforcement of those rights, which might be done by summary application to the sheriff, under section 6 of the 2004 Act.
5. By email dated 4 May, the tenants notified the tribunal that they had served notice on the landlord of their intention to quit the property on 31 May.
6. By email dated 8 May, the landlord informed the tribunal that: the tenants were moving out of the property on 31 May; he intended carry out repair and maintenance work at the property after regaining possession on that date; after carrying out the work, he intends to market and sell the property. Against that background, the landlord sought a variation of the RSEO, with a view to allowing him to comply with the Order, after regaining possession.
7. The tribunal acknowledges that the process of identifying the exact cause of the problem in this case (being unpleasant smells migrating from other flats in the building to the property, through the extractor fan vent in the bathroom) is not straightforward; nor is the process of obtaining access. Nevertheless, as the landlord appears to accept, it should be possible to fix the problem.
8. Standing the representations now made by the landlord and the tenants, the tribunal has decided to allow a further period (until the end of June 2017) for the work required by the RSEO to be addressed.
9. The decision of the tribunal was unanimous.

Right of Appeal

10. **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.**

11. 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.

A Stalker

Signed

Date 25/5/17

Chairperson