

Housing and Property Chamber First-tier Tribunal for Scotland



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

Notice of Failure to Comply with a Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 ("the 2006 Act")

Chamber Ref: FTS/HPC/RT/23/0027

Title no: ANG22680

Property at 3/2 29A Strathmartine Road, Dundee DD3 7RL ("The Property")

The Parties:-

- **Mr Cameron Cox, 3/2 29A Strathmartine Road, Dundee DD3 7RL ("the Tenant")**
- **Mr Stuart Cuthill, Dundee City Council Private Sector Services Unit, 5 City Square, Dundee DD1 3BA ("the Third Party Applicant")**
- **Mr Sean Lewis, SGL Investment Ltd, Top Floor India Buildings, 86 Bell Street, Dundee DD1 1HN ("the Landlord")**

The Tribunal comprised:-

Ms Gabrielle Miller - Legal Member
Mr Robert Buchan - Ordinary Member (Surveyor)

Decision

1. The Tribunal, having carried out such enquiries as are appropriate, determined that the Landlord has failed to comply with the requirements of the Repairing Standard Enforcement Order ("RSEO") issued by a decision of the Tribunal dated 16th May 2023. It further determined that notice of that failure should be served on the Local Authority in whose area the Property is situated. The Tribunal further determined to make a Rent Relief Order to the extent of a 90% (NINETY PERCENT) reduction of the payable rent charge.

Background

2. On 16th May 2023, the Tribunal issued a determination which stated that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act). On the same date, the Tribunal issued a RSEO in respect of the property. The RSEO made by the Tribunal required the Landlord
 - a. Remove the window which is sitting on the stair and reinstate the top stair window which is currently boarded over so that the window and the stairwell are made safe, in a reasonable state of repair and in proper working order.
 - b. Repair or replace the second floor window so that it and the stairwell are made safe and in a reasonable state of repair and in proper working order
 - c. Provide to the Tribunal an up-to-date Electrical Installation Condition Report by a qualified electrical contractor registered with SELECT or NICEIC or NAPIT dated after the date of this Order. The report must also specifically address the faulty water heating switch.
 - d. Provide to the Tribunal an up-to-date Portable Appliance Test certificate for the electrical appliances provided by the landlord, completed by a suitably competent person.
 - e. Arrange for the necessary repairs required to the access to the roof space, and to the hot water supply system serving the property to be carried out by a suitably qualified person so as to ensure that the installation is safe, in a reasonable state of repair, in proper working order, fit for human habitation and capable of being accessed safely. Details of the person undertaking this work and the detail of the work to be undertaken should be provided to the Tribunal and, following the completion of the works, a satisfactory water quality test certificate confirming that the cold and hot water supplies serving the property are fit for human habitation should be provided to the Tribunal.
 - f. Following completion of the works specified in paragraph numbered e) above, a satisfactory Legionella Risk Assessment prepared by a suitably qualified person should be provided to the Tribunal.
 - g. Arrange for a roofing contractor to inspect the roof and stack above the living-room, to carry out any necessary repairs required so as to ensure that the property is wind and water tight and to provide to the Tribunal a report with a photograph of the inspection and any works undertaken.

- h. Repair or replace the windows so as to ensure that they are in a reasonable state of repair and in proper working order.
 - i. Provide suitable draught-proofing to the front doors so as to ensure that they are wind tight and secure.
 - j. Properly secure the electrical heater in the bedroom.
3. The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within 3 months from the date of service of the RSEO, that is, by 6th October 2023. The RSEO was served on 6th July 2023.
 4. A further inspection of the property was undertaken by the Tribunal on 27th November 2023. It was noted at the inspection that no works in the RSEO had been undertaken and there had been no communication from the Landlord.
 5. The Inspection report was circulated to the Third Party Applicant, Landlord and the Tenant. The report was served upon the Landlord by sheriff officers. There was no response from the Landlord.

Decision

6. The Tribunal takes the view that the Landlord has had ample time to carry out the works. The Tribunal noted that in terms of the application itself, the Third Party had written to the Landlord complaining about the repairs on 22nd October 2022. This was sent to the Landlord by Recorded Delivery. The Tribunal did not consider that a variation or extension was appropriate. The Landlord has failed to engage with the Tribunal in relation to this application and has provided no explanation for his failure to comply with the RSEO. As such, the Tribunal has nothing in front of it which would suggest that any defence may apply and it would appear that the Landlord has simply ignored the RSEO completely.
7. The Tribunal took the view that the works required by the RSEO had been outstanding for more than six months after the RSEO had expired. The Tribunal took the view that these works could have been completed in that period of time.
8. The Tribunal, having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the RSEO in relation to the Property, determined that the Landlord has failed to comply with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that a notice of failure be served on the Local Authority in which the property is situated.

9. In accordance with the relevant provision of Section 26 of the 2006 Act, the Tribunal is required to determine whether a Rent Relief Order should be made. In arriving at its decision, the Tribunal took into account that despite the seriousness of the issues of disrepair, including the safe water supply which is fundamental to the occupation and enjoyment of the House, the Landlord has failed to engage with the Tribunal and has had plenty of time to carry out the required works. It appears to the Tribunal that the Landlord has simply chosen to ignore the RSEO. Accordingly, the Tribunal has decided to make a Rent Relief Order to the extent of 90% (NINETY PERCENT) of the rent payable in terms of the lease agreement between the parties.

10. The decision of the Tribunal is unanimous.

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 type written on this and the preceding pages are executed by Gabrielle Miller, Chair and Legal Member of the Tribunal at Glasgow on 22nd March 2024 in the presence of the undernoted witness: -

G Miller

J Devlin

Witness

_____ Chairperson

Jordan Devlin Name in full

c/o 20 York St Address

GTC, Glasgow

G2 8GT