

Housing and Property Chamber First-tier Tribunal for Scotland



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

RENT RELIEF ORDER: Housing (Scotland) Act 2006 Section 27

Chamber Ref: FTS/HPC/RP/18/0837

**145 Findhorn, Forres, Moray IV36 3YL
("The Property")**

The Parties:-

**Miss Orla Broderick, 145 Findhorn, Forres, Moray IV36 3YL
("the Tenant")**

**Miss Pamela Burnett, 1M Hagen 47, Kleinmachnow, 14532, Germany
(represented by their agent Cockburns, Solicitors, 82 High Street, Elgin IV30
1BL)
("the Landlord")**

NOTICE TO MISS PAMELA BURNETT ("the Landlord")

Whereas in terms of its decision dated 21 May 2019, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Tribunal.

The Tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 75% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the

party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the Tribunal is granted, then the effect of the decision and the Rent Relief Order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

G Harding

Signed  Granam Harding Chairperson

Date 21 May 2019

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) (“the 2006 Act”)

Chamber Ref: FTS/HPC/RP/18/0837

145 Findhorn, Forres, Moray IV36 3YL
 (“The Property”)

The Parties:-

Miss Orla Broderick, 145 Findhorn, Forres, Moray IV36 3YL
 (“the Tenant”)

Miss Pamela Burnett, 1M Hagen 47, Kleinmachnow, 14532, Germany
 (represented by their agent Cockburns, Solicitors, 82 High Street, Elgin
 IV30 1BL)
 (“the Landlord”)

Tribunal Members

Graham Harding (Legal Member)
 Colin Hepburn (Ordinary Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), unanimously determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order (“RSEO”) dated 27 September 2019 and accordingly made a Rent Relief Order under Section 27 of the 2006 Act. The Tribunal further determined that notice of the failure be served on the Local Authority in which the house is situated.

Background

2. Reference is made to the determination of the Tribunal dated 27 September 2019 which determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act in that she had failed to ensure that the property met the repairing standard. The Tribunal therefore imposed a RSEO. The works required by the RSEO were:-
 - (a) to instruct a reputable plumbing and drainage engineer to inspect the waste water drains at the rear of the property and the waste pipes

from the bathroom and kitchen and to carry out such repairs and renewals as may be recommended by said plumbing and drainage engineer;

- (b) to instruct a report from a reputable firm of timber and damp specialists to report on any issues of damp or rot affecting the property and to carry out all recommendations in terms of said report;
- (c) to remove existing plaster and plasterboard from the walls and ceilings in the property, frame where necessary and install insulating material conforming to current building standards and replace with new plaster and or plasterboard and fill and tape and redecorate as necessary;
- (d) to remove all loose tiles from the bathroom and inspect the condition of the plaster and or plasterboard walls behind and repair or renew as necessary and replace or renew the tiles or replace with waterproof wall panels;
- (e) to instruct a HETAS registered engineer to inspect and service the wood burning stoves in the kitchen and living room of the property and carry out any necessary repairs;
- (f) to replace the existing carbon monoxide detectors in the living room and kitchen with new detectors;
- (g) to instruct a suitably qualified electrician to PAT test all electrical appliances supplied by the Landlord in the property and provide a report and to exhibit same to the Tribunal;
- (h) to instruct a suitably qualified electrician to provide an up to date Electrical Installation Condition Report and to exhibit same to the Tribunal;
- (i) to produce and exhibit to the Tribunal the current Gas Safety Certificate; and
- (j) to instruct a domestic energy assessor to produce an Energy Performance Certificate in respect of the property and to exhibit same to the Tribunal.

The Tribunal required the works be completed within a period of 90 days from the date of service of the RSEO.

3. On 23 January 2019 the Ordinary Member carried out a re-inspection of the property. The Tenant was present and allowed access. The Landlord was not present or represented.

4. The findings of the re-inspection are attached as a Schedule to this decision.

The Hearing

5. On 8 May 2019 the Tribunal held a further hearing. Both parties made written representation to the Tribunal in advance of the hearing. The hearing was attended by the Tenant and by Mr David Adams, Solicitor on behalf of the Landlord. Mr Adams advised the Tribunal that the Landlord had intended to be present but had been unable to do so due to suffering from a broken arm and being unable to fly.
6. Mr Adams suggested that three things remained to be done. These were the insulation work, the damp proof work and the HETAS certificate.
7. Mr Adams referred the Tribunal to the bundle of productions lodged in advance of the hearing and pointed out that the contractor chosen by the landlord to do the insulation and damp-proof work was in a position to commence in June. He thought it might take about four months for all the work to be completed.
8. Mr Adams was not sure of the position with regards to the HETAS certificate as it had been left with the contractors, Sticks and Stoves to arrange an inspection with the Tenant he thought on 29 April.
9. In reply to a question from the Tribunal as to why the quote for the required works had not been obtained sooner, Mr Adams thought that some contractors had priced themselves out of the job. He also made reference to difficulties with access. He thought the email trail provided to the Tribunal showed that the Landlord had been trying to progress the repairs.
10. Mr Adams asked the Tribunal to vary the RSEO to extend the time allowed for completion of the work required to September 2019.
11. With regards to rehousing the Tenant whilst the work was being carried out Mr Adams said that there were no proposals on his client's behalf in this regard. He said that his client would have great difficulty in recommending the Tenant to another Landlord. He did not think the work could be done with the Tenant in the property. He did not think there was any obligation on the part of the Landlord to provide alternative temporary accommodation.
12. Mr Adams confirmed that the Tenant had been served with a Notice to Quit that would expire on 1 June 2019.
13. For her part the Tenant explained that she had taken it upon herself to make enquiries with building and insulating firms as to how long it would take to carry out the works required at the property and had

been advised it could all be done in about two days. The Tenant also said that because of her financial circumstances the works could be carried out free of charge. The Tenant confirmed she had not lodged any documentation with the Tribunal confirming that the work could be done in two days but believed such documentation would be available. She did not believe it would take four months to complete.

14. The Tenant went on to speak of there being further water ingress at the porch roof and also in the kitchen and that previous tenants had complained about the property.
15. The Tenant advised the Tribunal that the CO detectors had still not been fixed to the walls and there was new black mould growth in the upstairs bedroom.
16. The Tenant spoke of repairs to the chimney being carried out by Sinclair Taylor workmen who had tried to cap one of the chimneys. The Tenant believed this could have had terrible consequences if they had been allowed to do this and she had then lit a fire.
17. The Tenant spoke of the adverse effect the condition of the property and the subsequent actions of the Landlord following the application to the Tribunal had upon herself and her family. She spoke of the substantial additional cost of keeping the property heated whilst opening windows to ventilate it to try to control the growth of black mould.
18. In response Mr Adams indicated that he would ask Sinclair Taylor to inspect the porch roof and also the kitchen gable.
19. The Tenant asked the Tribunal to make a Rent Relief Order. Mr Adams said that although the Tenant was currently not paying rent, rent was due but the Landlord was not actively pursuing rent arrears.
20. Neither party disputed the findings of the Re-inspection Report.

Reasons for Decision

21. The Tribunal accepted the terms of the re-inspection report. No representations were made on behalf of the Tenant or the Landlord disagreeing with its content.
22. Whilst the Landlord had partly complied with the works required in terms of the RSEO the most significant items had not been addressed despite the passage of some seven months. The Tribunal felt that the Landlord had failed to give the matter the degree of urgency that it clearly required. It may be that the Landlord had hoped that she would have been able to obtain vacant possession of the property as the Tribunal understood that there had been several previous Notices to Quit served on the Tenant but that in itself is in the Tribunal's view not

an excuse for failing to have the works undertaken timeously. The email correspondence submitted by the Landlord's representative whilst disclosing some issues with regards to access to the property again did not in the Tribunal's view indicate that it would not have been possible for the works to have been instructed and indeed completed within, if not the timescale set down in the RSEO, then certainly by the time of the hearing.

23. There has clearly been a breakdown in the Tenant/Landlord relationship that may have been challenging for both parties but that does not excuse the Landlord from fulfilling the requirements of the RSEO. The Tenant is continuing quite lawfully to live in the property and the failure on the part of the Landlord to complete the works required in terms of the RSEO is undoubtedly affecting the amenity of the property and the Tenant's enjoyment of it. She has indicated that she is spending a great deal on heating the house whilst keeping it ventilated to try to control the mould growth. The Tribunal therefore determined that a Rent Relief Order was appropriate and that relief at the rate of 75% reflected the loss of amenity and the additional cost incurred by the Tenant. The Tribunal proceeded to make a Rent Relief Order to that effect.

24. The decision of the Tribunal was unanimous.

Right of Appeal

- 1. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**
- 2. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.**
- 3. Please note that in terms of section 28(1) of the 2006 Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes a landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to**

a house at any time during which a RSEO has effect in relation to the house. This is in terms of section 28(5) of the 2006 Act.

G Harding

Signed. ~~Graham Harding~~ 

Date: 21 May 2019

Chairperson



Re-inspection report

Date of inspection: 23rd January 2019

Reference Number: FTS/HPC/RP/18/0837

Property: 145 Findhorn, Forres, Moray IV36 3YL

Surveyor: Colin F Hepburn

Access: Provided by the tenant, Miss Orla Broderick

In attendance: Miss Orla Broderick. Landlord was not present or represented.

Repairing Standard Enforcement Order (RSEO)

Whereas in terms of their decision dated 27/09/2018 The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) The house is wind and watertight and in all other respects fit for human habitation.
- (b) 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.
- (c) 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.
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed
- (e) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

G Harding

Works required by the RSEO:

The Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord:-

- (a) to instruct a reputable plumbing and drainage engineer to inspect the waste water drains at the rear of the property and the waste pipes from the bathroom and kitchen and to carry out such repairs and renewals as may be recommended by said plumbing and drainage engineer;
- (b) to instruct a report from a reputable firm of timber and damp specialists to report on any issues of damp or rot affecting the property and to carry out all recommendations in terms of said report;
- (c) to remove existing plaster and plasterboard from the walls and ceilings in the property, frame where necessary and install insulating material conforming to current building standards and replace with new plaster and or plasterboard and fill and tape and redecorate as necessary;
- (d) to remove all loose tiles from the bathroom and inspect the condition of the plaster and or plasterboard walls behind and repair or renew as necessary and replace or renew the tiles or replace with waterproof wall panels;
- (e) to instruct a HETAS registered engineer to inspect and service the wood burning stoves in the kitchen and living room of the property and carry out any necessary repairs;
- (f) to replace the existing carbon monoxide detectors in the living room and kitchen with new detectors;
- (g) to instruct a suitably qualified electrician to PAT test all electrical appliances supplied by the Landlord in the property and provide a report and to exhibit same to the Tribunal;
- (h) to instruct a suitably qualified electrician to provide an up to date Electrical Installation Condition Report and to exhibit same to the Tribunal;
- (i) to produce and exhibit to the Tribunal the current Gas Safety Certificate; and

- (j) to instruct a domestic energy assessor to produce an Energy Performance Certificate in respect of the property and to exhibit same to the Tribunal.

Works in the RSEO undertaken:

- a) Drains have been inspected and no works recommended.
- e) Heating stoves have been inspected and some repair works undertaken.
- f) Carbon monoxide detectors have been provided but not fitted to the walls.
- g) PAT testing of electrical appliances has been completed.
- h) Electrical installation condition report obtained.
- i) Gas safety certificate produced.
- j) Energy performance certificate provided.

Outstanding works:

The timber specialists report has been sought and obtained but no repairs yet carried out.

No repairs to plaster or plaster board yet undertaken.

Detailing around the bath has been repaired on a temporary basis pending completion of the works referred to above.

Although the stoves have been inspected the heating engineer has concerns about the general standard of the installation and in particular fire proofing around the stoves.

Copies of PAT test, electrical installation condition report, gas safety certificate and energy performance certificate require to be provided to the committee by the Landlord.

Colin F Hepburn MRICS

Date of report: 10th February 2019