

Housing and Property Chamber First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

Property: 3 Saltire Square, Edinburgh EH5 1PR (“the Property”/ “the house”)

Title No: MID118503

Chamber Reference: FTS/HPC/RP/19/1515

Mrs Ashlee Cotter, 3 Saltire Square, Edinburgh EH5 1PR (“the Tenant”)

Places for People Homes Limited, incorporated under the Industrial and Provident Act 1965 (Registered Number IP19447R) and having their Registered Office at 305 Gray’s Inn Road, London WC1X 8QR, c/o their agents, Touchstone, sometime Stanley House, Clarence Dock, Leeds LS10 1PZ and now 2 Crescent Office Park, Clarks Way, Bath BA2 2AF (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Robert Buchan (Ordinary Member/Surveyor)

Whereas in terms of their decision dated 16 May 2019, 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”), 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 to carry out such repairs or replacement as are necessary to ensure the windows in the Property are in proper working order and are wind and watertight, lockable and capable of being opened and closed.

The Tribunal order that the works required by this Order must be carried out within the period of three months from the date of service of this Order.

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.

Please note that in terms of section 28(1) of the 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 any 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 Act.

IN WITNESS WHEREOF these presents, typewritten on this and the preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 2 August 2019, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

V Clark

..... Legal Member/Chair Witness

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Property: 3 Saltire Square, Edinburgh EH5 1PR (“the Property”/ “the house”)

Chamber Reference: FTS/HPC/RP/19/1515

Mrs Ashlee Cotter, 3 Saltire Square, Edinburgh EH5 1PR (“the Tenant”)

Places for People Homes Limited, incorporated under the Industrial and Provident Act 1965 (Registered Number IP19447R) and having their Registered Office at 305 Gray’s Inn Road, London WC1X 8QR, c/o their agents, Touchstone, sometime Stanley House, Clarence Dock, Leeds LS10 1PZ and now 2 Crescent Office Park, Clarks Way, Bath BA2 2AF (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Robert Buchan (Ordinary Member/Surveyor)

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 duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. By application, received by the Tribunal on 17 May 2019, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Tenant stated that the Landlord had failed to

ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation.

3. In the application and its supporting documentation, the Tenant stated that the windows in the Property were not wind and watertight and that, despite 10 months of communication, they had not been fixed. They did not close or lock properly, and, after three visits, professionals had concluded that they needed to be replaced. The Tenant provided the Tribunal with copies of e-mails between her and the Landlord's agents dated between 29 June 2018 and 12 March 2019 and a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 30 October 2014 and, if not terminated on 29 October 2015, continuing thereafter on a calendar monthly basis.
4. On 19 June 2019, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and Hearing. No further written representations were received from either Party prior to the inspection and Hearing.
5. The Tribunal inspected the Property on the morning of 2 August 2019. The Tenant was present at the inspection. The Landlord was not present or represented at the inspection.
6. The Tribunal comprised George Clark (Legal Member/Chairperson) and Robert Buchan (Ordinary Member/surveyor).
7. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

8. Following the inspection, the Tribunal held a Hearing at George House, 126 George Street, Edinburgh. The Tenant was present. The Landlord was not present or represented at the Hearing.
9. The Tenant told the Tribunal that on 29 June 2018 she had reported to the Landlord's agents, Touchstone, that she had been unable to shut the window and it appeared that the frame had warped in hot weather. Later in the evening, when it was cooler, she had managed to shut it, but she did not want to try and open it again, in case she damaged it further or was unable to then close it again. The Landlord's agents had sent someone out, but when the Tenant asked for a progress report on 23 July 2018, the Landlord's agents had responded by saying they thought the works had been completed. The Tenant had chased up the agents on 12 September 2018 and, on 2 October 2018, told the agents that the contractor had been in touch with her the previous week and had said it sounded like the windows would have to be replaced and that they would be contacting the agents. The Tenant told the Tribunal that the contractors had tried unsuccessfully to open the windows. The agents had said on 10 October

that they were chasing the contractors regarding what to do next. By 5 December 2018, there had been no progress and the Tenant told the agents that she was having to spend a small fortune on heating the Property intimated that she did not think the Property was meeting the repairing standard. The agents responded that they had contacted the contractors, who were waiting for a quote to come back from the window manufacturer. The Tenant did not hear further and later chasing e-mails, copies of which were provided to the Tribunal. were all acknowledged, but there was no action to resolve the problem.

10. On 10 July 2019, the agents told the Tenant that they had instructed CR Smith to complete the job, but on 17 July 2019, CR Smith inspected the Property and told the Tenant that they did not make windows as large as the ones in the Property.
11. In summary, the Tenant said, people had come to the Property, but nothing had actually been done. The Tenant had had to use duct tape to reduce draughts.
12. The Tenant then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of fact

13. The Tribunal makes the following findings of fact:
 - The Property is a maisonette flat on the ground and first floors of a multi-storey block of flats built around 2008.
 - The Tenant is tenant of the Property.
 - The windows are part of a timber framed panel that extends over both floors of the Property, with an entrance door and side panel at ground level and two timber-framed tilt and turn window units on the first floor. At the inspection, although both windows could be tilted, neither of them opened and closed properly and neither of them could be safely opened for cleaning or additional ventilation. There was evidence of staining on the internal walls at ground floor level, indicating past water penetration, but the weather was warm and dry, with no wind, on the date of the inspection.

Reasons for the decision

14. The Tribunal was unable to determine at the inspection whether the windows were wind and watertight, but they were clearly not in working order. The Landlord has been aware of the problem for more than a year but, whilst Touchstone as its agents, have tended to respond to e-mails from the Tenant, the Landlord has failed to resolve the issue. The windows do not meet the repairing standard.

15. The decision of the tribunal was unanimous.

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.

G Clark

Signed..... Legal Member/Chairperson
Date: 2 August 2019

Schedule of Photographs referred
to in the foregoing Statement of

G Clark

Large Clou
2/8/19

Photographs taken during the inspection of
3 Saltire Square, Edinburgh EH5 1PR



Front



Street

Photographs taken during the inspection of
3 Saltire Square, Edinburgh EH5 1PR



Unable to be fully closed and locked.



Split due to being unable to be opened.