



Notice of a decision to Revoke
a Repairing Standard Enforcement Order
ordered by the Housing and Property Chamber of the First-tier
Tribunal for Scotland

HPC Ref: FTS/HPC/RP/18/1221

Re: 3/2, 15 Gallowflat Street, Rutherglen, Glasgow G73 3DX (“the Property”)

Title No: LAN50093

The Parties:-

Stephen Murphy, 3/2, 15 Gallowflat Street, Rutherglen, Glasgow G73 3DX
(“the Tenant”)

- (1) Robert Laurenson, c/o Slater Hogg & Howison, 10 Brouster Gate, East Kilbride, South Lanarkshire G74 1LD; and**
 - (2) Alasdair Laurenson, c/o Slater Hogg & Howison, 10 Brouster Gate, East Kilbride, South Lanarkshire G74 1LD;**
- (“the Landlords”)**

(represented by Countrywide p.l.c. trading as Countrywide & Slater Hogg Lettings, 26 Springfield Court, Glasgow G1 3DQ)

The Tribunal comprised:-

Mr David Bartos	- Legal member and Chairperson
Ms Lori Charles	- Ordinary member (Surveyor)

NOTICE TO the Tenant and Landlords

The First-tier Tribunal for Scotland’s Housing and Property Chamber (“the Tribunal”) having determined on 26 June 2019 that the outstanding work required by the **Repairing Standard Enforcement Order** relative to the Property dated 7 September 2018 (as amended on 26 June 2019) is no longer necessary,

the said **Repairing Standard Enforcement Order is hereby revoked** with effect from the date of service of this Notice.

A landlord or tenant aggrieved by this decision may seek permission from the Tribunal to appeal on a point of law against this decision to the Upper Tribunal and that within 30 days beginning with the date when this decision was sent to the party seeking permission.

Where such a request or appeal is made, the effect of the revocation is suspended until the request or appeal is abandoned or finally determined, and where the request or appeal is abandoned or finally determined by confirming the decision, the revocation will be treated as having effect from the day on which the request or appeal is abandoned or so determined.

In witness whereof these presents typewritten on this and the preceding page are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, chairperson of the Tribunal at Edinburgh on 26 June 2019 before this witness:-

E Watson

D Bartos

_____ witness _____ chairperson

E Wilson

_____ name in full

PARLIAMENT HOUSE Address

EDINBURGH

Occupation

Housing and Property Chamber First-tier Tribunal for Scotland



Decisions of the Housing and Property Chamber of the First Tier Tribunal for Scotland

(Hereinafter referred to as “the Tribunal”)

Under Sections 26(1) and (2) and 25 of the Housing (Scotland) Act 2006

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Springfield Court, Glasgow G1 3DQ)

The Tribunal comprised:-

Mr David Bartos	- Legal member and Chairperson
Ms Lori Charles	- Ordinary member (Surveyor)

Decisions

1. The Tribunal decides that the Landlords have failed to comply with the Repairing Standard Enforcement Order dated 7 September 2018 as amended on 26 June 2019.

2. The Tribunal decides not to make a rent relief order reducing the rent payable under the lease of the Property between the Landlords and the Tenant.
3. The Tribunal decides to revoke the said Repairing Standard Enforcement Order as amended.

Background:-

1. The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property dated 7 September 2018. The works in the RSEO required to be completed within 2 months from the date of service of the RSEO on the Landlords. The RSEO was served on the Landlords on or about 14 September 2018 by recorded delivery post and at the same time on the Tenant by e-mail and first class post.
2. On 18 December 2018 the Tribunal's Surveyor member carried out a reinspection of the Property. She produced a Re-inspection Report dated 18 December 2018 which is referred to for its terms.
3. By letters to the Landlords and Tenant issued on or about 11 January 2019 the Tribunal's clerk intimated to the Landlords and to the Tenant the said re-inspection report, and invited them to comment on whether there had been failure to comply with the RSEO.
4. Neither party submitted any written response to the Re-inspection Report. The Landlords' agents sent an e-mail to the Tribunal dated 14 January 2019 stating that the fitting of one electric heater in the living room had been instructed. They sent a further e-mail dated 13 February 2019 stating that their glazier would be attending at the Property on the following day to inspect and measure the centre living room window as the existing defective seals were not capable of replacement.
5. The Tribunal decided that in the light of the evidence before it and the apparent disagreement between the parties on whether the works had been carried out, a further re-inspection was necessary to determine whether there had been a failure to comply with the RSEO and whether a rent relief order should be made.
6. After this there was further correspondence between the Tribunal office and the parties with a view to fixing this further re-inspection. On the request of the Landlords' representatives the re-inspection fixed for 15 February 2019 was postponed. On the request of the Tenant dated 27 March 2019 the Tribunal fixed a hearing and the re-inspection (without a hearing) scheduled for 2 April 2019 required to be postponed.
7. The legal member of the Tribunal, Joseph C. Hughes having stepped down, the President of the Housing and Property Chamber appointed David Bartos to succeed him.

8. By e-mails to the Landlords' agents and Tenant sent on or about 1 April and 12 April 2019 the further re-inspection and hearing were fixed for 16 April 2019 at 10 a.m. and 11.30 a.m. respectively. The parties or their representatives were informed that the hearing would take place at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT.

The Further Re-inspection

9. The Tribunal inspected the Property on the date and time fixed. The Tenant was present. The Landlords' representative Caitlyn Haddow of Countrywide was present. The weather was dry, bright and sunny. The Tribunal carefully inspected the matters which were the subject of the RSEO.
10. The evidence before the Tribunal consisted of: -
- The RSEO
 - E-mails from the Landlords' agents to the Tribunal dated 14 January 2019, 13 February 2019,
 - The re-inspection report dated 18 December 2018
 - Works orders from the Landlords' agents to Senako Site Services Ltd dated 19 February and 11 April 2019
 - E-mails (2 No.) from the Tenant to the Landlords' agents dated 27 March 2019
 - E-mails (2 No.) from the Landlords' agents to the Tenant dated 27 March 2019
 - E-mails (2 No.) from the Tenant to the Tribunal dated 27 March 2019
 - E-mails from the Landlords' agents to the Tenant dated 8 & 11 April 2019
 - E-mail from the Tenant to the Landlords' agents dated 11 April 2019
 - Window order acknowledgement from Senako Site Services Ltd to the Landlords' agents dated 12 April 2019
 - E-mail from Senako Maintenance to the Landlords' agents dated 16 April 2019
 - The oral evidence of the Tenant on 16 April 2019
 - Its members' observations on re-inspection
 - E-mails from GL Electrical Contractors to the Landlords' agents dated 6 and 13 May 2019
 - Sunhouse Panel Convection Heaters Installation and Operating Instructions

The Hearing

11. Following the conclusion of the re-inspection the Tribunal held a hearing at the time and place fixed. The Tenant appeared. The Landlords' agents' representative Caitlyn Haddow appeared. In the course of the hearing the Tenant put forward his own evidence in relation to various factual matters.
12. Parties agreed that the kitchen unit and drainer had been made secure.

13. Parties also agreed that the kitchen strip light had been replaced.
14. With regard to the living room heating the Tenant stated that the original electric heater had been replaced by the current heater. This had been done around New Year time. There was no other source of heating in the living room. With the heater turned up on full it was still "pretty chilly". He was wary of putting it up to that level the whole time in case it broke down. He had required to sit in a jumper, house coat and with a blanket.
15. With regard to the windows the Tenant stated that he had not seen any specialist report. The panes in the living room had been replaced. When they were being replaced he had queried the seals with the glazier but had been told that they had been discontinued by the manufacturers. The seals had been there at the outset of the lease.
16. The Tribunal found the evidence of the Tenant was given honestly.

Findings in fact

17. Having considered all the evidence, the Tribunal found the following facts to be established:-
 - (a) The Tribunal issued a RSEO dated 7 September 2018 which was served on the Landlords on or about 14 September 2018. The Landlords had two months from the date of service to carry out and complete the works stated in the RSEO.
 - (b) The terms and photographs of the re-inspection report dated 18 December 2018 are adopted and incorporated herein. They describe the situation at the Property as at that date.
 - (c) As at 16 April 2019 there was installed in the living room of the Property a Sunhouse SPHN 200/T model electric panel heater with a 2 kW output. This had been installed on or about 17 January 2019. The Schedule of Photographs taken during the re-inspection on 16 April 2019 also shows the condition of the Property in relation to the requirements of the RSEO.
 - (d) No specialist report has been obtained as required by part (iv) of the RSEO.
 - (e) As at 16 April 2019 a replacement window for the central window in the living room was awaiting installation. The seals for the existing central window were perished.
 - (f) By the end of April 2019 the central window pane had been replaced.

Reasons for Decisions

18. The Tribunal accepted the re-inspection report in relation to the RSEO dated 18 December 2018. On the basis of its own inspection and the agreement of the parties it accepted that the work to the kitchen unit and drainer and the kitchen strip light had been done. This left parts (iii), (iv), and (v) of the RSEO. These include the lack of adequate heating in the living room. The Tribunal did not consider that satisfactory progress in compliance with the RSEO had been made by the deadline in the RSEO.
19. In deciding whether the outstanding parts of the RSEO had been complied with the Tribunal also took account of section 26(3)(b) of the Housing (Scotland) Act 2006 which provides:

“The Tribunal may not decide that a Landlords has failed to comply with a repairing standard enforcement order . . . if the Tribunal are satisfied, on the submission of the Landlords or otherwise –

 - (i) that the Landlords is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights...”
20. Part (iii) of the RSEO required the Landlords to:

“. . .install additional heating or upgrade the current heating system within the living room to provide adequate heating therein”.

The Tribunal were clear, and there was no dispute over this, that the gas fire had not been made operable.
21. The Landlords’ representative submitted that the electric convector heater in the living room had been replaced and upgraded with a brand new heater. The replacement had occurred in January 2019 by 17 January when they received the invoice. The heater installed was a Sunhouse SPHN Panel Heater with a thermostat control. She submitted that the new heater provided adequate heating. However she was unable to indicate the model of thermostat or the output of the heater unit.
22. There was no suggestion by the Landlords’ representative that the Landlords had been unable to comply with the two month time limit in the RSEO because of a lack of necessary rights of access. There remained however a question of whether there had been compliance with part (iii), albeit belated.
23. In these circumstances the Tribunal indicated that it was unable to make a full decision on compliance with part (iii) of the RSEO without the information about the model of heater and its output. It therefore issued a direction to the Landlords to provide it with further information on the new heater unit.
24. By e-mail dated 14 May 2019 the Landlords’ representative provided the Tribunal with further information from the business that installed the panel heater. This information, contained in two e-mails from the business to the

Landlords' agents confirmed that the heater had a 2kw output and that this was sufficient for a room of 20 m² such as the living room.

25. The Tribunal concluded from this that the new panel provided adequate heating to the living room. The heat loss described by the Tenant may have been due to a draught from the window or the heater not being put to full heat. The Tribunal took from its decision on the adequacy of the heater that while part (iii) of the RSEO had not been complied with by the 14 November deadline, it had been belatedly complied with with albeit 2 months late.
26. Part (iv) of the RSEO required the Landlords to instruct a "window conditioning" specialist report on the condensation between the window panes within the Property while part (v) required the Landlords to repair or replace all windows in accordance with the specialist report.
27. The Landlords' representative was unclear whether the report had been sent to the Tribunal or the Tenant. She explained that she had not been in charge of the case during the period up to and including December 2018. She was not able to point to the report having been instructed or obtained.
28. Instead she submitted that windows had been replaced and that the centre window pane in the living room would be replaced. She explained that the condensation issue had been dealt with and was no longer present. The order for the replacement of the centre window had been given on 19 February 2019 to Senako Site Services. Senako had required to inspect the windows. They had not been able to obtain access until early April 2019 to measure up for the window. This required a further order from the Landlords' agents to Senako. Only on 12 April were Senako able to acknowledge the order from their sub-contractors Precision. The window was due to be replaced on 24 April 2019. She referred to the documentation from Precision as well as from themselves (the Landlords' agents).
29. The Tenant denied receipt of any report. He accepted that the condensation issue had been dealt with. However an issue remained with the seals for the central window. He referred the Tribunal to the part (iv) of the RSEO. However the Tribunal observed that part (iv) made no reference to the seals despite the finding in fact in the Statement of Reasons stating, at paragraphs 7(a) and 11(vii).
30. The Landlords' representative did not dispute that the seals had formed part of the complaint and had been discussed at the original hearing. The Tribunal indicated that it appeared that there had been a minor clerical error in part (iv) of the RSEO which should have referred to the report covering the seals issue as well as the condensation issue. It indicated that it would issue to the parties a notice of proposed review of the RSEO with a proposed revision to correct this error.
31. The Tribunal issued the notice of proposed review although due to administrative difficulties it was not issued until 22 May 2019. No objections

to the proposed review and revisal were made by either party and the Tribunal corrected part (iv) of the RSEO to make it read :

“To instruct a window conditioning specialist report to comment on condensation between the window panes and on the rubber seals on the front window within the living room within the Property”

32. In her e-mail to the Tribunal dated 23 May 2019 the Landlords' representative stated that the central window pane in the living room had been replaced but that she had yet to check the position. The Tenant in his e-mail to the Tribunal dated 2 June 2019 complained that there continued to be a “strong wind” coming into the living room. The Landlords' representative in her e-mail dated 3 June 2019 responded by stating that their contractor had visited the Property that day and found that the draught had been caused by an open trickle vent at the top of the window which could be closed. The Tenant has taken no further issue with the windows in the Property that were covered by part (iv) of the RSEO.
33. In these circumstances the Tribunal were of the view that the Landlords had not instructed the specialist report as required by part (iv) and to that extent had failed to comply with the RSEO. Nor had the defects in the windows been fully dealt with until April 2019, over 5 months after deadline in the RSEO.
34. The Tribunal will serve notice of the non-compliance on South Lanarkshire Council.
35. Having said all of that the Tribunal exercising its expertise took the view that the work that had been carried out was sufficient, on a balance of probability, to make the windows in the Property wind and watertight as required by section 13(1)(a) of the Housing (Scotland) Act 2006. It took the view that the specialist report sought in part (iv) of the RSEO was no longer required and that the works carried out purportedly under part (v) of the RSEO were sufficient to meet that part of the repairing standard in section 13.
36. As the works in parts (i) to (iii) had been complied with (part (iii) belatedly) and compliance with the works in parts (iv) and (v) of the RSEO was no longer necessary the Tribunal decided to revoke the RSEO.

Rent Relief Order

37. Having decided that the Landlords had failed to comply with the RSEO the Tribunal had to decide whether to make a rent relief order and if so the extent of rent to be deduced under the order (Sections 26(1) and 27(1) of the 2006 Act).
38. Neither the Tenant nor the Landlords made any representations regarding a rent relief order. In these circumstances and given that there has been belated compliance with the RSEO or the works were no longer necessary

as the repairing standard found absent had been remedied, the Tribunal decided not to make a rent relief order.

39. The decisions of the Tribunal were unanimous.

Boiler and gas supply matters

40. The parties are reminded that nothing in these decisions related to the Tenant's complaints regarding the boiler and gas supply made in March 2019, months after the RSEO, dealing with different matters had been issued.

Rights of Appeal & Effect of Section 63 of the 2006 Act

41. A landlord or tenant aggrieved by any of these decisions may seek permission from the Tribunal to appeal on a point of law against any decision to the Upper Tribunal and that within 30 days beginning with the date when these decisions were sent to the party seeking permission.

42. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Tribunal which made the decision.

43. Where such a request or appeal is made, the effect of this decision is suspended until the appeal is abandoned or finally determined.

44. Where the appeal is abandoned or finally determined by confirming the decision, the decision is to be treated as having effect from the day on which the appeal is abandoned or so determined.

D Bartos

SignedDate: 26 June 2019.....

David Bartos, Chairperson

D Bartos

Signature of Witness.....Date.....26/6/19

E Wilson

Name of witness:

Address: FACULTY OF ADVOCATES
PARLIAMENT HOUSE
EDINBURGH

Occupation of witness: