

Housing and Property Chamber
First-tier Tribunal for Scotland



Variation of Repairing Standard Enforcement Order made by the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 25(1) and 25(2) of the Housing (Scotland) Act 2006

Property: 308/3 Portobello High Street, Edinburgh EH15 2DA (“the Property”/ “the house”)

Title Number: MID3611

Chamber Reference: FTS/HPC/RP/18/1785

M/s Fleur Scheltdorf, 308/3 Portobello High Street, Edinburgh EWH15 2DA (“the Tenant”)

Mrs Tivender Singh, 25 Wakefield Avenue, Edinburgh EH7 6TN (“the Landlord”)

Tribunal Members - George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/Surveyor)

NOTICE TO MRS TIVENDER SINGH (“the Landlord”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), has decided, in terms of Sections 25(1) and 25(2) of the Housing (Scotland) Act 2006, to vary the Repairing Standard Enforcement Order in respect of the Property made on 8 October 2018, to read as follows:

(1) to exhibit to the Tribunal a satisfactory current Electrical Installation Condition Report, issued by an electrical contractor who is registered either with NICEIC, SELECT or NAPIT and containing no C1 or C2 items of disrepair and including all fixed appliances in the Property provided by the Landlord, together with satisfactory evidence of PAT testing by a suitably qualified electrical contractor of all portable appliances in the Property provided by the Landlord..

(2) to carry out such investigations to the roof as are required to detect the likely cause of damp penetration to the bedroom and to the living area immediately adjacent to the kitchen of the Property and thereafter carry out such remedial works as are necessary to make the Property wind and water tight; and

(4) to carry out such repairs to the glass-panelled door to the living area of the Property as are required to ensure there is no gap between the door and the door frame which would admit draughts.

The Tribunal orders that the works required by this Order must be carried out within the period of 3 months from the date of intimation to the Parties of this Variation.

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.

IN WITNESS WHEREOF these presents, typewritten on this and the preceding page, are subscribed by George Barrie Clark, Legal Member/Chair, at Lasswade on 3 April 2019, before this witness Valerie Elizabeth Jane Clark, Droman House, Lasswade, Midlothian.

G Clark

..... Legal Member/Chair
V Clark
..... 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 Sections 25(1) and 25(2) of the Housing (Scotland) Act 2006

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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 terms of a Repairing Standard Enforcement Order made on 8 October 2018, determined to Vary the Order.

Background

On 8 October 2018, the Tribunal made a Repairing Standard Enforcement Order (“the Order”) in respect of the Property. The Order required the Landlord, within six weeks of the date of service of the Order:

- (1) to exhibit to the Tribunal a current Electrical Installation Condition Report in respect of the Property, to include confirmation that all the appliances in the kitchen have been tested and can be safely used;
- (2) to replace the floorcovering in the kitchen, after carrying out any repairs to the floor beneath that are necessary to ensure it is in a reasonable state of repair;
- (3) to carry out such investigations to the roof as are required to detect the likely cause of damp penetration to the bedroom and to the living

area immediately adjacent to the kitchen of the Property and thereafter carry out such remedial works as are necessary to make the Property wind and water tight;

(4) to carry out such repairs to the glass-panelled door to the living area of the Property as are required to ensure it is in proper working order and opens and closes properly; and

(5) to ensure that the provision of smoke and heat detectors meets the requirements of the Scottish Government's Building Standard Division Revised Domestic Technical Handbook 2013, so that, as a minimum, an additional smoke detector in the hallway should be installed interlinked with existing smoke and heat detectors.

On 11 January 2019, the Ordinary Member of the Tribunal reinspected the Property and reported that items (2) and (5) of the Order had been complied with, but, whilst an Electrical Installation Condition Report had been exhibited by the Landlord, it was not clear whether it had been provided by a suitably competent contractor and there was no confirmation that the appliances in the kitchen had been tested and could be safely used. The floorcovering in the kitchen had been replaced. Damp meter readings taken in the living room and bedroom in areas which, at the time of the initial inspection on 8 October 2018, had been identified as being damp, had been found to be high, suggesting that any roof work that had been carried out subsequent to the making of the Order had not eradicated the issues found at the initial inspection. The door to the living room now opened and closed properly, but there was a gap at the top of the door which amounted to 1.5cms. New smoke detectors had been installed in the hall and living room, together with a replacement heat detector in the kitchen, in accordance with the Domestic Technical Handbook (revised 2016) as issued by the Scottish Government.

A copy of the Reinspection Report was sent to each of the Parties for comment and, as it was clear from their responses that the Parties were not agreed on the extent to which the Order had been complied with, the Tribunal decided to hold a further hearing.

On 3 April 2019, the Tribunal held a hearing at George House, 126 George Street, Edinburgh EH2 4HH. The Parties attended the hearing and the Landlord was accompanied by her daughter.

The Tribunal proceeded to discuss with the parties the findings of the Reinspection Report. The Landlord told the Tribunal that she had supplied a new cooker, and this was confirmed by the Tenant. The Parties were also agreed that the kitchen flooring had been replaced and that the work required by the Order in respect of smoke and heat detectors had been carried out.

The Landlord told the Tribunal that she had understood that the electrician who had issued the Electrical Installation Condition Report was registered with SELECT, but she was prepared to verify the situation and, if he was not

so registered, she would arrange for a further Report to be prepared, including testing of all appliances provided by the Landlord.

The Landlord told the Tribunal that she was in the process of obtaining the agreement of the owners of the other properties in the tenement of which the Property forms part to roof repair work costing in the region of £4,000. One owner had asked for a competing estimate. She hoped to secure agreement by the end of April, with the work taking place as soon as practicable thereafter. The Landlord made the point that such work could not be carried out in the winter months and that it was necessary to sort out the cause of the penetrating damp before proceeding to make good internally the wall plaster.

The Tenant sought a Rent Relief Order in respect of the Landlord's failure to fully comply with the Order. She told the Tribunal that it was unfair that she had paid full rent for so many months since the Order had been made.

The Parties 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 reinspection.

Reasons for the decision

The Tribunal was satisfied that items (2) and (5) of the Order had been complied with.

With regard to the Electrical Installation Condition Report, a website search made by the Tribunal had failed to show up the Landlord's electrician as being registered with SELECT, so the Tribunal was not satisfied with the Report produced by the Landlord. The Tribunal wished to make clear that the reports in relation to the installation and appliances must be issued by a contractor who is registered with SELECT, NICEIC or NAPIT. However, given the Landlord's efforts to date, the Tribunal was prepared to give her an extension of time to produce the reports it required and did not consider it appropriate to make a Rent Relief Order in respect of the Landlord's failure to comply with item (1) of the Order.

The Tribunal was not satisfied that the living room door was in proper working order, as there was a 1.5 cms. gap between the top of the door and the door frame, so it was not draught-proof. The Tribunal did not, however, consider that the failure to comply with item (4) of the Order justified the making of a Rent Relief Order, as it was a relatively minor matter, but noted that further work would be required to make the door draught-proof.

The Tribunal accepted that, whilst it was nearly six months since the Order had been made, the work required to the roof was, in part at least, a communal repair which required the agreement of the other owners within the building and that it would not have been practicable to carry out the work during the winter months. Having heard the Landlord's explanation that she hoped to have agreement by the end of April, the Tribunal was prepared to

give the Landlord an extension of time to have the work required in item (3) of the Order carried out and decided not to make a Rent Relief Order in respect of the Landlord's failure to comply with item (3) of the Order.

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.

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G Clark

Signed
Date: 3 April 2019

..... Legal Member/Chairperson