

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Statement of Decision under section 25(1) of the Housing (Scotland) Act 2006
("the Act")**

Chamber Ref: FTS/HPC/RP/18/2716

**Property at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ
("The Property")**

The Parties:-

Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee, DD1 3BA
("the Third Party Applicant")

Mr Ryan Anderson, residing at Flat A/0, 109 Logie Street, Dundee, DD2 2PZ ("the former Tenant")

Mr David Barn, Barn Properties, Melville House, Monimail, Cupar, KY15 7RJ ("the Landlord")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Robert Buchan	-	Ordinary Member

Decision

The Tribunal determined that the Landlord had not complied with the duties imposed by Section 14(1)(b) of the Act and therefore determined not to revoke the Repairing Standard Enforcement Order ("RSEO")

Background

1. By application dated 15th October 2018 the Third Party Applicant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act. On 2 July 2019 the Tribunal made an RSEO requiring the Landlord to carry out the following works:-
 - (a) investigate the source of damp in the bedroom and carry out any remedial works required to ensure the property is wind and watertight;

- (b) investigate the issue with the erratic shower temperature and repair or replace the unit to ensure it is in proper working order;
- (c) repair the living room window to ensure it can open and close and is wind and watertight; and
- (d) carry out any internal decoration required after the works at (a) to (c).

The Tribunal gave the Landlord a period of one month to complete the works.

- 2. Reference is made to the decision of the Tribunal dated 2 July 2019 and subsequent variations. The current period for completing the works expired on 3 August 2022.
- 3. On 15 August 2022 the Tribunal wrote to the Landlord seeking an update on the outstanding issues at the property. The Landlord was asked to confirm if any further works had been undertaken, with details of what has been carried out and evidence of said works in the form of invoices or receipts. Alternatively the Tribunal sought confirmation as to whether the property was in the process of being sold and what the timescales for this may be. No response was received from the Landlord. The Tribunal wrote again on the 5 September 2022 seeking an update. Again no response was received.
- 4. In terms of its decision dated 18 October 2022 the Tribunal determined that the landlord had failed to comply with the duties imposed under section 14(1)(b) of the Act.
- 5. On 10 August 2023 the Tribunal received an email from the Landlord's representative advising that further works had been completed and requesting a re-inspection. A re-inspection was subsequently scheduled for 31st October 2023. The re-inspection was postponed following a request from the Landlord's representative.

The Re-inspection

- 6. The re-inspection took place on 1st December 2023. The property was vacant and the weather was dry following a generally mixed spell of weather. The Tribunal was allowed access by Matthew Thomson of Hula Property on behalf of the Landlord.
- 7. The Tribunal proceeded to inspect the property in terms of the items listed in the RSEO. The Tribunal noted that the shower unit had been replaced and the living room window adjusted so that it fit the frame with no gaps apparent. However the dampness had not been eradicated. Although various internal works had been carried out and the gable walls were dry, dampness was still evident on the back wall of the bedroom with obvious stains. This was further confirmed by damp meter readings.
- 8. A copy of the re-inspection report is appended to this decision.

9. The Tribunal circulated the re-inspection report to parties for their comments. No representations were received. The Tribunal therefore determined that it could proceed to a decision without a hearing on the basis that it had sufficient information on which to do so.

Reasons for Decision

10. The Tribunal considered it had sufficient information to make a determination and it did not require to hold a hearing in the matter. It was evident from the findings of the re-inspection that the dampness has not been eradicated. Accordingly the Tribunal could not make a finding that the Landlord had complied with the RSEO in full.
11. The Tribunal therefore concluded that the Landlord had not yet complied with the duty under section 14(1)(b) of the Act and therefore determined not to revoke the RSEO. The RSEO will remain in place pending further procedure and the Landlord is reminded that it is a criminal offence to re-let the property whilst the order remains outstanding.
12. The decision of the Tribunal was unanimous.

A landlord, tenant or third party applicant 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.

Signed

R O'Hare

9 January 2024