

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 failed to comply with the duties imposed by Section 14(1)(b) of the Act

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 a Repairing Standard Enforcement Order 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.

Reasons for Decision

- 4. The Tribunal considered it had sufficient information to make a determination and it did not require to hold a hearing in the matter. The Tribunal did consider whether to carry out a further re-inspection but in light of the lack of response from the Landlord the Tribunal determined that it could reasonably assume that the damp issues had yet to be addressed. This would be the fourth occasion the Tribunal had inspected the property and on each occasion damp had been identified. The Tribunal had sought to obtain information from the Landlord as to whether any further works had been carried out in order to consider the need for a re-inspection but he had failed to reply. The Tribunal therefore determined that it could reasonably assume that nothing had been done and based its decision on its knowledge of the ongoing issues with damp at the property from previous inspections.
- 5. Given the absence of any information from the Landlord the Tribunal was satisfied that there was no justification for a variation of the order under section 25(3) of the Act as it was not clear whether the Landlord had, or intended to, carry out any further works that would require a further extension of time for complying with the RSEO. The Tribunal thereafter had regard to section 27 of the Act and whether it should make a Rent Relief Order. The Tribunal was conscious that whilst the Repairing Standard Enforcement Order remained in place the Landlord would be prevented from reletting the property, it being an offence to do so. Accordingly, on the basis that the property would remain unoccupied until such time as the Repairing Standard Enforcement Order was complied with the Tribunal concluded that there was no need to make a Rent Relief Order at this time.

6. 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

Ruth O'Hare
Legal Member

18 October 2022