

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

STATEMENT OF DECISION of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 25 (1) of the Housing (Scotland) Act 2006

Ref: PRHP/RP/16/0119

Re:- Property at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("**the property**")

Land Register Title No: AYR79158

The Parties:-

Mr John Cameron residing at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("**the tenant**")

And

Mrs Eva Ohnesorge, residing at 62 Ashford Road, Eastbourne, BN21 3TD represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow, PA14 5NU ("**the landlord**")

Tribunal Members

James Bauld, legal member
Nick Allan, surveyor, ordinary member

Background

1. By decision dated 15 September 2016, the then Private Rented Housing Committee issued a determination which decided that the landlord had failed to comply with the duties imposed by Section 14 (1) of the Housing (Scotland) Act 2006 ("**the 2006 Act**"). On the same date the Committee issued a Repairing Standard Enforcement Order ("**RSEO**") in respect of the property.
2. In terms of the RSEO the landlord was ordained to carry out certain works to the property within three months of the date of the order.

3. Subsequently a decision was made to vary the terms of the RSEO by extending the time limit for works to be completed. That decision was issued by the First-tier Tribunal for Scotland (Housing and Property Chamber) to whom the functions of the Private Rented Housing Committee were transferred on 1 December 2016 in terms of relevant legislation and regulations.
4. Subsequent to the variation of the RSEO, the First-tier Tribunal then issued a further decision on 31 August 2017 indicating that the landlord had failed to comply with the terms of the RSEO and the Tribunal made a Rent Relief Order ("RRO") in terms of Section 27 of the 2006 Act reducing the rent payable under the tenancy for the housing by an amount of 40% of the rent which would, but for the order, be payable.
5. By letter dated 8 April 2019, the landlord's agent wrote to the Tribunal requesting a re-inspection of the subjects and indicating that he believed the various works required by the RSEO had been completed.
6. In response to the correspondence from the landlord's agent, the Tribunal arranged for the property to be re-inspected and the Ordinary Member of the Tribunal attended at the property on 11 June 2019.
7. A re-inspection report was produced and is attached to this decision. A hearing was then set to take place and that hearing took place on 27 September 2019 within the Frank Sweeney Centre for Enterprise in Ardrossan.

The Hearing

8. At the hearing the landlord was represented by her agent Mr Robert Smith, Property Management Options, 6 Roberts Street, Port Glasgow. The tenant was neither present nor represented and information was provided to the Tribunal that the tenant had now vacated the property and it had not been re-let.
9. The Tribunal discussed the re-inspection report dated 11 June 2019 with Mr Smith. The Tribunal noted from the report that all requirements of the RSEO had been completed with the exception of two requirements.
10. The two requirements which had not been completed were the requirements, firstly, to obtain an appropriate report from a recognised specialist company to establish the extent of the works needed to eradicate dampness in the property particularly in the living room and bedroom and to carry out those works and secondly to remove the vegetation and clear the gutters.

11. Mr Smith produced to the Tribunal a report and estimate which had been obtained on 25 September 2019 from C Hanlon, Multi Trade Specialists, 6 Brackenrig Road, Glasgow, G46 8QQ. That report indicated that this company had inspected the property and contained a list of works required to ensure compliance with the remaining two aspects of the RSEO.
12. Mr Smith confirmed that he was now no longer asking the Tribunal to remove the RSEO or to certify that the works had been completed. He was not seeking further time to allow the works set out in the C Hanlon report to be instructed and completed. Mr Smith indicated that most of the works set out in this report are communal repairs and he requires to obtain cooperation from other owners. The estimated cost is £4000 plus VAT to carry out these communal repairs. Mr Smith indicated that if he cannot get cooperation from the other owners in the building he will approach the local authority seeking their assistance.
13. Mr Smith was candid and honest with the Tribunal members and discussed the current situation in an open and transparent manner. He indicated that he was seeking a further variation of the order and that he was seeking a reasonably significant period of time to allow the works to be completed. The Tribunal members during these discussions asked whether a further extension of six months would be sufficient and Mr Smith indicated that such an extension would be sufficient to allow the various matters to be done.
14. The Tribunal hearing then concluded.

Decision

15. The Tribunal carefully reviewed matters and in particular the further information and evidence obtained at the hearing.
16. The Tribunal noted the very open and candid manner in which the landlord's agent had discussed matters at the Tribunal and noted that a report had now been produced from an appropriate specialist company setting out the variety of works which still required to be done.
17. The Tribunal also noted the terms of the recent Upper Tribunal for Scotland decision in the case of Josephine Marshall Trust (Appellant) and Nicholas Charlton (Respondent) (under Upper Tribunal reference 2019 UT 34). In that case, the Upper Tribunal had indicated that in making Repairing Standard Enforcement Orders, the First-tier Tribunal should try to avoid making orders where they require the landlord to obtain a specialist report and thereafter to "carry out such work as is recommended in terms of the report". The Upper Tribunal indicated that in granting such an order the Tribunal may be removing its own oversight of the process and relinquishing control of works to be carried out and delegating that power to an unknown third party. The Tribunal noted that in this case its original RSEO had contained as

part of the order a requirement that the landlord "obtain appropriate reports from a recognised specialist company to establish the extent of the works required to eradicate dampness in the property and in particular within the living room and bed rooms of the property and to carry out these works including internal redecoration".

18. Having now noted the terms of the report obtained by the landlord's agent and bearing in mind the directions contained within the decision of the Upper Tribunal, the Tribunal determined that it should vary the Repairing Standard Enforcement Order granted in this case. The variation would make specific requirements for works to be done in connection with eradicating dampness within the property and would extend the time for these works to be done as requested by the landlord.
19. Accordingly the Tribunal determined that the RSEO should be varied and have issued along with this determination a formal notice of decision to vary setting out the current requirements to be followed by the landlord. The Tribunal also indicate that the time for completing these works will be extended until 30 April 2020.

Decision

20. The Tribunal having made such enquiries as it saw fit for the purpose of determining whether the landlord had complied with the RSEO are taking full account of all evidence obtained at the re-inspection and in respect of the evidence of produced by the landlord's agent at the hearing determined to exercise their powers in terms of Section 25 of the 2006 Act to vary the RSEO. The Tribunal proceeded to make a variation to the RSEO.
21. The decision of the Tribunal was unanimous.

Right of Appeal

22. A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

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

J. Bauld

Signed
James Bauld 

Date... *5 November 2019*

Housing and Property Chamber First-tier Tribunal for Scotland



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

Notice of Decision to Vary

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

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Re:- Property at Flat 101, 38 Boyd Street, Largs, KA30 8LE (“**the property**”)

Land Register Title No: AYR79158

The Parties:-

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And

Mrs Eva Ohnesorge, residing at 62 Ashford Road, Eastbourne, BN21 3TD represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow, PA14 5NU (“**the landlord**”)

Tribunal Members

James Bauld, legal member

Nick Allan, surveyor, ordinary member

Notice to Mrs Eva Ohnesorge residing at 62 Ashford Road, Eastbourne, BN21 3TD represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow, PA14 5NU.

The then Private Rented Housing Committee issued a Repairing Standard Enforcement Order dated 15 September 2016 in respect of the property and varied same to extend the time for completion of the works until 31 May 2017. The Tribunal now further varies the RSEO with effect from the date of service of this notice in the following respect:-

The Tribunal now requires the landlord to carry out the following works:-

1. Erect scaffolding and eaves and gable chimney
2. Remove vegetation growing in chimney, gutter and downpipe

3. Replace slipped and missing slates on front of property
4. Strip eaves slates lay aside then refit
5. Apply liquid fibreglass to gutters at front
6. Strip slates from skewers at formers clean and later refit slates
7. Apply liquid fibreglass to front skewers at gable chimney and mid slope chimney
8. Re-stool chimney pots including haunching on front and gable chimneys
9. Address pointing issues on both front and gable chimneys
10. Hammer test gable wall at bell cast, hack back to sound and apply rendering coat
11. Remove scaffolding
12. Remove all associated debris

The Tribunal orders that the works specified in this order must be carried out no later than 30 April 2020.

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.

J. Bauld
 Signed
 James Bauld, Chairperson

J. Glasgow
Witness
 JENNIFER GLASGOW

7 West George Street,
 Glasgow,
 G2 1BA