

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RT/18/0347

Title no/Sasines Description: the northmost first floor house 29 North William Street, Dundee being part of the subjects described in Disposition by Enrico Albert Roncone in favour of Graham Bradley and Norah Bradley, Spouses, as Trustees for their firm of Bradley Removals and Storage Group dated 7 March 1995 and recorded in the General Register of Sasines for the County of Angus on 7 March 1995 (Search Sheet Number 91334)

Re: Property at Flat 1/1, 29 North William Street, Dundee, DD3 7DB (“the Property”)

The Parties:

Miss Lorraine Robertson, residing at the Property (“the Tenant”)

Graham Bradley and Norah Bradley as Trustees for the firm of Bradley Removals and Storage Group; care of Graham Bradley Properties/Bradley Property Management Group, Strips of Craigie House, 34 Strips of Craigie Road, Dundee, DD4 7QG; (“the Landlord”)

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

Whereas in terms of their Decision dated 29 May 2018, The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’) and in particular that the Landlord has failed to ensure that the House meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;

- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord:-

- (1) To repair or, as necessary, replace the left hand window in the living room to ensure that the window is secure and its operating mechanism, including the handle, is functioning satisfactorily, allowing the window to be opened and closed properly and securely, ensuring that it is in a wind and watertight condition.
- (2) To fit a shower screen or shower rail and shower curtain around the bath in the bathroom to allow the shower to be used properly.
- (3) To replace the existing foam or filler around the bath in the bathroom with a suitable waterproof sealant to ensure that there is a satisfactory waterproof seal around the bath.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice.

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.

In terms of Section 63 of the Act, 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in

**to a house at any time during which a RSEO has effect in relation to the house.
This is in terms of Section 28(5) of the Act.**

In witness whereof these presents typewritten on this and the two preceding pages are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 29 May 2018 in the presence of the undernoted witness:-

F Weir

N Weir

_____ witness

_____ Legal Member

_____ name in full

CP HASBRO address

Lowry Junction Way
King, H23 4LN

Housing and Property Chamber

First-tier Tribunal for Scotland



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 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/18/0347

Title no/Sasines Description: the northmost first floor house 29 North William Street, Dundee being part of the subjects described in Disposition by Enrico Albert Roncone in favour of Graham Bradley and Norah Bradley, Spouses, as Trustees for their firm of Bradley Removals and Storage Group dated 7 March 1995 and recorded in the General Register of Sasines for the County of Angus on 7 March 1995 (Search Sheet Number 91334)

Re: Property at Flat 1/1, 29 North William Street, Dundee, DD3 7DB (“the Property”)

The Parties:

Miss Lorraine Robertson, residing at the Property (“the Tenant”)

Graham Bradley and Norah Bradley as Trustees for the firm of Bradley Removals and Storage Group; care of Graham Bradley Properties/Bradley Property Management Group, Strips of Craigie House, 34 Strips of Craigie Road, Dundee, DD4 7QG; (“the Landlord”)

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

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 duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal comprised:-

Nicola Weir, Legal Member

Donald Wooley, Ordinary Member

Background

1. By Application received on 16 February 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 Housing (Scotland) Act 2006 ("the Act"). The Application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the following parts of the repairing standard in terms of Section 13 of the Act, namely that the house is wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a); that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order (Section 13(1)(b); that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d); and that any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (Section 13(1)(e).

In particular, the Third Party Applicant stated "The tenant has complained to the landlord on numerous times that repairs to the property were requiring to be carried out. These complaints have been made since the tenant moved in to the property in January 2017. The Landlord has either ignored these requests or informed the tenant that she was out when his tradesman called. Letter sent to Landlord tracker number BR5727 6703 9GB." As to the work needed, the Third Party Applicant referred to the copy letter from the Third Party Applicant to the Landlord dated 12 February 2018 which was attached to the Application. This letter stated that the works required were:-

- "1. Living room window (left hand side) repaired so that it closes properly and is draught free.
2. Bath panels replaced as they are missing.
3. Existing sealant around bath removed and replaced with appropriate sealant to ensure proper waterproof seal.
4. Shower curtain or screen installed.
5. Work required on front door to eliminate draughts.
6. Existing or new Electrical Installation Condition Report to be produced."

Apart from the application form, the Third Party Applicant also submitted the said copy letter dated 12 February 2018 notifying the Landlord of required repairs, together with "track and trace" proof of delivery of same on 13 February 2018 from the Royal Mail "Signed For" service. No

tenancy agreement was included with the Application. This was requested and subsequently submitted to the Tribunal on 8 March 2018.

2. On 15 March 2018, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral, Inspection and Hearing in terms of Schedule 2, Paragraph 1 of the Act was served upon the parties by letter dated 6 April 2018, stipulating that any written representations should be lodged with the Tribunal by 27 April 2018. The Third Party Applicant responded to say that they wished to attend the Hearing but did not wish to make further written representations. The Landlord did not respond as to whether the Landlord wished to attend the Hearing and no written representations were submitted.
3. The Tribunal issued a Notice of Direction dated 3 May 2018 which required the Landlord to provide to the Tribunal no later than close of business on 14 May 2018 a current Electrical Installation Condition Report (EICR) in respect of the installations in the Property for the supply of electricity and the electrical fixtures and fittings and a Portable Appliance Test (PAT) in respect of portable electrical appliances (if any) from a suitably qualified and registered SELECT or NICEIC electrical contractor. The Landlord subsequently complied with this Direction, albeit on 16 May 2018, rather than by the time limit stated of 14 May 2018.
4. The Tribunal inspected the property on the morning of 16 May 2018. In addition to the Members of the Tribunal and the Tribunal Clerk, Mr Graham Bradley was present as Landlord, as was the Tenant and Mr Stuart Cuthill for the Third Party Applicant. Contractors instructed by the Landlord were also in the property, carrying out repairs, at the time of the inspection.
5. Following the inspection of the house, the Tribunal held a Hearing at Kirkton Community Centre, Derwent Avenue, Dundee, DD3 0AX. Mr Cuthill for the Third Party Applicant attended the Hearing. There were no other attendees.

The Inspection

6. At the time of the inspection, the weather was dry and sunny with no wind. A Schedule of Photographs taken by the Ordinary Member during the inspection is attached to this Statement of Decision and executed as relative hereto.

Description of property

The Tribunal noted that the property is a first floor purpose built, tenement flat within a four storey building. Separately occupied commercial premises are located on the ground floor of the tenement. Access to the property is taken via a common close and stairwell shared with other co-proprietors in the building. The property is of traditional construction with brick/stone outer walls

rendered externally under a pitched roof. The accommodation comprises, entrance hall, living-room, bedroom, kitchen and bathroom.

Site observations relative to the Third Party Application

- 1) Within the living room there are two "tilt and turn casement windows" of double glazed design. As viewed from within, the left hand window was tested and the operating mechanism was established to be in need of some repair and maintenance. Specifically the handle was stiff, difficult to operate and when open the window closed only with some difficulty. When in the closed position there was no evidence of any significant draughts around the frame.

The casement element of the window is secured to the left hand side of the frame / opening and its operating mechanism was functioning satisfactorily (photograph 3). The alternative opening / tilting mechanism of the window was defective and the bottom right hand corner of the window is not secured when in the open position (photograph 2). Photograph 4 (taken from outside) illustrates the right hand window, when viewed from within, in the open "tilted" position.

- 2) The bath panels have been replaced (photograph 5).
- 3) Surrounding the rim of the bath and shower attachment is what appears to be a form of expanded foam, or equivalent, filler and there is no satisfactory waterproof sealant (photographs 7 & 8).
- 4) There is no shower screen nor curtain. During the inspection it was noted that, what appeared to be a shower screen panel, was lying on the bathroom floor leaning against the internal wall although it had not been fitted.
- 5) The internal panel of the entry door to the flat has, historically been damaged, and has been the subject of what appears to be a partially completed repair (photograph 9). Internal finishing work remains outstanding. The explanation provided by the Landlord was that this had been the result of previous forced entries to the property. Timber beading surrounding the door frame has recently been erected supporting an aluminium frame and rubber draught excluder (photograph 10). When in the closed position there was no evidence of any draughts around the door frame.
- 6) An Electrical Installation Condition Report (EICR) was provided by the Landlord to the Tribunal indicating that the wiring system was approximately 30 years old and in "satisfactory" condition. There were a number of category C3 (improvement recommended) items although no category C1 or C2 observations.

The Hearing

7. At the Hearing, the Tribunal had before it the Application and other documentation referred to above.

8. Mr Cuthill gave evidence and answered questions from the Tribunal Members.
9. Mr Cuthill advised that the Tenant had been referred to him around February 2018 due to the problems she was having with the property. She had been renting the property since January 2017 and said she had been reporting the issues with the property to the Landlord direct but that nothing was done. She did not provide Mr Cuthill with any written evidence of this. Mr Cuthill pointed out, however, that the Landlord's property repair business was on the ground floor of the building in which the Tenant lived and she could therefore easily report the repairs issues to the Landlord.
10. Mr Cuthill advised that the Landlord is a registered landlord with Dundee City Council and that the property is included in the Landlord Registration. He thinks the Landlord or family members may own the whole or a significant proportion of the tenement building of which the property forms part, consisting of around six upper floor flats, the property repairs business on the ground floor of the building which the Tribunal had noted at the inspection was called "Lexy Group" and a separate main door ground floor property, to the south of the common entrance close, the use of which was unclear. The Tribunal had also noted at the inspection that there was signage and vehicles in the nearby vicinity of the building for a business called "Bradley Removals".
11. Mr Cuthill advised that he had gone out to see the property before the Application was submitted to the Tribunal. He sent the letter dated 12 February 2018 to the Landlord detailing the issues he considered to be repairing standards issues, a copy of which had been submitted to the Tribunal with the Application. As regards the living room window, Mr Cuthill stated that the draughts the Tenant had been experiencing may have been due to the fact that the window was not closing properly. He confirmed that the bath panels had been missing, although accepts that they had now been fitted. He advised that the Tenant had been avoiding having showers due to the lack of a shower screen or curtain and that he had noted the green foam filler that had been used around the bath when he had been out at the property before. He confirmed that the shower rail that had been seen lying freestanding in the bathroom during the Tribunal's inspection may have been there when he was at the property previously but that it had definitely not been fitted. Mr Cuthill accepted that works had now been done to the front door which should help exclude draughts.
12. Mr Cuthill confirmed he had not been involved in any correspondence with the Landlord in connection with this property prior to the letter dated 12 February 2018. He advised that the Landlord had emailed in response to the letter, acknowledging it and advising that the repairs issues would be attended to. He did not receive any further communication from the Landlord. Mr Cuthill had since kept in touch with the Tenant and that she had advised that nothing had been attended to during the intervening

period. Mr Cuthill acknowledged that the Landlord's tradesmen were in attendance at the property during the inspection of the property by the Tribunal. He was shown a copy of the EICR dated 24 March 2017 which had been produced by the Landlord at the inspection and stated that, as far as he could tell, it appeared to be in order.

13. Mr Cuthill summed up by stating that the Landlord could have attended to these various matters earlier and avoided this whole procedure.

Findings in Fact

14. Reference is made to the Tribunal's findings on Inspection detailed above.
15. The Tenant occupies the house under a Short Assured Tenancy which commenced on 9 January 2017.
16. The Tenant had complained to the Landlord about repairs issues but these had not been attended to. The Tenant was referred to the Third Party Applicant who had formally intimated the repairs issues to the Landlord by letter dated 12 February 2018 and submitted the Application to the Tribunal. Some of these repairs issues remained outstanding at the date of the Inspection and Hearing on 16 May 2018.
17. The Landlord had contractors working in the property when the Inspection took place. It appeared that they had rectified some of the repairs issues contained in the Application, that morning.
18. The Landlord produced to the Tribunal at the Inspection a current EICR which was satisfactory in its terms dated 24 March 2017.
19. The outstanding repairs issues in terms of the Application were the issues with the living room window, with there not being a waterproof seal around the bath, nor a shower screen or shower rail and curtain installed around the bath.

Reason for decision

20. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection.
21. The Tribunal was not satisfied, given the outstanding issues of disrepair referred to above, that the house is wind and watertight and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the Act nor that any fixtures, fittings and appliances provided by the Landlord under the tenancy were in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the Act. Accordingly, in the Tribunal's view, the property does not meet the repairing standard.

22. The Tribunal is of the view that it requires to make a Repairing Standard Enforcement Order (“RSEO”) in respect of the outstanding matters specified above. Given the nature of the required repairs, the Tribunal was of the view that a period of 6 weeks from service of the RSEO was an adequate and reasonable timescale for the necessary repairs to be completed.

Decision

23. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

24. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.

25. The decision of the Tribunal was unanimous .

Right of Appeal

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.

In terms of Section 63 of the Act, 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.

N Weir

Signed.. Date: 29 May 2018

Nicola Weir, Legal Member of the Tribunal

Glasgow, 21 May 2018

This is the Schedule of Photographs referred to in the Statement of Decision attached hereto.
A Weir, legal member of the Tribunal

Flat 1/1, 29 North William Street Dundee DD3 7DB

Schedule of Photographs taken at the inspection on 16th May 2018



1. External View



2. Tilt mechanism livingroom window

3. Casement mechanism livingroom window



4. Living room windows external view.



5. Replacement bath panel



6. Missing shower screen



7.



8.

Defective sealant around bath and shower attachment



9.

Entry door internal panel



10.

Entry door draught excluder