

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Variation of Repairing Standard Enforcement Order: Housing (Scotland)
Act 2006 Section 25**

Chamber Ref: FTS/HPC/RP/18/2455

Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE, Title Number GLA21674
("The property")

The Parties:-

Emma Elliott-Walker, Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE
("the Tenant")

**Nazim Bashir, c/o RiteHome Property Management, 350 Glasgow
Harbour Terraces, Glasgow G11 6EG**
("the Landlord")

The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having determined on 4 November that the **Repairing Standard Enforcement Order** relative to the house made on 24 January 2019 should be varied, the said **Repairing Standard Enforcement Order is hereby varied** with effect from the date of service of this Notice in that the period allowed for the completion of the work required by the order is extended to 6 January 2020.

Subsection 25(3) of the Housing (Scotland) Act 2006 applies in this case.

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.

In witness whereof these presents type written on this and the preceding page are executed by Adrian Stalker, advocate, Advocates Library, Parliament House, chairperson of the Tribunal at Edinburgh on 8 November, before this witness:-

S Westwater

A Stalker

_____ witness
SHEILA WESTWATER name in full
PARLIAMENT HOUSE Address
EDINBURGH

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Statement Of Decision to Vary Repairing Standard Enforcement Order:
Housing (Scotland) Act 2006, Section 25(1)(a)**

Chamber Ref: FTS/HPC/RP/18/2455

Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE, Title Number GLA21674
("The property")

The Parties:-

Emma Elliott-Walker, Flat 3/1, 28 Dixon Avenue, Glasgow G42 8EE
("the Tenant")

**Nazim Bashir, c/o RiteHome Property Management, 350 Glasgow
Harbour Terraces, Glasgow G11 6EG**
("the Landlord")

Tribunal Members:

Adrian Stalker (Chairman) and Debbie Scott (Ordinary Member)

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), decided:

(1) again to vary the RSEO dated 24 January 2019, with effect from the date of service of this Notice, in that the period allowed for the completion of the work required by the order is extended to 6 January 2020.

(2) despite the withdrawal of the application, as a result of the lawful termination of the tenancy on 31 August 2019, to enforce the RSEO, under paragraph 7(3)(b)(ii) of schedule 2 to the Housing (Scotland) Act 2006.

Background

1. Reference is made to the Tribunal's decision and RSEO of 24 January 2019 in this case, and to the decision to vary the RSEO, made on 24 April. The variation decision extended the period for carrying out the work specified in the RSEO till 14 June 2019.
2. The works specified in the RSEO were as follows:

1. **The Landlord, either himself or with other owners of the flats at 28 Dixon Avenue Glasgow, or with any property factor instructed by the owners:**
 - i. **to instruct a reputable contractor, specialising in roofing, roof repairs and the repair and maintenance of guttering, to carry out an inspection to ascertain the cause of water ingress and damage to the ceiling and walls above the bay window within the living room, and water ingress at the window within the adjacent bedroom;**
 - ii. **to instruct said contractor to prepare a report identifying the cause of the said water ingress, and the nature and type of works necessary to make the property wind and water tight, and to put the roof, drains, pointing and gutters in a reasonable state of repair and proper working order;**
 - iii. **to submit a copy of said report to the Tribunal;**
 - iv. **to instruct said contractor to carry out the works identified in the report;**
 - v. **to instruct said contractor to provide confirmation in writing that that said works have been carried out;**
 - vi. **and to submit a copy of said written confirmation to the Tribunal.**
 2. **The Landlord to make good any part of the ceiling, walls, windows, window sills and window frames of the living room and adjacent bedroom, which have been subject to water damage.**
 3. **The Landlord to instruct a suitably qualified electrical contractor to install a heat alarm in the kitchen.**
3. The RSEO further required the Landlord to produce to the office of the Tribunal an Electrical Installation Condition Report ("EICR"), and in the event that the EICR identified any items specifically categorised as C1 or C2 under "section K" in the report, required the Landlord to carry out such work as was necessary to put that electrical installation in a satisfactory state of repair and in proper working order.
4. As is explained in decision of 24 January (at paragraphs 17-20), the Landlord's agent Ritehome had accepted, at the hearing before the Tribunal on 7 December, that there was a significant issue with water ingress in the wall and ceiling above the bay window, in the living room, and that there was also water ingress at the window of the adjacent bedroom. However, Ritehome were hampered in their efforts to address the problem, because this entailed a repair to the common parts of the building, which would have to be managed by the factors, James Gibb Property Management ("the Factors").

5. At the hearing before the Tribunal Mr Rigano of Ritehome had asked how they could progress this matter, given that repairs would have to be arranged by the Factors, and may be subject to delay, if there was a lack of co-operation from other owners. The Tribunal indicated that it would be for the Landlord and Ritehome, his agents, to take the necessary steps to ensure the work was carried out. Where that involved the Factors or other owners, the Landlord and Ritehome may wish to seek legal advice as regards the Landlord's rights to have work carried out, with particular reference to the Property Factors (Scotland) Act 2011, and the Tenements (Scotland) Act 2004.
6. Thereafter, the Landlord sought an extension of the period allowed to carry out the works, which was granted, till 13 June, for the reasons set out in the Tribunal's decision of 24 April. On expiry of that period, Ritehome sent an email to the Tribunal clerk dated 13 June, which stated:

I refer to our email of 21st March and write to advise that the factors, James Gibb, are still trying to obtain a majority approval from all of the owners in the building for the communal works that are required.

We would like to add that the Scottish Government announced last year that they would be making changes to the Repairing Standard (the standard of repair that all private rented sector landlords must obey to).

The government has released their draft legislation to introduce the following changes as of the 1st of March 2019:

Understand that a flat in a tenement building does not fail the Repairing Standard if any work needed to comply with the standards cannot be carried out due to a majority of owners in the tenement refusing consent for the work to be carried out.

7. The email contains a reference to an amendment made to section 16 of the 2006 Act, by the Housing (Scotland) Act 2006 (Supplemental Provision) Order 2019/62. This adds a new subsection (5) to section 16, the relevant parts of which now read as follows:

16 Exceptions to landlord's repairing duty

(4) A landlord is not to be treated as having failed to comply with the duty imposed by section

14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.

(5) For the purpose of subsection (4), in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary rights.

8. The amendment came into force on 1 March 2019. That post-dates the making of the RSEO, but pre-dates the date by which the work under the RSEO was required to be carried out.
9. In the circumstances, and there being no application for a further extension of the period for carrying out the work, The Tribunal decided to fix a further inspection and hearing on 19 August, the date and time of which was intimated to the parties.

Further inspection

10. The Tribunal inspected the property on the morning of 19 August 2019. Present at the inspection were:
 - The tenant, Emma Elliott-Walker;
 - Craig Weir, property manager, Ritehome Property Management ("Ritehome").
11. The applicant advised the Tribunal members that two of the four joint tenants had intimated their intention to leave the property. Consequently, all of the joint tenants received intimation from the Landlord's agents that he wished to terminate the tenancy. In the circumstances, the other two joint tenants had decided also to leave, on 31 August. Mr Weir did not dispute that position. It therefore appears that the current tenancy ended on 31 August.
12. The Tribunal members then inspected the property. It was apparent that no work has been done in respect of points 1 and 2 in the RSEO. In relation to point 3, no heat alarm had been fitted in the kitchen. In advance of the hearing, Ritehome had submitted a PAT testing certificate, showing three issues that required to be addressed. An EICR certificate had been attached to Ritehome's email of 21 March. However, not all of the pages of the certificate were provided.
13. The Tenant also pointed out that there was a leak in the ceiling of the kitchen. However, this was not one of the defects identified in the original application to the Tribunal.

Hearing

14. Later that morning, the Tribunal held a hearing at Room 107 of the Glasgow Tribunals Centre, 20 York Street, Glasgow. Only Mr Weir was present at the hearing.
15. Mr Weir confirmed that the Property Factors have had difficulty in achieving consensus amongst the flat owners as to the necessity of repairs.
16. There are 8 flats, and a majority (i.e. five) is needed to agree the repairs. The Tribunal noted that Mr Weir's position was confirmed by the Title Sheet for the property. Burden 4 in section D states:

...(Second) the portions of said tenement...held in common shall be maintained at the mutual expense of our said disponee...and...our successor proprietors of the other house in said tenement in the proportion of one eighth thereof in respect of each house, it being hereby declared that the majority of the proprietors of the said houses (counting one vote for each house) shall be entitled to decide as to what repairs are necessary for the proper maintenance of the common portions of said tenement...and to get said repairs carried out and to recover the proportion thereof due from each of the remaining proprietors...
17. Mr Weir advised that the Factors had obtained three quotations for the relevant work. They recommended that the proprietors instruct work in terms of one of the quotations. There had been difficulty achieving consensus. However, Ritehome had recently been advised by the Factors that only one more vote was needed for the necessary approval.
18. Accordingly, Mr Weir did not, at the hearing, seek to advance an argument that the RSEO was no longer applicable, in light of the amendment to section 16 of the 2006 Act. Rather, he sought a further variation to extend the time allowed for carrying out the necessary work.
19. In the circumstances, and given the tenants are leaving the property, the Tribunal decided that it would be appropriate to further vary the RSEO, to allow the time for carrying out the work to be extended to 6 January 2020.
20. The production of this decision was unfortunately somewhat delayed by the requirement for production of the EICR and PAT testing certificates (see below). The Tribunal notes that, in the period between the hearing

and the date of this decision, Mr Weir intimated to the Tribunal by email (dated 2 October) that "the factor has had a majority agree on a quote [and is] currently collecting funds in order to proceed with the works. I am contacting the factor for updates on a weekly basis".

Termination of the tenancy

21. The issuing of this decision postdates the day (31 August 2019) on which the tenants were due to leave. The Tribunal has assumed that lawful termination of the tenancy took place on that date.
22. Accordingly, under paragraph 7(1) of schedule 2 to the 2006 Act, the application by the Tenant is deemed to have been withdrawn. However, it was the Tribunal's understanding, from Mr Weir, that the Landlord and Ritehome would intend to let the property in the future. Accordingly, the Tribunal decided that it was appropriate to continue with the process of enforcing the RSEO, in terms of paragraph 7(3)(b), rather than abandoning consideration of the application.
23. The Landlord and Ritehome, are reminded that, in terms of section 28(5) of the 2006 Act, "A landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house."

EICR, heat alarm

24. At the hearing, the Tribunal indicated an intention, to Mr Weir, to extend the time for completion of the roof/guttering work till Monday 6 January 2020. However, the Tribunal also made it clear that this was subject to receiving the full EICR certificate required by the Repairing Standard Enforcement Order issued in January. Mr Weir agreed to submit the EICR, within a few days of the hearing.
25. The EICR was not submitted to the Tribunal until 2 October. On submission of that certificate, the Tribunal's ordinary member then decided to check whether the person issuing the certificate was registered with the NICEIC. She had a discussion with the NICEIC and the contractor. The contractors were de-registered after the inspection took place. However, they were registered when the certificate was issued. As regards the PAT testing, the Tribunal was satisfied, following the inspection, that relevant appliances were either owned by the tenants, or had been removed by Ritehome.

26. As noted at paragraph 12 above, part 3 of the RSEO had not been met at the time of the re-inspection on 19 August, as there was no heat alarm installed in the kitchen. The Tribunal trusts that this requirement will be met, before 6 January 2020.

Decision

27. The Tribunal proceeded to vary the RSEO under section 25(1)(a), which Variation is referred to for its terms. It also decided to continue with the process of enforcing the RSEO.

28. The decision of the Tribunal was unanimous.

29. 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.

30. 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.

A Stalker

Signed

Date 8/11/19

Chairperson