

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber) STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 26 (1)

Chamber Ref: PRHP/RP/16/0178

Title no/Sasines Description:

ALL and WHOLE those 437.79 square metres of ground with house 11 Mearsdale Drive, Moffat, known as 11 Mearsdale Drive, Moffat, DG10 9JB, being the subjects more particularly described in the Disposition by Annandale District Council in favour of William Armit and Jean Govan Armit and recorded in the Division of the General Register of Sasines applicable to the County of Dumfries on the eighth March Nineteen ninety six ("The Property")

The Parties:-

Mr Andrew McGill, formerly residing at 149 Carlisle Road, Crawford, Biggar, and now residing at 21 Queen Street, Lochmabon, Dumfriesshire, DG11 1PP ("the Landlord")

And

Mr John Warner & Mrs Anne Warner, 11 Mearsdale Drive, Moffat, DG10 9JB ("the Tenants")

And

Lynne Davies, Dumfries & Galloway Citizens Advice Service, 81/85 Irish Street, Dumfries, DG1 2PQ ("the Tenants' Representative")

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) ("the tribunal"), has now determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 4 October 2016, and further has determined that notice of that failure should be served on the Local Authority in which the property is situated in accordance with Section 26(2)(a) of the Housing (Scotland) Act 2006 ("the Act"). The tribunal further determined to make a Rent Relief Order ("RRO") in terms of Section 26(2)(b) of the Act, which order shall take effect 28 days after the last date on which the decision to make the RRO may be appealed under Section 64 of the Act.

The Committee consisted of:-

Mr Andrew Cowan – Chairperson

Mr Kingsley Bruce – Surveyor Member

Background

1. On 4 October 2016, the tribunal issued a determination which stated that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act. On the same date, the tribunal issued a RSEO in respect of the Property.

A Cowan

2. The RSEO made by the tribunal required the Landlord to:-

- (a) Carry out such works as are necessary to ensure that the windows within the living room of the Property are in a reasonable state of repair and in proper working order, and to further ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) Carry out such works as were necessary to repair and/or renew the porch so that it was in a reasonable state of repair and in proper working order, and so that the Property is fully wind and watertight and in all other respects reasonably fit for human habitation.
- (c) Carry out such works as are necessary to the gutters at the Property so that they are brought to a reasonable state of repair and in proper working order.
- (d) Carry out such works as are necessary to the system for heating water at the Property so that the system is brought to a reasonable state of repair and in proper working order.

3. The tribunal ordered that the works specified in the RSEO were to be carried out and completed within a period of 4 weeks from the date of service of the RSEO upon the parties.

4. On 18 November 2016, the Surveyor Member of the tribunal re-inspected the Property. At that time, the Surveyor Member noted that some works required by the RSEO had been undertaken as follows:-

- Self-adhesive, compressible "foam" strip had been applied around the frame of windows in place of original fixed seals installed;
- The lean-to porch at the rear of the house, which was of timber construction had been removed, leaving only the base and brick or block base courses; and
- Gutters had been cleared and appeared to be in proper working order. >

The Surveyor Member noted that all other requirements of the RSEO as issued by the tribunal were outstanding for the reasons given by the Surveyor Member as outlined in his report, following his re-inspection of the Property.

5. A copy of the report prepared by the tribunal Surveyor Member, following the re-inspection on 18 November 2016, was circulated to both the Landlord and the Tenant. The Landlord acknowledged the Surveyor Member's re-inspection report and indicated, in writing dated 13 December 2016, that he agreed with the findings of the re-inspection report. The Landlord stated in his written response dated 13 December 2016 that "as far as we are aware and have been informed all work on the list had been completed with the exception of the boiler which again we are informed is all in good working order and no work required". The Landlord indicated he did not wish to attend a further hearing in relation to the matter. The Landlord indicated in writing that he did not think a RRO should be issued as a reduction in the rent had already been given.
6. The Tenants of the Property made written submissions dated 9 December 2016 following receipt of the tribunal Surveyor Member's written report. The Tenants indicated they agreed with the findings in the Surveyor Member's report. The Tenants indicated they did not wish to attend a further hearing in relation to the matter. The Tenants consider that a RRO should be issued as "only one out of four repairs were completed and the porch at the Property had been removed and not repaired or renewed as required by the RSEO".
7. Neither the Landlord nor the Tenants wish to attend any further hearing in relation to this application. Both the Landlord and the Tenants accept the terms of the tribunal Surveyor Member's report dated 18 November 2016. The Surveyor Member found in terms of his report that the Landlord has failed to comply with the requirements of the RSEO which were issued by the tribunal.

A Cowan

Effect of section 63

15. 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.

A Cowan

Signed
Andrew Cowan, Chairperson

Date

23 January 2017

L McManus

Witness

Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)
RENT RELIEF ORDER: Housing (Scotland) Act 2006 Section 27

Chamber Ref: PRHP/RP/16/0178

Title no/Sasines Description:

ALL and WHOLE those 437.79 square metres of ground with house 11 Mearsdale Drive, Moffat, known as 11 Mearsdale Drive, Moffat, DG10 9JB, being the subjects more particularly described in the Disposition by Annandale District Council in favour of William Armit and Jean Govan Armit and recorded in the Division of the General Register of Sasines applicable to the County of Dumfries on the eighth March Nineteen ninety six ("The Property")

The Parties:-

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And

Mr John Warner & Mrs Anne Warner, 11 Mearsdale Drive, Moffat, DG10 9JB ("the Tenants")

And

Lynne Davies, Dumfries & Galloway Citizens Advice Service, 81/85 Irish Street, Dumfries, DG1 2PQ ("the Tenants' Representative")

NOTICE TO Mr Andrew McGill, formerly residing at 149 Carlisle Road, Crawford, Biggar, and now residing at 21 Queen Street, Lochmabon, Dumfriesshire, DG11 1PP ("the Landlord")

Whereas in terms of its decision dated 23 January 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order ("RSEO") in relation to the house made by the tribunal.

The tribunal determined to make a Rent Relief Order ("RRO") in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 50% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the RRO may be appealed under section 64 of the said Act.

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.

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the tribunal is granted, then the effect of the decision and the RRO is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The RRO will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

A Cowan

Signed .
Andrew Cowan, Chairperson

Date 23 January 2017