

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Section 25 Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RP/18/0551

Title no: GLA 7182

Garden Flat, 4 Kensington Road, Glasgow, G12 9LF (“The Property”)

The Parties: -

Mr Alexander Thom, formerly Garden Flat, 4 Kensington Road, Glasgow, G12 9LF (“The former Tenant”)

Stephanie Ryles, c/o FineHolm Letting Services Ltd, 114 Union Street, Glasgow, G1 3QQ; 6 Sisters Crescent, Drummoyne, NSW 2047; 26 Knockmyle Road, Antrim, Northern Ireland, BT41 1HE (“The former Landlord”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made such enquiries as it saw fit determined that, as the work required by the Repairing Standard Enforcement Order (“RSEO”) relative to the property dated 5 July 2018 is no longer necessary, the said RSEO is hereby revoked with effect from the date of service of this notice.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Mr Nick Allan, Ordinary Member

Background

1. By application received on 8 March 2018 the former Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) 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 former Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. Specifically, the Tenant stated that from December 2017 there had been damp and mould in the property from a leak in the plumbing and that the property was flooded on 6 March 2018 leading to a sunken ceiling and the property being uninhabitable.
2. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 8 May 2018. The parties were notified that an inspection and hearing would take place on 15 June 2018. Following service of the Notice of Referral the Tribunal were notified that the Tenant had vacated the property on 31 May 2018. By Minute of Continuation dated 5 June 2018 the Tribunal determined that it would proceed to continue to determine the application in terms of Schedule 2 Paragraph 7(3) of the Act.
3. The Tribunal inspected the property on the morning of 15 June 2018. Following the inspection of the property the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow. After the hearing, the Tribunal proceeded to issue a Repairing Standard Enforcement Order (“RSEO”) in relation to the property. In terms of the RSEO the Landlord was required, (1) to instruct a suitably qualified damp specialist and building contractor to prepare a detailed survey of the property to identify the cause and full extent of the dampness, damp staining and any remedial action. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant decoration made good, and (2) To instruct suitably qualified contractors to carry out the repairs identified in the report on the property by Advanced Preservation Specialists Ltd dated 20 June 2018 to include a repair to stop water ingress from the property above, and any resultant decoration made good. The works were to be completed within 12 weeks of intimation of the RSEO. The RSEO was issued to the Landlord on 11 July 2018.
4. The Ordinary Member of the Tribunal re-inspected the property on 1 November 2018. The Ordinary Member noted improved damp meter readings in the living room cupboard and bathroom wall.

There was no change to the damp meter reading in the boiler cupboard. The ceiling in the lower bedroom was noted to be drying. A previously damp section of wall in the lower bedroom appeared dry but another section was still saturated. The property appeared to be unoccupied and uninhabitable. A re-inspection report was issued to the Landlord on 20 November 2018.

5. On 14 December 2018, the Landlord's agent confirmed that the work stipulated in the RSEO has not yet been carried out and that insurance authorisation was still outstanding, although progress was being made and that all necessary paperwork had been submitted in connection with the claim. On 11 January 2019, the Tribunal determined that the RSEO should be varied by extending the time for completion of the work until 30 March 2019. A variation of the RSEO was issued to the Landlord on 18 January 2019.
6. Further re-inspections by the Ordinary Member were arranged for 22 March 2019 and 11 April 2019. Both were postponed at the request of the Landlord's agent. A further re-inspection was arranged by the Tribunal for 21 May 2019. The Landlord's agent sought a further postponement, which the Tribunal refused. The Ordinary Member attended at the property on 21 May 2019. Access was provided by a contractor instructed by the Insurance company to carry out remedial work to the living room and lower bedroom. The Ordinary Member noted the existence of high moisture readings in the same areas identified at the first inspection namely, the living room, boiler cupboard, kitchen, living room cupboard, bathroom, front and lower bedroom. It was noted that the contractor has commenced work but that this was restricted to two of the affected areas. A report on the reinspection was issued to the Landlord. On 20 June 2019, the Landlord's agent requested a variation of the RSEO seeking a further four months for completion of the work. The agent advised that the property remained vacant and would not be re-let until all repair work was complete. She explained that delays had been caused by a dispute with another flat owner regarding the location of a water tank and a failure by the Insurance company to authorise work. She confirmed that an industrial dehumidifier was in place to assist with drying out and that all work identified in the RSEO would be addressed.
7. By decision dated 7 July 2019 the Tribunal determined that the RSEO should be varied by further extending the time for completion of the work until 30 October 2019. The decision was issued to the Landlord on 9 July 2019. A further re-inspection of the property was arranged for 12 November 2019. The Landlord sought a postponement of the re-inspection stating that the work was not

complete as a problem with the heating had caused a delay in the property drying out. The Tribunal refused the request. The Ordinary Member of the Tribunal attended at the property to carry out a re-inspection on 12 November 2019. Access was provided by a representative of the letting agency. The Ordinary Member noted that the dampness issues in two of the affected areas of the property, namely the living room wall and lower bedroom, had now resolved although both areas required re-decoration. Significant dampness was still noted in the boiler cupboard, the kitchen, living room cupboard, bathroom, and front bedroom. A report on the re-inspection was issued to the Landlord on 15 November 2019. No representations, further information, or request for a further variation of the RSEO were received. On 4 January 2020, the Tribunal determined that the Landlord had failed to comply with the RSEO.

8. On 21 September 2020, the Landlord's agent contacted the Tribunal to advise that the work was now complete. On 8 October 2020, the Tribunal notified the Landlord that a re-inspection could not be arranged, due to the pandemic, but that she could lodge evidence of the completed work. On 9 October 2020, the Landlord lodged photographs of the property and confirmed that the work was now complete. The Tribunal arranged a case management discussion ("CMD"). This took place by telephone conference call on 26 January 2021 at 10am. The Landlord was represented by Ms Gaillie and Ms Davrent, of Fineholm Letting. The Tribunal noted that the only evidence submitted by the Landlord in connection with the property were some undated photographs. The Tribunal advised Ms Gaillie that the Landlord could submit additional evidence of the work which had been carried out and the current condition of the property. This would be considered by the Tribunal and a decision made whether a certificate of completion could be issued, without a further re-inspection taking place. Ms Gaillie confirmed that she would discuss this with the Landlord who is anxious to have the matter concluded, as the property was to be sold. The Tribunal determined that the case should be continued for a re-inspection to be arranged and noted that the Landlord might lodge evidence for the Tribunal to consider.
9. On 12 March 2021, the former Landlord sold the property and the new owner enquired about the RSEO and whether this could be revoked. She advised that some of the work specified in the RSEO had been completed but that she had instructed further investigation and work. In response to the enquiry the Tribunal arranged a re-inspection of the property. The Tribunal attended at the property on 23 June 2021, 11.30 am to carry out the reinspection. Access was provided by the new owner of the property, Jennifer Smith.

The Re-inspection

10. The Tribunal noted that the property is now furnished. Ms Smith advised the Tribunal that she is currently living there, having purchased the property in March 2021.
11. The Tribunal noted that the living room wall is completely dry and has been decorated, the boiler cupboard is completely dry, the living room cupboard is completely dry, the front bedroom around the window is dry and no evidence of dampness was detected in the lower bedroom. Dampness persists at a reduced level in the kitchen and bathroom, suggesting that the walls may be drying out. A copy of the report on the re-inspection is attached to this decision.

Reason for decision

12. The Tribunal considered the condition of the property at reinspection and noted that the property has been sold by the former Landlord and is now occupied by the current owner as her home.
13. The Tribunal noted that the dampness affecting the property has resolved in almost all areas of the property identified at previous inspections of the property. Some residual dampness was noted in the kitchen and bathroom, but damp meter readings were much lower than previously noted and it appears that these areas may still be drying out.
14. In the circumstances, the Tribunal is satisfied that the work specified in the RSEO is no longer required and, as the property has been sold and is now occupied by the owner, that the RSEO should be revoked.

Decision

15. The Tribunal determined that the RSEO should be revoked.
16. The decision of the Tribunal is 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.

Josephine Bonnar, Legal Member:

5 July 2021