

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RP/19/2089

Re: Flat 0/2, 36 Garturk Street, Glasgow G42 8JF (“the house”)

Land Register Title No: GLA125116

The Parties:-

Mr Atif Aziz Khawaja, residing at the house (“the tenant”)

Mr Mohammed Arshad, c/o AQA Property Ltd, 584 Cathcart Road, Glasgow G42 8AB (“the landlord”)

Tribunal Members – Sarah O'Neill (Legal Member) and Sara Hesp (Ordinary Member, Surveyor)

Decision

The tribunal determined that the landlord has failed to comply with the Repairing Standard Enforcement Order.

The tribunal's decision was unanimous.

Background

1. The tribunal issued a decision on 9 October 2019 requiring the landlord to comply with the Repairing Standard Enforcement Order (RSEO) relative to the property issued by the tribunal on the same date.
2. The RSEO required the landlord to:

- 1) Instruct an appropriate contractor to carry out the replacement or repair as necessary of all areas of defective pointing to the front and rear elevation of the building.
- 2) Instruct a suitably qualified specialist contractor to make good or repair or replace the defective damp-proof course to the rear elevation of the building, and to provide evidence of that contractor's qualifications to the tribunal.
- 3) Deliver to the tribunal, for approval, a specialist report from a suitably qualified building surveyor, who is a professional member or fellow of the Royal Institution of Chartered Surveyors, to address the requirements for a property of this form of construction to make the property wind and watertight and substantially free from rising or penetrating damp, and to comply with the Repairing Standard. This report should include investigation of any issues contributing to the rising and /or penetrating damp which may have originated from the flat above or elsewhere within the tenement building.
- 4) Once a satisfactory report has been approved by the tribunal, to carry out such work as is recommended in terms of the report, provided that the tribunal confirms its approval of the works specified in the report.
- 5) Instruct a suitably qualified contractor to check whether the extractor fans within the house are in a reasonable state of repair and in proper working order. If any of these are found not to be operating satisfactorily, repair or upgrade the relevant fan/s, to ensure that they are in a reasonable state of repair and in proper working order.
- 6) Once item 5 above has been completed, provide an up to date Electrical Installation Condition Report (EICR) in respect of the house, showing that all electrical installations, appliances and fixtures and fittings, and in particular the extractor fans, have been checked and are working safely. The EICR must be produced by either:
 - a suitably qualified and registered SELECT or NICEIC contractor
 - a member of NAPIT, or
 - a contractor who is able to provide evidence that they are a 'competent person' i.e. a completed and signed checklist, as set out at Annex A on page 13 of the guidance by Scottish Ministers on Electrical Installations and Appliances in Private Rented Property, which can be found on the [Chamber's website](#).
- 7) Provide an up to date gas safety certificate in respect of the house by a Gas Safe registered engineer, showing that all gas installations and

appliances, and in particular the boiler and radiators, have been checked and are in a reasonable state of repair and in proper working order.

- 8) On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal ordered that the works must be carried out and completed within the period of six months from the date of service of the RSEO.

3. On 5 April 2020, at the request of the landlord's agent, AQA Property Ltd, the tribunal varied the RSEO to extend the period for completion of the works for a further six months until 9 October 2020. The tribunal considered that, given the extensive nature of the repairs required, and in light of the restrictions which were in place due to the coronavirus outbreak at that time, and which were likely to continue for some months, it was reasonable to allow the landlord further time to comply with the RSEO.
4. On 15 September 2020, a further request for an extension of time was received by email from the landlord's agent on his behalf. The email stated that some of the repairs had been completed and requested further time to complete the remaining works, as due to renewed coronavirus restrictions, the agency's contractors were not going into properties to carry out work.
5. Having considered this request, the tribunal issued a further variation of the RSEO on 29 September 2020, extending the period for the completion of the works for a further twelve weeks until 31 December 2020. In its decision of 29 September 2020 to grant the variation, the tribunal noted its concerns that the works which had been carried out to date appeared to be primarily of a decorative/cosmetic nature. It also noted that, where work had been carried out, the tribunal was unable at that stage to assess whether it had been completed to a satisfactory standard.
6. The tribunal observed in that decision that the works carried out to date did not appear to have addressed the primary issues identified by the tribunal, namely those arising from the dampness within the house. It noted that items 2, 3, 4, 6 or 7 of the RSEO did not appear to have been addressed. While the tribunal accepted that it had been difficult to arrange repairs due to the current pandemic, it noted that the landlord had at that point had almost a year to address these issues. The tribunal therefore stated in the decision that if the remaining works were not completed by 31 December 2020, it was likely to issue a failure to comply decision.
7. On 1 December 2020, an email was received from the landlord's agent attaching a gas safety certificate and EICR relating to the property. In the email, the landlord's agent requested further time to allow its contractors to complete the rest of the work, stating that they were not currently working due to the coronavirus restrictions.

8. A case management discussion (CMD) was arranged for 10 February 2021 to discuss the application. The tribunal issued a direction to the landlord on 15 January 2021 requiring him to provide the following by 8 February 2021:
 1. A further up to date EICR for the house by a suitably qualified and registered contractor, showing that all electrical installations, appliances and fixtures and fittings, and in particular the extractor fans, have been checked and are working safely (the tribunal having noted that the contractor who produced the EICR which had been provided to the tribunal did not appear to be registered with either SELECT or NICEIC).
 2. Written confirmation from the gas safety engineer who produced the gas safety certificate which had been provided by the landlord as to the meaning of a defect identified in that certificate.
 3. Evidence of any written communication with any specialist contractor and/or suitably qualified building surveyor regarding the work required at items 2 and 3 of the RSEO.
 4. Confirmation in writing as to whether the tenant was still living in the house.
9. In the direction, the tribunal noted that it understood that the current Scottish Government coronavirus guidance permitted tradespeople to enter a house to carry out or deliver essential work or services, including carrying out repairs and maintenance that would otherwise threaten the household's health and safety. It again stated that the tribunal was likely to issue a failure to comply decision unless it was satisfied that there were good reasons for the failure to carry out the works.
10. A response to the direction was received from the landlord's agent on 1 February 2021. An email was also received from the landlord's agent on 26 January 2021, requesting a postponement of the CMD arranged for 10 February 2021. The email stated that the landlord was currently abroad for medical reasons and was too ill to attend a hearing on the telephone. A copy of an airline ticket which appeared to show that the landlord had travelled abroad in November 2020 was attached. The tribunal notified the parties on 5 February 2021 that it had refused the postponement request because it did not consider that the evidence which had been provided demonstrated that there was good reason to postpone the CMD. The tribunal therefore confirmed that the CMD would go ahead as scheduled.

The case management discussion

11. A CMD was held on 10 February 2021 by telephone conference call. The landlord was not present or represented on the conference call. The tenant was represented by Ms Wendy Malloy, a housing adviser at Govan Law Centre, who gave evidence on his behalf.

12. The tribunal delayed the start of the CMD by 10 minutes in case the landlord had been detained. He did not attend the conference call, however, and no telephone calls, messages or emails had been received from him. The tribunal noted that notification of the CMD date and time had been sent to the landlord's agent by recorded delivery and by email on 12 January 2021. It was clear from the email received from the landlord's agent on 26 January 2021 that he was aware of the CMD. The landlord's agent had also been notified by email of 5 February 2021 that the tribunal had refused its postponement request. The tribunal was therefore satisfied that the requirements of rule 17 (2) of Schedule 1 to The First-tier Tribunal for Scotland Chamber Rules of Procedure 2017 as amended ('the 2017 rules') regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the landlord.
13. Ms Malloy told the tribunal that the tenant and his family were still living in the house. She said that he had been registered as homeless with the local authority and was still waiting for an offer of suitable housing for his family. She said that, contrary to the claims which had been made by the landlord's agent, the tenant had only been offered one other property by the landlord. This was the other ground floor flat within the same tenement, which he had been offered prior to the tribunal's initial inspection and hearing. As noted in its original decision of 9 October 2019, the tenant had declined this offer as the other flat was in a poor state of repair and was unsuitable for his family. She said that the landlord had made no further offers of alternative accommodation since then.
14. She told the tribunal that the tenant had confirmed that some redecoration and pointing work had been carried out within the house but had told her that these were of poor quality. While the tenant had initially been understanding that the works would take some time to complete, he was unhappy that the situation had gone on for so long without matters being resolved. The tenant had confirmed that a dampness surveyor had come to the house on 28 January 2021 and had heard nothing further about this.
15. Ms Malloy also confirmed that she had discussed with the tenant the possibility of a Rent Relief Order, should the tribunal decide that the landlord had failed to comply with the RSEO. She indicated that he wished the tribunal to consider this. She said that given the extent of the problems within the house, the length of time which they had been ongoing, and the impact they were having on the tenant and his family, he sought a rent relief order restricting the rent payable by 90%, the maximum which could be awarded.

Reasons for decision

16. In light of the evidence before it, the tribunal determined that it was in a position to make a decision on whether the landlord had complied with the RSEO at the

CMD. The tribunal considered whether the landlord had complied with each part of the RSEO in turn, as set out below.

17. Firstly, regarding item 1 of the RSEO, the tribunal notes that it appears from the photographs submitted by the landlord's representative on 17 September 2020 that the defective pointing to the front and rear elevation of the building has been replaced. The tribunal has been unable to arrange a re-inspection of the house due to the coronavirus pandemic. It notes that Ms Malloy told the tribunal the tenant had reported that the repairs were of poor quality. Without carrying out a re-inspection of the house, the tribunal is unable to determine whether the work has been completed to a satisfactory standard. It is therefore unable to make a finding as to whether item 1 has been complied with.
18. In relation to item 2 of the RSEO, the tribunal notes from the information provided by the landlord's agent in response to its direction of 15 January 2021 that they instructed Advanced Preservation, a specialist dampness surveyor, to provide a dampness report for the house on 22 January 2021. The correspondence provided by the landlord's agent shows that a surveyor was due to inspect the house on 28 January 2021. In her evidence on behalf of the tenant, Ms Malloy confirmed that a dampness surveyor had visited the house on that date.
19. Item 2 of the RSEO required the landlord to 'instruct a suitably qualified specialist contractor to make good or repair or replace the defective damp-proof course to the rear elevation of the building, and to provide evidence of that contractor's qualifications to the tribunal.' The tribunal concludes from the evidence before it that the landlord has not done this. The landlord has to date only instructed a dampness report in relation to the house. While the tribunal appreciates that the coronavirus restrictions have made it more difficult to carry out works, it notes that the landlord only appears to have taken this action very recently following its direction. The tribunal therefore finds that the landlord has failed to comply with item 2 of the RSEO.
20. With regard to items 3 and 4 of the RSEO, the tribunal has neither received a specialist report from a suitably qualified surveyor as described in item 3 nor approved such a report as required in terms of item 4. The tribunal therefore determines that the landlord has failed to comply with both items 3 and 4 of the RSEO.
21. In terms of item 5 of the RSEO, the landlord's agent stated in an email of 17 September 2020 that the extractor fans in the bathroom and the kitchen were both working. It has also provided to the tribunal a letter dated 26 January 2021 from the electrical contractor who produced both EICRs for the property (as discussed below), stating that the extractor fans seem to be in working order. Given the tribunal's concerns regarding the competency of that contractor, and the validity and authority of both EICRs produced by him, as discussed in

relation to item 6 below, the tribunal determines that, on the balance of probabilities, the landlord has failed to comply with item 5 of the RSEO.

22. With regard to item 6, the tribunal has some concerns regarding the two EICRs, both dated 'October 2020', which have been produced by the landlord's agent. The first EICR (EICR 1), which was provided by the landlord's agent on 1 December 2020, was produced by Andrew Gilbert of High Chapelon, Stewarton KA3 3ED. The tribunal was unwilling to accept this EICR as the contractor did not appear to be registered with either SELECT or NICEIC, or to be a member of NAPIT, and had not provided evidence that he was otherwise a 'competent person', as required by the RSEO. The tribunal therefore directed the landlord to produce a further EICR from a suitably qualified and registered contractor.
23. A second EICR (EICR 2) was provided by the landlord's agent in response to its direction of 15 January 2021. The tribunal has several concerns about EICR 2. Firstly, despite having been produced in response to the tribunal's direction, it is dated October 2020, the same date as EICR 1. Secondly, while it has been produced by a SELECT registered firm, C. Dickson Electrical Ltd of Rhindmuir Grove, Swinton, Glasgow, the name of the electrician who carried it out is given on the certificate as Andrew Gilbert. It therefore appears that EICR 2 was produced by the same individual contractor as EICR 1 and was carried out at the same time. Given these issues, the tribunal has concerns about the validity and authority of EICR 2.
24. Moreover, both EICR certificates state that while the installation is assessed as being satisfactory but describe it as 'poor but passable' (EICR 2) and 'barely passing' (EICR 1). Both recommend that the installation is further inspected and tested by October 2021, rather than the usual five-year period. The tribunal is concerned that this suggests that there is some doubt as to whether the electrical installation is in fact satisfactory. Given this, taken together with the concerns discussed in the paragraph above, the tribunal determines that on the balance of probabilities, the landlord has failed to comply with item 6 of the RSEO.
25. The tribunal is satisfied that the landlord has complied with item 7 of the RSEO. While it had some concerns about the gas safety certificate dated 8 September 2020 which was initially supplied by the landlord's agent, it notes that this certificate in fact related to another flat in the same building (Flat 0/1). The tribunal is content that the gas safety certificate relating to the house dated 6 July 2020 which has now been produced by the landlord's agent provides evidence of compliance with item 7 of the RSEO.
26. Finally, the tribunal is unable to make a determination as to whether the landlord has complied with item 8 of the RSEO as some of the other works have not yet been completed, as discussed above.

27. For the above reasons, the tribunal determines that the landlord has failed to comply with items 2,3,4,5 and 6 of the RSEO. While it is unable to make a determination on whether the landlord has complied with items 1 and 8, the tribunal finds that in any case the landlord has failed to comply with all of the other items in of the RSEO as outlined above.

28. The tribunal has previously notified the landlord twice that, unless it was satisfied that there were good reasons for the failure to carry out the works in the RSEO, it was likely to issue a failure to comply decision. The tribunal appreciates that the coronavirus pandemic presented additional challenges for the landlord. The landlord has been given a total period of 16 months to carry out the works, including more than 5 months prior to the commencement of the first coronavirus lockdown in March 2020 and several months during summer 2020, when the restrictions were relaxed. The tribunal therefore considers that the landlord has had ample time to carry out the repairs, including two lengthy extensions granted by the tribunal, but appears to have made little effort to do so.

Decision

29. The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlord has complied with the RSEO, therefore determines that the landlord has failed to comply with the RSEO in terms of section 26(1) of the Act, and that a notice of this failure should be served on the local authority in whose area the property is situated.

Rent relief order

30. The tribunal considered whether a Rent Relief Order should be made in terms of section 27 of the Act. It determined that given the extent of the landlord's failure to comply with the RSEO, despite having been given a total of 16 months to do so, such an order should be made.

31. The tribunal then considered the amount by which the rent payable under the tenancy should be reduced. The tribunal noted that the dampness issues are extensive which must have had a major impact on the health and wellbeing of the tenant and his family. The issues have also been ongoing for a considerable period of time, and the landlord appears to have done little to address them. Having weighed up these considerations, the tribunal determined that an appropriate reduction would be to reduce the rent payable under the tenancy by **90%** until the RSEO has been complied with. The Rent Relief Order will be effective from 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

Right of Appeal

32. 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.

33. 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 will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

S O'Neill

03/03/2021

Signed.....
Chairperson

Date.....