

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 Sections 26, 27 & 28

Chamber Ref: FTS/HPC/RP/22/4346

Property at Flat 5/L, 84 Commercial Street, Dundee, DD1 2AP ("the Property")

The Parties:-

**Mr Conor McConville, Flat 5/L, 84 Commercial Street, Dundee, DD1 2AP
("the Tenant")**

**Sale Developments Limited, Westburn House, North Dunning, Perthshire, PH2 0QY
("the Landlord")
(Represented by Rockford Properties Limited, 50 Castle Street, Dundee, DD1 3AQ)**

Tribunal Members:

Gillian Buchanan (Chair) and David Godfrey (Ordinary Member)

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 Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that (i) the Landlord has failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. Reference is made to the determination of the tribunal dated 14 March 2023 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that it had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - a. To repair or replace the kitchen and bedroom windows to ensure that they are wind and watertight, in a reasonable state of repair and in proper working order and open and close correctly.

- b. To engage a suitably qualified contractor to investigate the extent and cause of the water ingress into the sloping ceiling and adjacent wall near to the north west dormer projection in the kitchen and to provide to the tribunal for approval a report detailing the cause of and any works required to eradicate any such ingress of water to ensure the sloping ceiling and adjacent walls are wind and watertight and in a reasonable state of repair and, following approval of the report and works stated to be required, to execute any repairs identified as being necessary and to provide evidence thereof to the tribunal.
- c. On completion of the works referred to in 2 above to provide to the tribunal written confirmation that the source of the dampness has been eradicated.

The RSEO gave the Landlord 2 months to carry out the works.

2. By email dated 13 June 2023 the Landlord's representative sent to the tribunal a report of 12 June 2023 from Leys Slaters detailing the findings of an inspection of and the remedial works required to the roof of the Property.
3. The tribunal approved the report of Leys Slaters and the works detailed therein.
4. The tribunal proposed a re-inspection of the Property on 21 June 2023. By email dated 16 June 2023 the Landlord's representative sought a postponement of the re-inspection on the basis that whilst the works required by the RSEO were "well underway" they were not complete. She stated:-

"The windows are specially made to measure and have been on order for some time with the intended completion time by your visit. Unfortunately the manufacturer has let us down and now our glazier is going to make them himself, as advised in the attached email. Would it be possible to bring the visit in line with his competition date?"

I wanted to clarify that the owner is committed to doing the works and it is all in motion. However we are struggling to meet the deadline of Wednesday for your visit. Can you please let me know how you wish to proceed."

The tribunal granted the postponement request in the circumstances and rescheduled the re-inspection to 19 July 2023.

5. By email dated 16 July 2023 the Landlord's representative sought a postponement of the reinspection. She stated:-

"I was on annual leave last week however before I went I called the glazier to confirm that the date of the 19th July was still achievable. Unfortunately today when I called for another update the windows are still in production and have not been finished yet, installation is then still to come. I am terribly sorry to ask, I am doing everything that I can to keep this repair going along as quickly as I can.

The three tasks you set me to do

1 window repair – in progress

2 provide a report on the roof – already completed and sent to you

3 provide confirmation that the source of damp has been eradicated. I can confirm this has been completed. The roofer has attended to the works and we have visited since during

some bad weather and the property was dry where there had previously been a leak. I do not have the roofers invoice but I have chased this today and will send it to you as soon as its received so you have it as evidence for your file.

I feel I should stress again the landlord is fully committed to getting the window work carried out, the company is made of one skilled joiner so the work is taking some time and unfortunately the deadlines that he has previously given us have not been met. Another deadline would be very much appreciated as I do not want to you have a wasted visit to the property when the works are not completed."

The tribunal refused the postponement request.

Re-inspection

6. On 19 July 2023 the tribunal re-inspected the Property. The Tenant was present. The Landlord was not present but was represented by Hazel Young of Rockford Properties Limited. A Tradesman, Neil Scrimgeour, for the Landlord was also present.
7. The re-inspection revealed that repairs had been carried out to the roof covering in the vicinity of the sloping ceiling and adjacent wall near to the north west dormer projection in the kitchen. All other works remained outstanding. In particular, the repair/replacement of the kitchen and bedroom windows had still to commence and the tribunal was advised by the Landlord's representative that the work was due to commence on 24 July 2023.
8. Damp staining was still evident to the upper walls/ceiling in the kitchen and the Tenant advised the tribunal that further damp staining had appeared since the roof repairs were completed. The estimate and specification for the roof repairs provided on behalf of the Landlord by Leys Slaters dated 12 June 2023 provides for the supply and fix of a rainwater pipe at the flat roof however no evidence of this was noted during the tribunal's external inspection of the rear of the building from street level.
9. The tribunal then considered what steps to take. In respect that the outstanding repairs were due to commence on 24 July 2023 the tribunal agreed to adjourn the re-inspection to a later date to allow those works to be completed. The re-inspection was adjourned to 9 August 2023.
10. By emails dated 24 July the Landlord's representative lodged with the tribunal the invoice of Leys Slaters and photographs of the roof.
11. By email dated 8 August 2023 the Landlord's representative stated:-

"I wanted to make you aware of the emails attached – especially the third attachment in preparation for the visit at 84 5L Commercial Street tomorrow.
As you can see I have been pushing the glazier to complete the works (as is the tenant) however the glazier still hasn't finished the job.
In the last meeting on site the glazier advised us when the works would be completed – he gave a date of the works starting 24/07/2023 and will take 7 days.
Unfortunately he has not adhered to this deadline despite trying my best. This is skilled work and the works are underway, I can not change contractor at this stage but I'm so disappointed at how the works are coming along as they should be completed. I can only apologise on behalf of the landlord and contractor as I understand how serious this matter is."
12. By email dated 9 August the Landlord's representative stated:-

"As discussed on the phone just now – I have spoken to the glazier this morning. The windows are made and are in his workshop, they are currently being painted. I have asked him to send me some pictures so I can share those with you – as soon as I get the email through I will pass it over to you. I just wanted to check if you still wanted the visit to go ahead today – you are welcome to visit however the windows will not be there so you wont be able to see them on site."

Further Re-inspection

13. On 9 August 2023 the tribunal re-inspected the Property. The Tenant was present. The Landlord was not present but was represented by Hazel Young of Rockford Properties Limited.
14. The re-inspection revealed that subsequent to the previous re-inspection on 19 July 2023 the north gable wall of the kitchen has been redecorated.
15. However, the repair/replacement of the kitchen and bedroom windows was still outstanding and damp staining was evident to the north gable wall of the kitchen.
16. The tribunal issued the re-inspection report to the parties.
17. By email dated 30 August 2023 the Landlord's representative stated:-

"I just wanted to write to keep you updated on the new windows being installed. The glazier has informed me today that he expects the job to be complete by the end of the working day on Friday 1st September. I will write again once the job has been finalised."

18. The tribunal has heard nothing more from either party.

Reasons for Decision

19. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
20. The tribunal determined that the Landlord has failed to comply with the RSEO. Significant works required in terms of the RSEO are outstanding namely the works to repair or replace the kitchen and bedroom windows. The state of the kitchen windows in particular is disgraceful with the window frames being entirely rotten and the sills have disintegrated altogether leaving a significant gap beneath the lower edge of the glazing open to the elements. As a result the Property is not wind and watertight and has not been wind and watertight for a considerable period of time. The sash cords are also broken. In the bedroom, the window frame is rotten and a glazed panel is cracked. Accordingly the tribunal is obliged to serve notice of the failure on the local authority and resolved to do so.
21. The tribunal then decided whether or not to make an RRO. The tribunal determined that it was appropriate to make an RRO.
22. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord has offered no explanation as to its failure to complete the outstanding works nor any indication as to when they will be completed. Accordingly, in the

circumstances, the tribunal was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

23. The tribunal determined that in terms of the Act the Landlords had failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution.
24. The tribunal made an RRO.
25. The decision of the tribunal was unanimous.

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.

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(s) are executed by Gillian Buchanan, Solicitor, First Tier Tribunal for Scotland (Housing and Property Chamber), 3rd Floor, Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT, Chairperson of the tribunal at Dundee on 9 October 2023 before this witness:-

G Buchanan

Witness : Devlin

Date : 9 October 2023