



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

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

STATEMENT OF DECISION of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 25 (1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RP/22/3546

Land Register Title number AYR48366

Re: Property at 25 Hunterston Road, West Kilbride, KA23 9EX (“the Property”)

The Parties:

Alan Gilmour (“the Applicant/Tenant”)

Yuk Lee, residing at 17 Castle Drive, Kilmarnock KA3 1TN (“the Respondent/Landlord”)

Tribunal members

James Bauld (Legal Member) and Donald Wooley (Ordinary Member)

Background

1. By application initially lodged on 28 September 2022, the applicant as tenant of the property made an application to the First Tier Tribunal (Housing and Property Chamber) indicating that he believed that the respondent who is the landlord of the property was failing to comply with the duty imposed on him by section 14 (1) (b) of the Housing Scotland Act 2006 (hereinafter referred to as “the 2006 Act”). He complained that the property did not meet the

repairing standard set out in the 2006 Act and the Tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the property.

2. The terms of the RSEO were as follows ...the tribunal required the Landlord to

- Instruct a suitably qualified damp specialist to prepare a survey report of the stairwell and ground floor entrance hall areas, detailing the cause and full extent of the dampness and damp staining together with a proposed specification outlining all necessary remedial action.
- Submit the report to the tribunal for further consideration and thereafter, carry out all works then required by the tribunal as are necessary to eradicate the damp from the property and to ensure that the property meets the Repairing Standard.
- Instruct a suitably qualified tradesperson to inspect and repair or replace the defective taps at the bath, ensuring that they are fully capable of being turned off, no longer emit an unnatural sound, are in a reasonable condition and in proper working order.
- Adjust, relay or repair that area of flooring in the hall located between the cupboard and bathroom, ensuring that it is well supported and free from periodic "impact contact" with any internal plumbing and/or central heating pipework.
- Adjust, relay or repair the section of defective flooring in the bathroom which has caused damage to the linoleum floor covering and renew or replace the damaged floor covering.
- Make good any decoration necessary following completion of the repairs.

3. The tribunal also ordered that the works specified in the RSEO were to be carried out and completed within the period of 6 weeks

Reinspection and subsequent responses from parties

4. Upon the expiry of that period of time arrangements are made for the tribunal to re-inspect the property.
5. A reinspection was carried out on 12 July 2023.
6. A report of the reinspection was prepared and was issued to the parties

together with a schedule of photographs. The parties were invited to comment upon the report.

7. By email dated 19th July, the applicant's representative indicated that he agreed with the report, that he had nothing to add and awaited the tribunal's decision.
8. The respondent replied to the report by means of an email dated 21st July from his representative. That email included a letter dated 19 July from Peter Cox preservation confirming that the installation of the chemical damp proof course and drywall plastering system had been completed in accordance with the terms of their report dated 28 March 2023. The email from the respondent's representative acknowledged that no repairs have been done to the flooring in the bathroom. In the email, the respondent's representative claimed that this was not a matter which was the responsibility of the landlord but was the responsibility of the tenant.

Decision

9. The tribunal has carefully reviewed the responses from the parties and also the evidence obtained at the reinspection.
10. The tribunal notes that the RSEO required the landlord to obtain a report from a suitably qualified damp specialist detailing the cause and full extent of the dampness and damp staining in the hall and ground floor areas together with a proposed specification outlining all necessary remedial action. The landlord was then required to submit the report to the tribunal for further consideration and thereafter to carry works as required by the tribunal
11. The tribunal notes that the report from Peter Cox was not sent to the tribunal until 14 April 2023 which is outwith the period specified in the order. Accordingly the tribunal had no opportunity to review the report nor agree the specification of any works.
12. The letter received from Peter Cox indicates that the only works carried out in accordance with the recommendations in the report were the installation of the damp proof course and the plastering.
13. The tribunal also notes that the part of the order which requires the landlord to repair or renew the section of defective floor covering in the bathroom has simply not been done. The tribunal does not accept the landlord's position in his representations saying that this is a matter to be dealt with by the tenant.

The damage to the linoleum covering is a direct result of the movement in the poorly secured floor boards (now repaired) and it remains a trip hazard.

14. Accordingly, the Tribunal took the view that the landlord had failed to implement the works required in terms of the RSEO and was accordingly in breach of the Order. In accordance with the relevant provisions of section 25 of the 2006 Act the Tribunal required to determine whether a Rent Relief Order should be made.

15. The Tribunal noted that no attempt has been made by the landlord to comply with one specific element of the requirements of the RSEO. He had also failed to comply with the requirement to provide the report and to obtain further instructions from the tribunal relating to repairs which may be needed.. he had obtained a report but had also ignored recommendations set out in that report.

16. In the view of the Tribunal, the landlord has had ample time to implement and comply with the terms of the RSEO. The Tribunal took the view that the landlord had failed to comply with all aspects of the RSEO and in the circumstances the Tribunal determined that a Rent Relief Order should be made.

17. The Tribunal carefully considered the level at which a Rent Relief Order should be made. The Tribunal noted that the maximum percentage deduction which could be made was 90%. The Tribunal took the view that the failure by the landlord to carry out the required works to the bathroom floor covering coupled with the terms of his email of 21 July indicated that the landlord had simply ignored part of the RSEO. The Tribunal also noted that the landlord had failed to timeously exhibit the required report from the specialist contractor.

18. Accordingly, the Tribunal took the view that the failure by the landlord to comply with the RSEO was significant and that there should be an appropriate reduction made in the ongoing rent to reflect same. The Tribunal took the view that the appropriate reduction in rent should be 10% in the ongoing monthly rent and accordingly the Tribunal determined to make a Rent Relief Order in those terms.

19. A Rent Relief Order is attached to the decision

Right of Appeal

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.

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.

The Decision of the Tribunal is unanimous.