

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Chamber Reference number: FTC/HPC/RT/22/0840

Parties:

- 1. Dumfries and Galloway Council per its employee Mr. Robert Rome, HMO Licensing and Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street. Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);**
- 2. Mr. James Donnelly residing at 4, Knowe Cottages, Kirkconnel, Sanquhar, DG4 6NN (“the Tenant”) and**
- 3. Inkersall Investments Limited, Challenge House, 46, Nottingham Road, Mansfield, Nottinghamshire, NG18 1BL (“the Landlord”), together referred to as “the Parties”.**

Property: 4, Knowe Cottages, Kirkconnel, Sanquhar, DG4 6NN being part of the subjects registered under title sheet number DMF22527

Tribunal Members

K Moore (Chairperson) and C Jones (Ordinary Member)

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that it cannot be satisfied and so determines that the Landlord has failed to comply. In addition, the Tribunal imposes a Rent Relief Order of 30% of the weekly rent from the date 30 days from the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

This Decision should be read in conjunction with Decision and Repairing Standard Enforcement Order (RSEO) both dated 21 June 2022 and Decision and Variation of the RSEO both dated 13 December 2022

Background

1. By application received on 23 March 2022 (“the Application”), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (h) of the Act.
2. Following an Inspection of the Property and a Hearing, the Tribunal imposed the RSEO:

“The Landlord must on or before 21 September 2022 carry out all of the following:-

Instruct a damp proofing and timber specialist registered with the Property Care Association or similar trade organisation to carry out an inspection of the Property with a view to identifying the extent and causes of the dampness in the ground floor bedroom, entrance hall and living room of the Property, provide a fully documented report on their findings and recommend works to remedy the dampness and rectify any damage caused by the dampness (“the Dampness Report”). The instruction to the specialist should include a copy of this RESO, the said Decision of Tribunal and the Tribunal’s Inspection Report; Submit the Dampness Report to the Tribunal, the Third-party Applicant and the Tenant; Instruct a contractor or contractors capable of providing a 10- year guarantee to carry out all works recommended by the Dampness Report; Instruct a drainage engineer registered with the National Association of Drainage Contractors or similar trade organisation to carry out a full inspection of the garden grassland area to the front of the Property with a view to identifying the extent and causes of the excess water in that area, provide a fully documented report on their findings and recommend works to remedy the drainage issues (“the Drainage Report”). The instruction to the specialist should include a copy of this RESO, the said Decision of Tribunal and the Tribunal’s Inspection Report; Submit the Drainage Report to the Tribunal, the Third-party Applicant and the Tenant; Instruct a contractor or contractors capable of providing a 10- year guarantee to carry out all works recommended by the Drainage Report; Make good the décor damaged as a result of the water ingress to the front bedroom ceiling; Replace the broken roof slates; Replace the downpipe and guttering to the rear of the Property to ensure that these are in proper working order; Replace the open fire hearth in the living room to ensure that the hearth is fully tiled with heat resistant tiling and that the fire can be used safely; Repair or replace the back panel to the right side lower cabinet and re-instate the shelf to the adjoining left side cabinet in the kitchen. Repair the extractor fan in the kitchen to ensure that it is in proper working order, is not excessively noisy and does not allow an excessive amount of wind to enter the Property. In the event that a repair is not possible, replace the fan with an electric fan to be fitted by a suitably qualified and registered SELECT, NAPIT or NICEIC electrical contractor and Make good all damage as a result of these works.”

Section 25(3) Application, Re-inspection and Hearing.

3. By email dated 20 September 2022, the Landlord applied to the Tribunal in terms of Section 25(3) of the Act to vary the RSEO in respect of both the wording of the RSEO and the time given for compliance which application was opposed by the third-party Applicant.

4. A Re-inspection took place on 4 November 2022 at 11.00 a.m. at the Property and a Hearing was held by telephone conference call on 30 November 2022 at 10.00 am. The Third-party Applicant was represented at the Hearing by Mr. Adam Black and Mr. Robert Rome. The Landlord was represented by Mr. James Woodcock. The Tenant was present as an observer along with Miss Parker, as a supporter.

5. Following the Re-Inspection and Hearing, the Tribunal varied the RSEO as follows in respect of content and allowed further time to comply:-

*“The Landlord must on or before **28 February 2023** carry out all of the following:-*

- 1. By instructing Russell Preservation of 69, Commercial Road, Strathaven or a damp proofing and timber specialist registered with the Property Care Association or similar trade organisation, ensure that the works recommended in the Report dated 8 August 2022 prepared by the said Russell Preservation and submitted to the Tribunal by the Landlord are carried out;*
- 2. By instructing a suitably qualified land drainage engineer or agricultural engineer, ensure that such drainage works as are required to ensure that all surface water is drained from the front garden and is directed away from the front garden and the house so that the front garden is usable as an ornamental garden and the house is free from water ingress from the front garden are carried out. The Landlord is to provide the Tribunal, the Third-party Applicant and the Tenant with a copy of the engineer’s quote for the works which should detail the works to be carried out;*
- 3. Repair the extractor fan in the kitchen to ensure that it is in proper working order, is not excessively noisy and does not allow an excessive amount of wind to enter the Property. In the event that a repair is not possible, replace the fan with an electric fan to be fitted by a suitably qualified and registered SELECT, NAPIT or NICEIC electrical contractor and*
- 4. Make good all damage as a result of these works.”*

Further Procedure.

7. By email dated 13 February 2023, the Third-party Applicant submitted a detailed drainage assessment report by Aegaea which had been commissioned by the Tenant. The report concluded that there are three drainage issues which might contribute to or be the cause of the localised saturation/flooding around the Property, in particular the front (southern) garden. These are: roof water runoff; external water runoff routing towards the property from surrounding areas and the existing drainage network including outfall to the nearby watercourse.

Re-inspection and Hearing.

6. A further Re-inspection took place on 4 May 2023 at 11.00 a.m. at the Property. The Third-party Applicant was represented by Mr. Adam Black. The Landlord was represented by Mr. James Woodcock. The Tenant was present as an observer.

7. At the further Re-inspection the Tribunal noted that work had been carried out to the front bedroom and in the hallway of the Property, a new carpet had been fitted

in the front bedroom, new sub-floor vents had been installed on the gable wall and front elevation and the extractor fan had been replaced. No redecoration work had been carried out, no work had been carried out to the living room/lounge of the Property and no work had been carried out in the front garden area. The Tribunal noted that the surface of the front garden area appeared to have dried out in places. The Tribunal noted that the dampness was still present in the front bedroom, in the hallway and in the living room/lounge of the Property. Mr. Woodcock explained that the work carried out was the work noted in the Russell Preservation Report, for which he had a guarantee.

8. Following the further Re-Inspection the Tribunal issued a Re-inspection Report and the following Direction:-

“The Landlord is directed to submit:

1. *A copy of the guarantee issued by Russell Preservation in respect of the work carried out by Russell Preservation at the Property on 9 January 2023;*
2. *Documentary evidence that the said Russell Preservation carried out all of the work recommended by Scott Miller of Russell Preservation in his report dated 8 August 2022;*
3. *A copy of the photographic log referred to by the said Scott Miller of Russell Preservation in his report dated 8 August 2022;*
4. *A copy of the sketch referred to by the said Scott Miller of Russell Preservation in his report dated 8 August 2022;*
5. *Documentary evidence of the Landlord’s attempts to comply with item 2 of the RSEO as varied on 13 December 2022 and*
6. *Any other documentary evidence on which the Landlord intends to rely at the Hearing on 22 May 2023.*

The Third-party Applicant is directed to submit:

7. *Any documentary evidence not already lodged on which the Third-party Applicant intends to rely at the Hearing on 22 May 2023.*

Both Parties are directed to submit:

8. *A list of witnesses, if any, to be heard at the Hearing on 22 May 2023.”*

9. The Landlord complied with the Direction and submitted the required documentation. The Third-party Applicant did not submit anything further. Neither Party submitted a witness list.

10. A Hearing was held by telephone conference call on 22 May 2023 at 10.00 am. The Third-party Applicant was represented at the Hearing by Mr. Adam Black. The Landlord was represented by Mr. James Woodcock. The Tenant was present as an observer.

11. The Tribunal explained that the purpose of the Hearing was to consider the current condition of the Property, the Landlord’s compliance with the RSEO as varied and for the Tribunal to make a determination on the next steps being whether to discharge or vary the RSEO or to make a finding of failure to comply. The Tribunal re-capped on the history of the Application with regard to the initial complaint and

the work carried out to date and noted that there is still dampness evident in the Property.

Third-party Applicant's Position.

12. The Tribunal sought the Third-party Applicant's views. Mr. Black advised that it was accepted that the works required by the Russell Preservation Report had been carried out and that a guarantee had been issued. However, the garden drainage work had not been carried out and the extractor fan was possibly not installed by a competent contractor as required by the RSEO. Mr. Black advised that he was loathe to ask that a Failure to Comply Decision be made but the Landlord had had significant time to rectify the problems with the Property, before and after the Application being lodged, and the Property was still suffering from dampness.

Landlord's Position

13. For the Landlord, Mr. Woodcock stated that the Landlord had used considerable endeavours to have the works procured. Although the Russell Preservation works had been carried out internally, the land drainage has still proved difficult to resolve. He stated that the Landlord considered that they had been hampered by the Tribunal requiring a specific type of contractor and submitted that, from the last inspection, it was evident that water-logging is a separate issue to any issues in the house as the garden was "completely dry and soil was firm with no sign of pooling". He submitted that the amenity to the Tenant is not diminished all the time as the water-logging is due to seasonal conditions.
14. Mr. Woodcock pointed out that the Landlord had complied with an earlier report obtained by the Tenant, the McMillan Report, and also with the Russell preservation Report. He submitted that the latter did not have any requirement for work to the living room/lounge area or the wall to the left side of the front door in the hall as Russell Preservation did not find any dampness at those locations. Mr. Woodcock stated that he could not see the actual readings on the Re-inspection Report and so did not pick up an issue in the hallway.
15. Mr. Woodcock stated that has repeatedly made submissions that the the tenant does not heat the front bedroom and that it is important to consider that as a factor.
16. In answer to questions from the Tribunal with regard to the evidence provided in relation to obtaining two quotes for the drainage work, Mr. Woodcock stated that although one of the contractors had inspected the Property, he had not followed up with a quote or attended further planned visits. Mr. Woodcock stated that he intended to instruct the other contractor, JMC, to carry out the drainage work for which he quoted and which quote had been lodged with the Tribunal in response to the Direction, and which he understands, is line with the recommendations set out in the drainage assessment report by Aegaea as submitted by the Third-party Applicant.
17. With regard to the extractor fan, Mr. Woodcock accepted that this had been installed by his handyman, IWB Handyman, who is not SELECT, NAPIT or NICEIC registered but can carry out electrical work, Mr. Woodcock stated that he is not required "by law" to use to a registered contractor as the work has no

electrical connection and does not require building regulation compliance. Mr. Woodcock confirmed that a valid EICR is in place for the Property. The Tenant confirmed that the extractor fan is in working order.

Third-party Applicant's Summing Up

18. In summing up, Mr. Black pointed out that the Russell Preservation Report had noted that the front garden was saturated and that could cause the underfloor dampness. Mr. Black submitted that the Landlord had had long enough to comply and had only obtained a quote for the drainage work after the last Re-inspection. He maintained that the garden is an underlying issue and should be rectified. Mr. Black stated that the Tenant is vulnerable and is having to live in damp conditions. He stated that a Rent Relief Order (RRO) should be made.

Landlord's Summing Up

19. For the Landlord, Mr. Woodcock disputed strongly that the drainage in the front garden has anything to do with the dampness in the Property. He maintained that the ground at the front of the Property is dry and firm and that any issue is at the path and when the weather is wet. He refuted that there is water under the Property and stated that any issues there are because the Property has had a poorly vented underfloor floor area. He stated that the reason the timbers were damp was due to a lack of airflow which has now been remedied.

20. Mr. Woodcock stated that the Landlord has done extensive works throughout and has documented all of these works. He stated that the Landlord has complied with the RSEO with the exception of the front garden drainage which work will now be instructed, and the Tribunal should vary RSEO further to allow this.

Findings of Fact

21. The Tribunal's findings in fact were made from all of the information before it being the Application, the Parties' written and oral submissions, the various reports and the further Re-inspection and the Hearing.

22. The Tribunal found the following matters established: -

- i) Work recommended in the Russell Preservation Report was carried out on or around 9 January 2023;
- ii) Regardless, of the work carried out, areas of dampness remain to the front wall of the Property in the front bedroom, the living room/lounge and in the hallway;
- iii) The vents installed in the gable wall are poorly fitted and not properly bedded in mortar and packed tight as required by the Russell Preservation Report;
- iv) No decoration work has been carried out to make good damage caused by the works as required by the RSEO;
- v) The extractor fan, although it appears to be in working order, was not installed by a SELECT, NAPIT or NICEIC registered contractor as required by the RSEO;
- vi) No work has been carried in the front garden to ensure that the garden is properly drained and surface water is directed away from the house and
- vii) The front garden remains unusable as an ornamental garden;

Summary of the Issues

23. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or if it should make a finding of failure to comply with the RSEO.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

24. The Tribunal had regard to Section 25 (1) of the Act which states:-“(1) *The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.*”

25. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the terms of the RSEO not yet complied with and which deal with the dampness in the Property and impact on the Property meeting the Repairing Standard and the Tolerable Standard. Accordingly, the Tribunal was not of a mind to revoke the RSEO.

26. With regard to Section 25(1)(a), and whether it should vary the RSEO further to allow the Landlord further time to address the drainage issues in the front garden, the Tribunal gave consideration to the submissions of the Parties. The Tribunal took the view that the Landlord had been given a significant amount of time being almost a year to address the drainage issues and had only in the last few weeks made meaningful progress in attempting to instruct a contractor. The Tribunal had no firm guarantee or assurance that the contractor would, in fact, be instructed or when that might be. Accordingly, the Tribunal was not of a mind to vary the RSEO.

27. The Tribunal then had regard to Section 26 of the Act which states:-“*It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.*” The Tribunal noted that in addition to failing to comply with the RSEO in respect of the drainage matter, the Landlord had not fully complied with the Russell Preservation work in respect of the external vents in the gable wall, had not fully complied with the installation of the extractor fan by a SELECT, NAPIT or NICEIC registered contractor as required by the RSEO and had not made good any damage. The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO. The Tribunal, being satisfied that the Landlord had not complied with the RSEO as varied without reasonable excuse, therefore, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO as varied.

Rent Relief Order

28. The Tribunal then had regard to Section 27 of the Act which allows the Tribunal, having made a finding of failure to comply, to make a Rent Relief Order (RRO) of up to 90% and took the view that, in the circumstances of the whole application and procedure to date, an RRO was appropriate. The Tribunal noted that by response dated 7 December 2022, the Third-party Applicant had requested that the RRO be fixed at 50%. The Tribunal took into account that works had been carried out by the Landlord and determined that an RRO of 30% of the weekly rent be imposed from the date 30 days of the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.
29. The decision of the Tribunal is unanimous.

Appeal of tribunal's decision

30. 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.

Signed

K Moore

K Moore, Chairperson

Date 22 May 2023