

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Sections 26 and 27 of the Housing (Scotland) Act 2006, as amended

Chamber Ref: FTS/HPC/RP/23/0653

Title no: STG64408

37 Tiree Place, Hallglen, Falkirk FK1 2PP (“The Property”)

The Parties:-

Ms Rehana Afreen and Mr Youssouf Keita, 37 Tiree Place, Hallglen, Falkirk FK1 2PP (“the Tenants”)

Ms Shehnaz Ijaz, 4 Achray Drive, Falkirk FK1 5UN (“the Landlord”)

Tribunal Members: Richard Mill (Legal Member) and Andrew McFarlane (Surveyor Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made enquiries for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the property concerned, and taking account of all representations received, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act. The tribunal also determined to make a Rent Relief Order.

Background

1. The tribunal made a Repairing Standard Enforcement Order (RSEO) dated 6 June 2023 which required the Landlord:-
 1. To restore the kitchen fan above the cooker to a reasonable state of repair and in proper working order. If this cannot be achieved, it should be replaced.

2. To have an investigation of areas where damp or damaged plaster is noted to ceilings in the first floor apartments carried out, and work carried out to render wind and watertight as required. Thereafter damaged areas of plasterwork should be dried out, patched, repaired and redecorated.
3. To have a suitably qualified electrician test the electric circuits serving socket outlets to establish their condition and highlight any action required to ensure they are free from defects. Confirmation of such works to be provided to the tribunal. To replace the missing retaining ring from the bulb holder to the light in the lower hallway.
4. To have the gutters and downpipes to the front of the property examined by a suitably qualified tradesman to ensure that they are running clear, collecting rainwater and conducting it to the underground drainage system. To provide confirmation that the system is operating correctly to the tribunal.
5. To replace the cracked sealed double glazed unit in the kitchen. To overall other windows to ensure that all seals are in place and functioning properly to eliminate draughts, along with ironmongery being operational. To provide controllable trickle ventilation. The tribunal would observe that it may be found more practicable to replace the windows.
6. To adjust the air brick which has a gas pipe running through it to ensure that there are no holes larger than the ventilation holes forming part of the brick.
7. To instruct a pest control contractor to prepare a further report for submission to the tribunal for any further instruction which may be required.

The tribunal ordered that the work specified in the Order must be carried out and completed within a period of 8 weeks from the service of this Notice.

2. On 27 July 2023 the landlord submitted a number of invoices in respect of works carried out to implement the terms of the RSEO.

3. The tribunal reinspected the property on at 10.00 am on Friday 22 September 2023. The first-named tenant invited the tribunal members into the property and directed them around. The landlord was also personally present and was accompanied by her handyman, Mr Nick Thomson.
4. Reference is made to the reinspection photo schedule report, previously issued to parties, which is attached to this decision which evidences:
 1. The integrated kitchen fan above the cooker in the kitchen was found to be operative.
 2. The ceiling in the front double bedroom had been repainted in areas. The ceiling in the front single bedroom had also been repainted in areas. It was noted that there was fresh cracking in the ceiling, likely attributable to ongoing water penetration.
 3. The missing retaining ring from the bulb holder to the light in the lower hallway had not been replaced.
 4. The property was inspected on a wet day when there was rain. The front gutter to the front elevation was noted to be leaking and there was wet staining to the front render.
 5. The cracked double glazed unit to the window in the kitchen was noted to have been replaced. Otherwise the windows were noted not to have been overhauled to the extent required by the tribunal. No trickle ventilation has been installed. The seals are not all wind and watertight. One of the hinges in the window in the front single bedroom was broken. There was evidence of extensive mould and condensation around all of the windows. It was noted that some of the window handles have been replaced.
 6. It was noted that the airbrick at the front of the property which has the gas supply pipe passing through it had been filled.
 7. There was no evidence of ongoing pest infestation.
5. On 25 September 2023 the tribunal issued a Direction in the following terms:

“The landlord is required to advise upon the following:

- whether the electrical testing undertaken by ‘FDA Repairs’ was by a qualified electrician
- whether the proposed new windows referred to within the estimate provided are to be fitted
- whether further work is proposed to remedy the leaking gutters

If further work is proposed by the landlord then the timescales for same require to be evidenced.

Both parties are more generally hereby provided with a period of 14 days to provide commentary in terms of the tribunal’s findings from the re-inspection. They are further encouraged to lodge brief written submissions in respect of the compliance, or non-compliance, of each of the seven components of the RSEO and thereafter state whether they wish to participate in a hearing prior to the tribunal determining whether or not the landlord has complied with the RSEO; or, alternatively, failed to comply with the RSEO.”

6. Over the following weeks, both parties lodged a number of additional written representations and supporting documentary evidence.

Compliance Hearing

7. The tribunal convened a hearing in respect of the landlord’s compliance with the RSEO on Tuesday 30 January 2024. This was conducted by teleconference at 10.00 am. The first named tenant, Ms Afreen, and the landlord, Ms Ijaz, both attended personally and represented their own respective interests.

Reasons for Decision

8. Both parties agreed that item 1 of the RSEO had been complied with. The kitchen fan above the cooker has been replaced. The tribunal noted this at the time of the reinspection in September 2023.
9. The tribunal analysed items 2 and 4 of the RSEO together. At the time of the reinspection in September 2023, the landlord had carried out patch repairs to the ceilings in the upstairs rooms together with repainting these restricted areas. Fresh cracks were noted which could be explained by ongoing water ingress. Further water ingress is complained of by the tenants, but this is restricted to occasions when there is particularly heavy rain and stormy and windy conditions. The landlord has evidenced that in July 2023 the roof, gutterings and downpipes were inspected by T Hamilton Roofing as well as the

landlord's handyman, Mr Thomson. Subsequent to the tribunal's inspection in September 2023, the landlord is evidenced to have instructed a further roofing company, Thistle Roofing. Documentation from that firm dated 13 October 2023 has been produced stating that in the professional opinion of Thistle Roofing, the gutters and downpipes are (as at that date) watertight. The tribunal attached weight to this independent documentary evidence. There may have been a subsequent failing in the roof and rainwater fixtures and fittings but that the landlord has complied with items 2 and 4. There has been no failure to comply in this respect.

10. As at the date of the hearing, the tenant confirmed that the electrical work required in terms of item 3 had been undertaken by NGA Electrical. The tribunal was satisfied that this is an approved contractor who is compliant with the necessary regulations. The tenant complained that she continued to be concerned about the condition of the general electrical supply. It was noted that the landlord has taken additional steps in response to those concerns. The RSEO did not require the production of an EICR. The requirement to periodically obtain one, and remedy any necessary defects, is part of the statutory regulations placed upon all landlords and necessary for ongoing landlord registration.
11. The tribunal noted at the time of the reinspection that the double glazed kitchen window unit had been replaced in implementation of item 5. However, the remaining concerns of the tribunal as set out within item 5 had not been remedied. Whilst some basic attempts had been made to overhaul the windows otherwise, this has not been professionally done and draughts have not been excluded, not all of the windows are operational and the windows do not have controllable trickle ventilation. The landlord's undertaking to replace all of the windows has not come to fruition, despite the passing of many months. As at the date of the hearing, a continued undertaking was given by the landlord that the windows will be replaced in the month of February 2024. There is no doubt that the landlord has failed to comply with this element of the RSEO.
12. It was agreed by both parties that item 6 has been complied with. A rough repair around the pipe which goes through the airbrick at the front elevation of the property, has been filled.

13. The tribunal was satisfied that item 7 has been complied with by the landlord. This is despite the fact that the tenants continue to have periodic problems with mice entering the property. The landlord did instruct a pest control company in response to the terms of the RSEO. The landlord has produced an email on 4 July 2023 from a professional company confirming that on reinspection by them there were no signs of pest activity at the time and that the snap traps left had been removed from the site. This may be by email but is a 'report'. The tenants now use their own traps. The tribunal was satisfied that this is no longer an ongoing repair issue to do with the condition of the property.

Rent Relief Order

14. The tribunal, having found that the landlord has failed to comply in a material respect with the RSEO determined that a Rent Relief Order was fair and necessary. The tribunal required the landlord to make the necessary upgrades to the windows within the property in June 2023. Seven months have passed and those works have not been undertaken. The adverse consequences for the tenants involving impairment of the general living standards within the home, which includes inadequate ventilation and retention of moisture. The failed window units are also likely to have had an impact upon energy costs and increased those. There are however no health and safety issues which arise and the conditions of the windows are not dangerous. Weighing up all relevant factors, the tribunal resolved that a Rent Relief Order at a rate of 15% is fair and proportionate.
15. If the landlord follows through with her undertaking to have the windows replaced in the month of February 2024, then the making of the Rent Relief Order will have little effect. The Rent Relief Order cannot take effect for a period of 28 days after being made. If the windows are replaced within this timescale and evidence provided (photographs of the new windows and confirmation from the window supplier/fitter that the work has been completed) then the tribunal will proceed to issue a Certificate of Completion of the RSEO and revoke the Rent Relief Order.

Right of Appeal

16. 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.

17. 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.

Legal Member: R.Mill

Date: 31 January 2024