

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 Section 24(1)

Chamber Ref: FTS/HPC/RT/18/2230

Title Number: STG 49369

4 Duke Street, Bannockburn, Stirling, FK7 0JQ (“The Property”)

The Parties: -

Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG (“the Third Party”)

Mandy Rushforth, 4 Duke Street, Bannockburn, Stirling, FK7 0JQ (“the former Tenant”)

Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG (“the Landlord”)

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”) dated 6 December 2018, determined that the Landlord has still failed to comply with the RSEO and that a certificate of completion should not be issued.

Tribunal Members; -

Josephine Bonnar, Legal Member and Carol Jones, Ordinary Member

Background

1. The Third Party applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Tribunal served Notice of Referral in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 3 October 2018. The parties were notified that an inspection would take place on 12 November 2018 at 10am and that a hearing

would take place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.

5. The Tribunal inspected the property on the morning of 12 November 2018. Thereafter, a hearing took place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. Following the hearing the Tribunal issued an RSEO requiring the Landlord; - (1) To instruct a suitably qualified window contractor to inspect the windows in the living room, downstairs bedroom and upstairs front bedroom and carry out any necessary repairs to ensure that the windows are in proper working order; or replace the windows. (2) To repair or replace the defective doors and door handles in the living room, downstairs bedroom, upstairs front bedroom and hall cupboard. (3) To replace missing and defective thermostatic radiator controls in the living room, kitchen and hall. (4) To re-instate missing bath panels. (5) To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation in the property, carry out any necessary remedial work, and exhibit a satisfactory EICR to the Tribunal. (6) To provide the Tribunal with evidence from a suitably qualified registered electrician that the smoke and heat detectors in the property are hard wired and interlinked, in proper working order, and comply with current regulations and guidance. (7) To repair the damaged kitchen units and re-instate missing handles; or replace the kitchen units. (8) To re-instate the missing kitchen door. (9) To replace the damaged letterbox. (10) To replace the defective hot water tap in the downstairs toilet. (11) To instruct a Gas Safe registered engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a satisfactory gas safety record. (12) To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property and ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods, and (13) To install a carbon monoxide detector in the property to comply with current regulations and guidance. The work was to be completed within six weeks of the order being issued.

6. The Ordinary Member of the Tribunal re-inspected the property on 14 February 2019. The Ordinary Member noted that since the first inspection new ceiling mounted hard wired interlinked smoke and heat detectors had been installed at the property which complied with current regulations and guidance and appeared to be in working order when tested. In addition, two new double sockets had been installed in the kitchen. No other work had been carried out. The former Tenant stated that a window contractor took measurements for replacement windows in January 2019, but had not returned to carry out any work. She also advised that the electrician who installed the smoke and heat detectors and sockets carried out an inspection and expressed concern about the wiring at the property. The Ordinary member noted that the Tenant, Third Party and Tribunal had not been provided with an EICR, gas safety record or evidence from the landlord regarding the smoke and heat detectors, all as required by parts 5, 6 and 11 of the RSEO.

7. Following the re-inspection, a report was issued to parties regarding the same. No response was received from the Landlord or Tenant. The Third Party responded confirming that it agreed with the terms of the re-inspection report and indicating that the Tribunal should make a rent relief order reducing the rent payable by 90%.
8. On 25 March 2019, the Tribunal determined that the Landlord had failed to comply with the RSEO. A decision with statement of reasons was issued, together with a Rent Relief Order ("RRO") reducing the rent payable by 70%.
9. Following a request for a re-inspection, the Tribunal scheduled a re-inspection for 23 November 2022. This was cancelled, at the request of the Landlord's representative, as the work had not been completed. On 29 September 2023, the Landlord submitted several handwritten receipts from the same contractor in relation to various works at the property including new gutters, bath panel and repairs to kitchen units, doors, and windows. A further request was made for a re-inspection. On 16 October 2023, an EICR from a SELECT accredited electrician was submitted. On 22 February 2024, a gas safety certificate from a Gas Safe registered engineer was submitted.
10. The Tribunal re-inspected the property on 6 March 2024. Access was provided by Ms Rae, the letting agent, as the property is now unoccupied. Mr Paterson, the third party applicant, Stirling Council attended but was unable to stay for the whole inspection due to a family emergency.

The Re-inspection

11. The Tribunal noted the following:- windows in the living room and ground floor bedroom are still defective; window in the front upper bedroom has been repaired; doors to the living room and upper front bedroom are still defective; doors to ground floor bedroom and hall cupboard have been repaired and are in working order; replacement thermostatic radiator controls have been fitted in the living room, kitchen and hall; the bath has been fitted with unpainted, plywood sheeting panels. The end panel is not secure and there are gaps where the panels meet the walls; missing and broken kitchen unit handles have been replaced but the kitchen units otherwise remain in poor condition and some are misaligned; Further deterioration to kitchen units was noted; the internal kitchen door has been re-instated; the letterbox has been replaced; both taps in the ground floor toilet have been replaced and the hot tap is in working order; gutters at the property have been replaced with new PVC half round gutters. These appeared to have been poorly fitted or are not suitable for the property; the carbon monoxide alarm has been re-positioned and now complies with current regulations and guidance.

Findings in Fact

12. The Landlord has repaired the front upper floor bedroom window. A new handle has been fitted and the window opens and closes properly.

- 13.** The Landlord has not repaired or replaced the living room windows or the ground floor bedroom window.
- 14.** The Landlord has repaired the ground floor bedroom door and hall cupboard door. These are now in proper working order.
- 15.** The Landlord has carried out repairs to the living room door and upper front bedroom door, but these repairs have not addressed the defects and the doors are defective.
- 16.** The radiators in the living room, kitchen and hall have been fitted with new thermostatic controls.
- 17.** The bath has been fitted with ill-fitting, loose plywood sheeting panels.
- 18.** The Landlord has submitted an EICR and gas safety certificate, both of which are in satisfactory terms.
- 19.** Interlinked smoke and heat detectors have been installed at the property. These are in proper working order.
- 20.** The Landlord has carried out some repairs to the kitchen units, but these repairs have not addressed all the defects in the units.
- 21.** The internal kitchen door has been re-instated.
- 22.** The letterbox has been replaced.
- 23.** The taps in the ground floor toilet have been replaced and are in proper working order.
- 24.** New gutters have been installed but these are defective.
- 25.** The carbon monoxide alarm has been re-positioned. The new position complies with current regulations and guidance.

Reasons for decision

- 26.** The Tribunal considered the condition of the property at re-inspection and the documents submitted by the Landlord prior to the re-inspection. Neither party lodged written representations
- 27.** The Tribunal is satisfied that the Landlord has complied with parts 3, 5, 8, 9, 10, 11 and 13 of the RSEO.
- 28.** The Tribunal is also satisfied that the Landlord has only partially complied with parts 1, 2, 4, 6, 7 and 12 of the RSEO. The Tribunal noted; -
 - i. Part 1 - the living room and downstairs bedroom windows. The left-hand living room window handle is stiff to operate, and the hinge is damaged with the result that the window is sitting out of line with the frame. Both living room windows cannot be fully opened. The ground floor bedroom window has not been repaired. The handle has not been repaired or replaced and the window does not open.

- ii. Part 2 – the living room door has new handles and a new ball catch, but the door is ill fitting and does not close. The door handles to the upper front bedroom have not been replaced and the ball catch plate is still missing. The door can be closed but can only be opened using considerable force from the hall.
- iii. Part 4 – unpainted plywood sheeting panels have been fitted to the bath, but the end panel is not secure and there are gaps where both panels meet the walls.
- iv. Part 7 – some repairs have been carried out to the kitchen units and missing/damaged handles have been re-instated. Otherwise, the kitchen units remain in the same poor condition, with some units misaligned. Further deterioration was also noted. The door to the base unit under the sink is not attached to the hinges which are defective.
- v. Part 12 – the gutters have been replaced with new PVC half round gutters, but these have either not been fitted correctly or are of insufficient size for the property. The fixings are protruding above all the gutters and the rear gutter is significantly misaligned and has been installed at too low a level to allow water to flow properly over the roof tiles and into the gutter.
- vi. Part 6 of the RSEO required the Landlord to provide a report from an electrician regarding the smoke and heat detectors. He has not done so but has replaced the smoke and heat detectors with hard wired, interlinked smoke and heat detectors which were found to be in proper working order when tested. The EICR provided includes these detectors on the schedule of circuit details. The Tribunal is therefore satisfied in relation to part 6.

29. For the reasons outlined in paragraph 28, the Tribunal is satisfied that the Landlord has failed to comply with the RSEO.

30. An RRO was issued in connection with a previous failure to comply decision. As the tenant has vacated the property and it is not unoccupied, the Tribunal does not require to consider whether to issue a further RRO.

Decision

31. The Tribunal determined that the Landlord had still failed to comply with the RSEO issued by the Tribunal and that a certificate of completion should not be issued.

32. The decision of the Tribunal is unanimous.

Right of Appeal.

A Landlord, Tenant or Third-party applicant 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.

In terms of Section 63 of the Act, 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.

J Bonnar

16 April 2024