

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 26

Chamber Ref: FTS/HPC/RP/20/2344

Title Number: LAN19101

Property at 173 Low Waters Road, Hamilton, ML3 7QQ (“the Property”)

Parties:

Ms Lorraine Lamey, 173 Low Waters Road, Hamilton, ML3 7QQ (“the former tenant”)

Mr Christopher Winsborough, 3/9 Gipps Ave, Mordialloc, Victoria 3195, Australia (“the Landlord”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Lori Charles (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”) dated 1 October 2021 determined that the Landlord has still failed to comply with the RSEO and that a certificate of completion cannot be issued.

Background

1. The former tenant made an application to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. Following two case management discussions, the parties were notified that the Tribunal would carry out an inspection of the property on 7 September 2021 at 10.30am and that a hearing on the application would take place by telephone conference call on 15 September 2021 at 10am.

2. The Ordinary Member of the Tribunal inspected the property on 7 September 2021 at 10.30am. A hearing took place by telephone conference call on 9 September 2021. Ms Lamey participated, represented by Ms Young. Mr McGlone represented the Landlord. The Tribunal heard evidence from both parties in relation to the complaints.
3. Following the hearing, the Tribunal issued an RSEO. In terms of the RSEO the Landlord was required to complete the following repairs within ten weeks: -
 - (a) Instruct a suitably qualified window contractor to inspect the windows in the kitchen and front bedroom and carry out any necessary repairs to ensure that the windows are in proper working order; or to replace the windows.
 - (b) Relocate the heater in the kitchen so that the control panel is accessible.
 - (c) Repair or replace the heater in the hall.
 - (d) 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 repairs, and exhibit a satisfactory EICR to the Tribunal.
 - (e) Instruct a suitably qualified roofing contractor to replace any missing and damaged slates on the roof and carry out all necessary and recommended remedial work to prevent water ingress at the property.
4. The Tribunal re-inspected the property on 2 February 2022. The Tenant provided access. Neither the Landlord nor his representative attended. Following the re-inspection, a report was issued to the parties.
5. The Landlord's representative notified the Tribunal that he had been unable to attend the re-inspection due to a bereavement. He stated that the Tenant had been obstructive about providing access for repairs but that the window contractor and electrician had been arranged and were due to attend to carry out work. The Tenant lodged submissions with evidence that she had not been rude to contractors or obstructive about the repairs. The Landlord did not lodge an EICR.
6. On 15 March 2022, the Tribunal determined that the Landlord had failed to comply with the RSEO and issued a written decision with statement of reasons and a Rent Relief Order ("RRO").
7. The Tribunal received a request for the removal of the RSEO as the property was due to be sold. The Tribunal arranged to re-inspect the property on 1 March 2024 at 10.30am. Access was provided by Mr McGlone. The property is now unoccupied.

The Re-inspection

8. The Tribunal noted the following:- the same storage heater is in the hall but could not be tested as it was switched off and the property has been empty for several months; the kitchen heater is in the same location and the controls are still inaccessible; the gap at the kitchen window has been filled with expanding foam and the silicon is coming away from the frame and stone work; no evidence of water ingress in the living room; new double glazed unit in the front bedroom; moisture readings in front bedroom were within normal range; the electrical cupboard is unchanged, housing various types of fuse boxes; roof repairs have been carried out at the property. A re-inspection report was issued to the Landlord's representative. In response, the Landlord's representative submitted an EICR and a photograph of the kitchen wall which indicates that the heater has been removed.

Findings in fact

9. The Landlord has replaced the window in the front bedroom. The new window is in proper working order.
10. The Landlord has carried out repairs to the roof of the property.
11. The property is no longer affected by water ingress or damp.
12. The kitchen window has not been repaired or replaced.
13. The heater in the kitchen has not been relocated.
14. The heater in the hall has not been repaired or replaced.
15. The Landlord has submitted an EICR. The electrician who carried out the inspection is not accredited by SELECT, NAPIT or NICEIC.
16. The EICR submitted is incomplete.

Reasons for decision

17. The Tribunal considered the condition of the property at the re-inspection and the submissions and documents lodged by the Landlord.
 - (a) The Tribunal is satisfied that the Landlord has replaced the front bedroom window, and that the new unit is in proper working order. However, no work has been carried out in relation to the kitchen window and this remains in the same condition as at the first inspection of the property. The Landlord has therefore failed to comply with Part 1 of the RSEO.

- (b) At the re-inspection, the Tribunal noted that the heater in the kitchen had not been relocated and the controls were still inaccessible. The Landlord has since submitted a photograph that appears to establish that the heater has been removed altogether but not replaced or relocated. The Landlord has therefore failed to comply with Part 2 of the RSEO.
- (c) At the re-inspection the Tribunal noted that the heater in the hall has not been replaced. Furthermore, no evidence has been provided that establishes that it has been repaired or that it is currently in working order. The Landlord has therefore failed to comply with Part 3 of the RSEO.
- (d) The Landlord has provided an EICR. However, this appears to be incomplete as the electrician could not carry out all required checks due to the lack of credit in the electricity meter. The Tribunal also notes that the electrician is not SELECT, NAPIT or NICEIC accredited, and no other evidence has been provided that he is “suitably qualified”. The Landlord has therefore failed to comply with Part 4 of the RSEO.
- (e) The Tribunal is satisfied that roof repairs have been carried out at the property. A copy invoice was submitted, and it was evident at the re-inspection that work had been carried out. This appears to have addressed the water ingress at the property. The Landlord has therefore complied with Part 5 of the RSEO.

18. As the property is no longer occupied by the tenant, a rent relief order cannot be issued.

Decision

19. The Tribunal determined that the Landlord has still failed to comply with the RSEO issued by the Tribunal and that a certificate of completion cannot be issued.

20. 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.

Josephine Bonnar, Legal Member

6 April 2024