

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 25 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/23/0979

Parties:

1. Renfrewshire Council per its employee Ms. Bernadette Kettle, Environment, Housing and Infrastructure, Renfrewshire House, Cotton Street, Paisley, PA1 1JD as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Mr. Yoon Fat Siow, residing formerly at 40, Bowhill View, Cardenden, Lochgelly, KY5 0NP and now at Flat 2/3, 13, Wilson Street, Renfrew, PA4 8NP (“the Landlord”) per his agents, Mackinlay & Suttie, Solicitors, 48, Cross Arthurlie Street, Barrhead, G78 1QU (“the Landlord’s Agents”) together referred to as “the Parties”.

Property: Flat 0/1, 13, Wilson Street, Renfrew, PA4 8NP being the subjects registered under title sheet number REN8655

Tribunal Members

Karen Moore (Chairperson) and Donald Wooley (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 duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (c), 13(1)(f), 13 (1) (g) and 13(1) (h) of the Act and that for the reasons set out below.

Background

1. By application received between 27 and 28 March 2023 (“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) (c), 13 (1) (d), 13(1)(e), 13(1)(f), 13 (1) (g) and 13(1) (h) of the Act.

2. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as:-
 - i) The entrance door is badly damaged and not capable of being locked;
 - ii) The kitchen wall unit door is missing;
 - iii) The kitchen floor unit door is missing;
 - iv) The living room window handle is faulty;
 - v) The bathroom shower is slow to drain;
 - vi) The toilet cistern runs constantly as the ballcock valve is faulty;
 - vii) There are no smoke or heat detectors in the Property;
 - viii) There is no carbon monoxide detector in the Property and
 - ix) There is no Electrical Installation Condition Report (EICR).
3. The Application was accepted by the Chamber and an Inspection and Hearing were fixed for 22 June 2023 at 10.00 and 11.45, respectively.

Inspection and Hearing

4. The Inspection and Hearing took place on 22 June 2023. As no internal access was available, the observations noted were based solely on an external inspection of the property. The outcome was that the Tribunal found that the Property did not meet the Repairing Standard and so imposed the following Repairing Standard Enforcement Order (RSEO) to be complied with by 31 December 2023:-

“Repair or renew the entry door to the Property ensuring that it is in a reasonable state of repair and in proper working order;

Repair or renew the front window ensuring that it is in a reasonable state of repair, wind and water tight and in proper working order;

Provide to the Tenant, the Third Party Applicant and the Tribunal a current Electrical Installation Condition Report (EICR) for the Property. The EICR requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category. Additionally, the EICR should confirm that smoke detectors have been installed within the living room and hall and a heat detector has been installed in the kitchen, they are fully functional, meet the requirements contained in the Housing (Scotland) Acts 1987 and 2006, as subsequently modified in 2019, are interconnected and fully functional”

4. At the Inspection, it was evident that the Property was no longer tenanted.
5. The Landlord did not comply with the RSEO in respect of submission of an EICR.

Re-inspection and Hearing

6. A Re-inspection and Hearing were fixed for 15 March 2024 at 10.00 and 11.45 respectively.

7. At the Re-inspection, the Third -party Applicant was represented by Mr. W. Holmes. The Landlord was present and accompanied by Mr. Dickson as a supporter. Siu Ying Tervit attended as an interpreter of the Cantonese language.
8. The Tribunal gained access to the Property and inspected the parts of the Property listed in the Application as follows:
 - i) The entrance door is badly damaged and not capable of being locked;
 - ii) The kitchen wall unit door is missing;
 - iii) The kitchen floor unit door is missing;
 - iv) The living room window handle is faulty;
 - v) The bathroom shower is slow to drain;
 - vi) The toilet cistern runs constantly as the ballcock valve is faulty;
 - vii) There are no smoke or heat detectors in the Property;
 - viii) There is no carbon monoxide detector in the Property and
 - ix) There is no Electrical Installation Condition Report (EICR).
9. The Tribunal noted the following:
 - i) The entrance door has been replaced and is capable of being locked but does not have handles;
 - ii) The kitchen has been removed completely and there no kitchen units or appliances;
 - iii) The living room window handle is broken;
 - iv) The kitchen window pane is broken and boarded up;
 - v) The bathroom shower has been removed completely;
 - vi) A WC is in place but requires to be repaired or replaced;
 - vii) The smoke detectors in the Property are battery operated and do not comply with the current statutory guidance;
 - viii) There is no gas in the Property and so there is no need for a carbon monoxide detector and
 - ix) There is no Electrical Installation Condition Report (EICR).
10. At the Re-inspection, the Landlord explained that he still currently rents the flat at 2/3, 13, Wilson Street and that it is still his intention to reside in the Property as his main residence when it is upgraded. He declined to attend the Hearing.
11. At the Re-inspection, the Tribunal took photographs and the Re-inspection Report and Schedule of photographs accompanies the Decision.
12. The Hearing was held at the Glasgow Tribunal Centre on 15 March 2024 at 11.45. The Third -party Applicant was not present or represented. The Tenant was not present and was represented.

Findings of Fact

13. The Tribunal's findings in fact were made from the Application, the written submissions and the Re-Inspection and Hearing.

14. The Tribunal found the following facts: -
The Landlord owns the Property which is currently vacant and unoccupied;
The Property is a ground floor flat within a four storey tenement built around 1900 and is of traditional construction with sandstone external walls under a pitched roof clad with concrete tiles;
The Property is accessed via a common entry close shared with eleven other properties;
A temporary repair has been completed to the entrance door and a new lock has been fitted. There is no handle on either of the door facings.
The kitchen has been removed completely and there are no kitchen units or appliances in the Property;
The living room window handle is broken;
The kitchen window pane remains broken and boarded up;
The bathroom shower has been removed completely and there is neither a bath nor a shower in the Property;
A WC is in place but requires to be repaired or replaced;
The smoke detectors in the Property are battery operated and do not comply with the current statutory guidance;
There is no gas in the Property and so there is no need for a carbon monoxide detector and
There is no Electrical Installation Condition Report (EICR).

Summary of the Issues

15. 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

16. 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.*”

17. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The terms of the RSEO deal with health and safety. The Tribunal held the view that safeguarding any future occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.

18. With regard to Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply. The Tribunal, being satisfied that the Landlord has had difficulty accessing the Property and that works appear to be in the course of being carried out, took the view that the RSEO should be varied.

19. The decision is unanimous.

Variation of Repairing Standard Enforcement Order

20. The Tribunal proceeded to vary the RSEO.

Appeal

21. 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.

22. 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.

Karen Moore, Chairperson

Date 23 March 2024