

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Sections 26 and 27

Chamber Ref: FTS/HPC/RP/23/3784

18 Brockly View, Kilbirnie, North Ayrshire, KA25 7HQ, being the subjects registered in the Land Register of Scotland under Title Number Ayr79254 (“the Property”)

The Parties:-

Allison Clark, 18 Brockly View, Kilbirnie, North Ayrshire, KA25 7HQ (“the Tenant”)

Alister Meek, CHAP, Michael Lynch Centre, 71 Princes Street, Ardrossan, North Ayrshire, KA22 8DG (“the Tenant’s Representative”)

Jackie Clyde, 56 Drumcroon Road, Garvagh, Coleraine, BT51 4ED (“the Landlord”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Donald Wooley, Chartered Surveyor (Ordinary Member) (“the tribunal”)

Decision

The tribunal determined:

(One) that the repairing standard enforcement order be varied to include the patio/french doors and

(Two) that the time for compliance with the varied RSEO be varied to 24 June 2024.

Background

1. By application dated 26 October 2023, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section

14 (1) (b) of the Housing (Scotland) Act 2006 as amended (“the 2006 Act”). The application is in terms of Section 22 (1A) of the 2006 Act.

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation; that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and that the Property does not meet the tolerable standard.
3. The tribunal inspected the Property on 21 February 2024 and, following a Hearing on the same day, issued a RSEO dated 25 February 2024.
4. The RSEO was in the following terms:

The Landlord was required to:

- 4.1 **Produce to the Tribunal a “satisfactory” current “Electrical Installation Condition Report” on the Property, prepared by a suitably qualified competent electrician, on the working order and condition of the installations in the house for the supply of electricity. The report should also address the state of repair and working order of any electrical fittings and appliances provided by the Respondent in the house (PAT test certificate). The provisions relating to competent electricians are contained in the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property. This information is available on the Housing and Property Chamber website at https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016_0.pdf**
- 4.2 **Produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.**
- 4.3 **Investigate and repair the roof to ensure it is wind and watertight.**
- 4.4 **Engage a suitably qualified central heating engineer to inspect the central heating system, including the boiler, radiators and associated plumbing to ensure that it is in a reasonable state of repair, that radiators are securely fixed to walls, that the system is fully functioning and thereafter to carry out any necessary repairs.**
- 4.5 **Investigate the source of water ingress to the internal part of the sink unit in the kitchen, carry out the necessary repairs and renew the rear panel of the sink base unit; complete all necessary work to ensure that**

there is a water tight seal between the sink unit and the wall panel above and to the rear of the sink.

- 4.6 Install a suitably located carbon monoxide detector, in the proximity of the gas boiler, to comply with current Scottish Government guidelines applicable to private rented residential properties.**
- 4.7 Repair or renew the defective heat detector in the kitchen, ensuring that it is in satisfactory working order and interconnected with the existing smoke detectors.**

The Landlord was required to carry out the work required by the RSEO before 26 April 2024.

5. The RSEO was made as a consequence of what the tribunal had found at the inspection. The application included a reference to patio/French doors needing repair or replacement and made a Finding in Fact in that regard. The Decision dated 25 February 2024 stated the following:

‘There are “French doors” leading from the dining room to the rear garden. When closed the doors are not secure and readily open if outside pressure is applied. The doors incorporate a triple locking security mechanism and the upper lock is currently inoperative which affects the security of the property. When the doors are in the closed position there is a significant gap where they meet, resulting in a noticeable through draught and rain water penetration in certain circumstances. The doors are in need of significant repair or renewal.’

The RSEO made no reference to work requiring to be done to the patio/French doors.

Property Re-inspection

6. The members of the tribunal inspected the Property on 14 May 2024. The Applicant was present and was accompanied by her co-tenant, Garry McCourt. The Respondent was not present.
7. A Re-inspection report, prepared by the Ordinary Member is attached to this Decision and is referred to for its terms.

Findings on Re-inspection

8. With the exception of an inspection in relation to the Gas Safety Certificate, no work has been done in relation to the requirements of the RSEO. The Re-

inspection report provides details and photographs in relation to the various works which were required to be done in relation to the RSEO.

9. The tribunal had sight of a copy of a Gas Safety Certificate dated 2 April 2024. The certificate includes a “Fail” because it states that the Protective Equipotential bonding is not satisfactory.
10. All of the items listed in the RSEO are outstanding.

The Patio/French Doors

11. On 14 May 2024, the patio/French doors were found to be in the same condition that they were in 21 February 2024.

The Hearing on 14 May 2024

12. A Hearing was held by teleconference on 14 May 2024. The Applicant, who was not present, was represented by Mr Meek. The Respondent was not present.
13. The ordinary member set out the findings from the re-inspection.
14. The tribunal recognised that the RSEO should have included reference to the patio/French doors and that it had erred in this regard. The doors require significant work or replacement and, in order to deal with the application justly, the tribunal determined that it would be appropriate to vary the RSEO to include a requirement to carry out works to the patio/French doors and that, as a consequence, the time for compliance with the RSEO should be extended. Such variation is in terms of Section 25(1) of the 2006 Act.

Decision

15. The RSEO is varied and now reads:

The Landlord is required to:

- 15.1 **Produce to the Tribunal a “satisfactory” current “Electrical Installation Condition Report” on the Property, prepared by a suitably qualified competent electrician, on the working order and condition of the installations in the house for the supply of electricity. The report should also address the state of repair and working order of any electrical fittings and appliances provided by the Respondent in the house (PAT test certificate). The provisions relating to competent electricians are contained in the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property. This information is available on the Housing and Property Chamber website at <https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY.pdf>**

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- 15.2 **Produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register and which is in satisfactory terms.**
- 15.3 **Investigate and repair the roof to ensure it is wind and watertight.**
- 15.4 **Engage a suitably qualified central heating engineer to inspect the central heating system, including the boiler, radiators and associated plumbing to ensure that it is in a reasonable state of repair, that radiators are securely fixed to walls, that the system is fully functioning and thereafter to carry out any necessary repairs.**
- 15.5 **Investigate the source of water ingress to the internal part of the sink unit in the kitchen, carry out the necessary repairs and renew the rear panel of the sink base unit; complete all necessary work to ensure that there is a water tight seal between the sink unit and the wall panel above and to the rear of the sink.**
- 15.6 **Install a suitably located carbon monoxide detector, in the proximity of the gas boiler, to comply with current Scottish Government guidelines applicable to private rented residential properties.**
- 15.7 **Repair or renew the defective heat detector in the kitchen, ensuring that it is in satisfactory working order and interconnected with the existing smoke detectors.**
- 15.8 **Repair or renew the patio/French doors leading from the dining room to the rear garden to ensure that they lock securely and free from draughts and rain water penetration.**

The Landlord is required to carry out the work required by the RSEO before 24 June 2024.

Note

The application disclosed that the Respondent had engaged a letting agent. Because of data protection issues, the Tribunal is not able to contact such a letting agent unless it is authorised to do so by a landlord. As a consequence, the letting agent for the Property did not receive any of the details of the re-inspection or Hearing.

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.

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.

M McAllister

Martin J. McAllister,
Solicitor, legal member of
Tribunal.
19 May 2024