

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 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

Chamber Ref: FTS/HPC/RP/23/1893

Re: Property at 0/2, 12, Cresswell Street, Glasgow G12 8BY being the subjects more particularly described as the righthand or eastmost flat on the ground floor of the tenement known as 12 Cresswell Street, Glasgow in Disposition in favour of Mary Russell and others recorded in the Division of the General Register of Sasines (Glasgow) on 27 October 1904 (“the Property”)

The Parties:

Ms. Alexandra Sidorova and Mr. Sean Arnold both residing at the Property (“the Tenants”)

And

Lanero Property Co. Ltd care of Clyde Property Ltd, 8 Busby Road, Clarkston, Glasgow G76 7XL (“the Landlord”) per their agents, Clyde Property Ltd (“the Landlord’s Agents”) and represented by Mitchells Robertson, George House, 36 North Hanover Street, Glasgow , G1 2AD (“ the Landlord’s Solicitors”)

Tribunal Members:

Karen Moore (Chairperson) and Andrew Taylor (Ordinary and Surveyor Member)

Decision of the Tribunal

The Tribunal determined to vary the Repairing Standard Enforcement Order (RSEO) imposed by it on 24 October 2023.

Background

1. By application received between 9 June 2023 and 25 July 2023 (“the Application”), the first-named Tenant of the Property 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 them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a) and 13(1) (h) of the Act. The Application comprised a copy of the tenancy

agreement between the Tenants and the Landlord, copy correspondence between the Tenants and the Landlord's Agents regarding repairs to the Property. The Application noted that the windows are in a state of disrepair and that there is a lack of ventilation in the bathroom.

2. The Application was referred to the Tribunal. An Inspection of the Property and a Hearing were fixed for 19 October 2023 and intimated to the Parties. The outcome of the Inspection and Hearing was that the Tribunal determined that the Landlords had failed to comply with the duty imposed by section 14(1)(b) and so made the following RSEO as required by Section 24 (1) of the Act:

"The Landlord must on or before 20 December 2023 carry out all of the following:-

- 1. Engage a suitably qualified sash and case window specialist to overhaul and repair or replace all windows ensuring that they are wind and watertight, that the windows are in proper working order and the windows are capable of opening and closing securely and safely, to include all necessary cill replacement, pointing, new ironmongery, draught proofing and any necessary painting inside and out.*
- 2. Redecorate all areas affected by water damage and black mould within the Property including any necessary treatment of mould and damaged plaster and*
- 3. Replace all blinds and window dressing affected by water damage and black mould*
- 4. Carry out all incidental and decorative works occasioned by the works necessary to comply with this Order to leave the Property in the condition required by the Repairing Standard."*

3. Following the making of the RSEO, the Landlord's agents submitted documentary evidence to show that the works required by the RSEO had been attended to or were in the process of being attended to.

Re- Inspection and Hearing

4. A Re-Inspection of the matters specified in the RSEO took place at the Property on 17 May 2024 at 10.00 am. The second named tenant was present. The Landlord was not present or represented. A Schedule of Photographs taken at the Re- Inspection was prepared and is annexed hereto.
5. The Hearing took place on 17 May 2024 at 11.45 am at Glasgow Tribunal Centre. The Tenants were not present and were not represented. The Landlord was not present and was not represented.

Findings of Fact

6. From the Inspection, the Tribunal found the following in respect of matters specifically complained of in the Application:
 - i) The windows throughout the Property have been repaired but are not capable of being opened and so cannot be operated properly to allow ventilation in the Property;

- ii) The mould and dampness in the kitchen and the bathroom walls appear to have been treated. However, mould is re-appearing in the kitchen due to lack of ventilation;
- iii) New window blinds have been installed;
- iv) There appears to be satisfactory provision for fire detection;
- v) Incidental decorative works have been carried out.

Summary of the Issues

7. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO, if the Property now meets the Repairing Standard in respect of Sections 13(1) (a) and 13(1)(h) of the Act and if the RSEO should be discharged, revoked or varied.

Decision of the Tribunal and reasons for the decision.

8. The Tribunal's decision is based on the Landlord's agents written representations and the Tribunal's findings at the Re-Inspection.
9. From the Re-Inspection, the Tribunal, having found that the windows in the Property cannot be operated properly and that mould has re-appeared on the kitchen wall, determined that the RSEO has not been complied with in full.
10. The Tribunal then had regard to Section 25(1) of the Act which states "Where the First-tier Tribunal has made a repairing standard enforcement order, it may, at any time (a) vary the order in such manner as it considers reasonable, or (b) where it considers that the work required by the order is no longer necessary, revoke."
11. The Tribunal took the view that, because the windows are not operating properly and as there are signs of mould in the kitchen, the work required by the RSEO is necessary and so the RSEO should not be revoked.
12. The Tribunal considered if it should make a finding of failure to comply in terms of Section 26 (1) of the Act and refer the Landlord to Police Scotland and the local authority in respect of that failure and took the view that, as the Landlord has carried out some of the works required by the RSEO and, in particular, has carried out work to the windows a finding of failure to comply was not appropriate at this stage.
13. Therefore, the Tribunal determined to vary the RSEO to allow the Landlord further time to comply in full with the RSEO.
14. The decision is unanimous.

Repairing Standard Enforcement Order (RSEO)

15. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to vary the RSEO as required by Section 24 (1) of the Act.

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.

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.

Signed

K Moore

K Moore, Chairperson

21 May 2024