



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RP/23/1995

Re: Property at 139b Union Street, Aberdeen, AB11 6BH (“the Property”)

Parties:

Claymore Homes Ltd, Neo House, Riverside Drive, Aberdeen, AB11 7DG (“the Landlord”); and

Mrs Linda Leung, 139b Union Street, Aberdeen, AB11 6BH (“the Tenant”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Angus Anderson (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), determined that the Landlord has failed to comply.

The Tribunal further imposed a Rent Relief Order of 20% of the monthly rent due and determined that notice of the failure be served on the local authority.

Background

- 1 Reference is made to the decision of the Tribunal dated 2 November 2023 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act, in that they had failed to comply to ensure that the property met the Repairing Standard. The Tribunal therefore made a RSEO. The works required by the RSEO were:-



- (i) Carry out such works as may be necessary to ensure that the two bedroom windows and the left hand window in the living/kitchen area can be fully opened; and
- (ii) Carry out such works as may be necessary to ensure that the window in the ensuite bedroom can be held open securely.
- (iii) As soon as possible, to install carbon dioxide monitors in the bedrooms of the property.

The Tribunal ordered that the works be completed within a period of twelve weeks from intimation of the RSEO on the parties. A copy of the decision and RSEO was intimated on both the Landlord and the Tenant on 17 November 2023.

The Re-inspection

- 2 The Tribunal re-inspected the property at 10am on 11 April 2024. The Tenant was in attendance and permitted access. The Landlord was not in attendance nor represented by their agent DJ Alexander (formerly Stonehouse Lettings).
- 3 The Tribunal proceeded to re-inspect the property. The left hand window in the living/kitchen area remained as it was when the Tribunal inspected the property in October 2023 and was restricted from opening due to the radiator positioned in front of it. Reference is made to the decision of the Tribunal dated 3 November 2023 in this regard. In the master bedroom and the second bedroom there had been holes drilled in a line on the lower rail of the outer sash and case window and a cover fitted to control ventilation. However the sash and case windows remained stuck fast with paint and could not be opened. In the ensuite bedroom the window could be opened with some difficulty due to its weight and position behind the toilet and held with a chrome metal screw. Portable carbon dioxide alarms were present in both bedrooms.

The Hearing

- 4 The hearing took place by teleconference on 11 April 2024. The Tenant was in attendance and accompanied by her husband Mr Leung and David Grierson who resided with them at the property. The Landlord was represented by Mr Raphael Barr of DJ Alexander. For the avoidance of doubt the following constitutes a summary of what was discussed at the hearing that is of relevant to the Tribunal's determination of the application and is not a verbatim account of the submissions from the parties.



- 5 The Tribunal heard submissions from the Tenant. She advised that several contractors had been out to look at the windows but no progress had been made. Nothing had been done. The Tenant understood this was a difficult situation but she felt the Landlord was making excuses not to do the work due to the cost. She felt that contractors had been trying to justify why the windows shouldn't open, for example by making reference to traffic pollution and health and safety. The Tenant advised that the Landlord's agent had most recently advised that there were issues in obtaining permission for scaffolding to be erected in order to carry out the work. The Tenant pointed out that the scaffolding issue had been discussed at the previous hearing, therefore the Landlord had been aware of this for a prolonged period of time. The Tenant advised that the Tribunal had made allowances for this in its decision of 3 November 2023 by allowing a period of twelve weeks for compliance with the order, taking into account works that were being carried out by the Council to an area where the scaffolding would be erected.
- 6 The Tenant explained that no contact had been made with her following the making of the RSEO until the end of January 2024. There had been one excuse after another. The Tenant advised that there had been no change in the bedrooms, the atmosphere was very stuffy and dusty due to the lack of ventilation. The only work that had been carried out by the Landlord had been the drilling of holes in the bedroom windows and the provision of carbon dioxide detectors. The Tenant pointed out that the Landlord had originally erred in installing carbon monoxide detectors, before providing carbon dioxide detectors once Mr Barr realised the mistake. She had been told the contractor had made the error. She noted that the carbon monoxide detectors had been installed on 9th February 2024 which was just before the period of time in the RSEO expired. Furthermore the works to the bedroom windows were carried out on the 7 February 2024. She felt this was all done at the last minute.
- 7 The Tenant invited the Tribunal to find that the Landlord had failed to comply with the RSEO. She pointed out that the weather was getting warm again which would lead to discomfort in terms of the lack of ventilation in the bedrooms and it may require the Tenant and her fellow occupants to move out of the property due to the negative impact on their health. The Tenant accepted that Mr Barr was trying to do his best but she did not think a variation of the RSEO was justified in the circumstances given the length of time the Landlord had already had to complete the works.
- 8 Mr Barr spoke on behalf of the Landlord. He apologised for the lack of attendance at the re-inspection, explaining that his colleague had been given the wrong time to attend. He further apologised to both the Tribunal and the Tenant for the handling of the case which had not been done well. Mr Barr conceded that, in his view, the RSEO had not been complied with. He had



become involved on the Landlord's behalf in March 2024 when DJ Alexander took over Stonehouse Lettings. Mr Barr stressed that there had been no delays caused by the Landlord's refusal to do works. The Landlord had given their authorisation for the works to proceed.

- 9 Mr Barr addressed the left hand lounge/kitchen and bedroom windows. He explained that there had been an issue with access for scaffolding which he had updated the Tenant on earlier that week. Following a risk assessment it was concluded that external access to the property via scaffolding would be required in order to complete the works. The contractor required access to a platform to the side of the property. It had initially been understood that this belonged to the bank downstairs in the block pertaining to the property, however the area was now believed to belong to the local authority. Mr Barr conceded that this was a matter that should have been identified at an earlier stage. The contractor was now liaising with the local authority in order to obtain access for the scaffolding to be erected. Mr Barr was in ongoing discussions with the contractor to seek updates as to progress.
- 10 With regard to the ensuite window, Mr Barr noted that there was a pin to hold the window open. He noted the Tribunal's comments about the difficulties in opening the window due to the weight and position however Mr Barr considered that the window could be opened and secured by the pin, which was compliant with the RSEO.
- 11 Mr Barr confirmed that the carbon dioxide monitors had now been installed. He confirmed that the works order issued to the contractor had stated carbon dioxide monitors but carbon monoxide monitors had been installed in error. He pointed out that carbon dioxide monitors were unusual which may have resulted in the misunderstanding however nevertheless he apologised that the monitors had not been provided at an earlier stage.
- 12 In response to questions from the Tribunal Mr Barr confirmed that the contractor required to access the windows externally due to health and safety concerns. The contractor had been concerned about works to open the sash and case windows but had been instructed to install stoppers that could be removed by the tenants if need be. The Tribunal pointed out for Mr Barr's information that the building certification for the property which was available on the local authority website indicated that bars were to be installed at various windows in the property thereby raising the height of the window sill. With regard to the lounge/kitchen window, Mr Barr confirmed that it was the Landlord's intention to move the radiator to allow the window to be opened.
- 13 Mr Barr invited the Tribunal to vary the period for compliance with the RSEO to allow further time for the works to be completed. He was unable to give a



firm timescale for this, as it would be dependent on permission being obtained from the owner of the platform in order to erect the scaffolding. He would keep the Tenant updated. Mr Barr confirmed in response to a question from the Tribunal that there were no further costs to be approved by the Landlord. They were ready to proceed.

- 14 The Tribunal concluded the hearing and determined to issue its decision in writing.

Reasons for decision

- 15 The Tribunal determined the application having regard to the terms of the application, the written representations and the findings of the Tribunal's inspection and re-inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 16 Whilst the Tribunal found Mr Barr to be entirely credible and genuine in his efforts to resolve the situation, ultimately more than five months had passed since the making of the RSEO and the Tenant was no further forward in respect of the substantive issue, namely the living/kitchen window and the bedroom windows. They were still incapable of being opened. Whilst some work had been done to improve the ventilation in the bedrooms by installing ventilation controls on the sash and case windows, the Tribunal did not consider this to be compliant with the actions required of the Landlord in the RSEO. It was clear from the terms of the RSEO that the left hand living/kitchen window and the bedroom windows must be capable of being opened.
- 17 The Tribunal was satisfied that the RSEO had been complied with insofar as the carbon dioxide alarms and the ensuite window, which the Tribunal was satisfied could be secured open with the pin albeit there was a level of difficulty in opening said window due to its position and weight.
- 18 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.*” With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. In light of the serious nature of the disrepair and the ongoing impact on the occupants the Tribunal was not of a mind to revoke the RSEO.



- 19 The Tribunal then considered Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply.
- 20 The Tribunal accepted that the Landlord was now making efforts to carry out the works to the windows. However the Tribunal could not ignore the fact that the scaffolding issue had been highlighted at the previous hearing in October 2023. It was not a new issue. The Tribunal had taken this into account when setting the period of time for carrying out the works. Other than Mr Barr's comments about how the matter had been handled, no other reasonable explanation had been provided as to why matters had not been satisfactorily progressed. The Tribunal so determined that, in the particular circumstances of this case, it would not be reasonable to vary the RSEO and allow further time for the Landlord to comply. It had now been over five months since the RSEO had been made, and over two months since the initial period for completion of the works had expired.
- 21 The Tribunal then had regard to Section 26 of the Act which states:-*"It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal."* The Tribunal was conscious that the consequence of decision by it that a Landlord has failed to comply with the RSEO could lead to a criminal prosecution. However the Tribunal could identify no reasonable excuse on the Landlord's part. The Tribunal had regard to the fact that the Landlord had an agent acting on their behalf. Nevertheless the responsibility for complying with the RSEO rested with the Landlord. Therefore the Tribunal, having taken the view that the Landlord had failed to progress the works required by the RSEO within a prolonged period of time, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.
- 22 Having concluded that the Landlord had failed to comply with the RSEO, the Tribunal considered whether to make a rent relief order ("RRO") under section 27 of the Act. The Tribunal took the view that, in the circumstances of the application and procedure to date, an RRO was appropriate. The Tribunal took into account the impact of the lack of property ventilation in the bedrooms on the occupant's health and full enjoyment of the property. Whilst the bedrooms could still be used it was not without an element of discomfort. Accordingly the Tribunal determined that an RRO of 20% of the monthly rent be imposed to reflect the effect of the disrepair on the occupants. The Tribunal further determined that notice of the decision be served on the local authority.
- 23 The decision of the Tribunal was unanimous.

Right of Appeal

Housing and Property Chamber
First-tier Tribunal for Scotland



In terms of Section 46 of the Tribunal (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 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 determined.

Ruth O'Hare

29 April 2024

Legal Member/Chair

Date