



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 Reference: FTS/HPC/RT/23/2591

Re: Property at 153 Newdyke Road, Kirkintilloch G66 2EL (“the Property”)

The Parties:

Calum Watt, CPW Property Investment, 128 Henderland Road, Bearsden, Glasgow G61 1JA (“the Landlord”)

Leighanne Grey, 153 Newdyke Road, Kirkintilloch G66 2EL (“the Tenant”)

East Dunbartonshire Council, William Patrick Library, West High Street, Kirkintilloch G66 1AD (“the Third Party”)

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 90% of the monthly rent due from the date 30 days from the date on which this Decision is sent to the parties until the RSEO is revoked and determined that notice of the failure be served on the local authority and Police Scotland.

Background

1. Reference is made to the decision of the Tribunal dated 22nd September 2023 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 as the property did not meet the Repairing Standard. The Tribunal therefore made an RSEO. The works required by the RSEO were:-

1. *Replace all rainwater goods and waste/soil pipes to ensure all drains, gutters and external pipes are in a reasonable state of repair and in proper working order.*
2. *Instruct a suitably qualified and SELECT, NAPIT or NICEIC registered electrician (i) to carry out a full inspection of the electrical installation throughout the house, the purpose of which inspection is to ensure that the electrical installations are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be repaired, replaced or renewed, including the defective double socket in the kitchen to ensure that the installation is fully functioning and meets current regulatory standards and (iii) thereafter to issue a complete and compliant electrical installation condition report (“EICR”) in accordance with Scottish Government statutory guidance on electrical installations and appliances in private rented property and exhibit the EICR to the Tribunal. This should include testing and certification of any portable electrical appliances provided by the Landlord.*
3. *Instruct a suitably qualified and Gas Safe registered engineer to carry out a certificated gas safety check on the gas heating system and any other gas appliances in the property and provide a copy of the gas safety record to the Tribunal.*
4. *Carry out such repairs as are necessary to reinstate the ceiling in the hall cupboard to ensure all electrical wires and pipework are contained within*
5. *Carry out such repairs as are necessary to ensure the front door and lock are in a reasonable state of repair and proper working order or replace the door and lock.*
6. *Carry out such repairs as are necessary to ensure the back door and lock are in a reasonable state of repair and proper working order or replace the door and lock.*
7. *Carry out such repairs as are necessary to ensure the windows in the living room, kitchen and bathroom are in proper working order and in a reasonable state of repair.*
8. *Instruct a suitably qualified plumber to carry out such repairs as are necessary to ensure the taps in the kitchen and bathroom are in proper working order*
9. *Carry out such repairs as are necessary to ensure the base cupboards in the kitchen are in a reasonable state of repair and proper working order.*
10. *Instruct a suitably qualified tradesperson to repair the radiator in the hallway to ensure it is secured to the wall and in proper working order*
11. *Instruct a suitably qualified tradesperson to properly fit and secure the carpet in the upper landing in the house.*

The Tribunal order that the works specified in the Order must be carried out and completed within the period of six weeks from the date of service of this Notice

2. Following the expiry of the period for completion of the works a re-inspection was scheduled for 12 February 2024 however the tribunal was unable to obtain access on that date. A further re-inspection was scheduled for 22nd March 2024 when access was provided by the tenant.
3. Following the re-inspection a report was issued to parties setting out the Tribunal's findings at the re-inspection. Reference is made to the re-inspection report which is incorporated and held to be part of this decision.
4. Parties were invited to respond to the re-inspection report by 11th April 2024. Neither party lodged a response.
5. Prior to the re-inspection the Third party representative lodged written representations stating that an eviction order would be requested by the landlord's secured lender on 14th May 2024. The Tribunal subsequently checked whether there had been a change in ownership on the title deeds to the property as a result of a repossession order. No such change had been recorded and the Tribunal determined to proceed with the re-inspection.

Reasons for decision

6. 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.
7. Based on their findings at the re-inspection the Tribunal was satisfied that the landlord had failed to carry out any of the works set out in the RSEO.
8. In terms of section 26 of the Housing (Scotland) Act 2006
The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—
 - (a) *unless the period within which the order requires the work to be completed has ended, or*
 - (b) *if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—*

(i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or

(ii) that the work required by the order is likely to endanger any person.

9. The Tribunal was satisfied that the work had not been carried out within the required period. The Tribunal then considered whether the Landlords failure to comply had been because of a lack of necessary rights despite having taken reasonable steps to acquire those rights The Tribunal had been provided with no information by the landlord that he lacked any necessary rights. The Tribunal determined that there had been a failure to comply with the RSEO.
10. 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 that the Landlord had not engaged with the Tribunal process and had carried out no repairs.
11. The Tribunal took into account that the tenant resides in the property with her 2 children. The disrepair issues impact the tenant’s enjoyment of the property. The Tribunal considered that the lack of progress in relation to the repairs issues raised concerns relating to the health and safety of the occupants of the property. Of particular concern was the lack of certification that the electrics in the property were in a reasonable state of repair. It was noted during the re-inspection that a double socket in the kitchen was not fixed to the wall presenting a risk to the tenant and her family. The Tribunal also took into account the lack of progress in relation to providing a gas safety certificate which also raised issues of safety given the overall condition of the property.
The other repairs outstanding directly impacted the tenant’s enjoyment of the property and posed a risk to her health and wellbeing.
12. Taking into account the above circumstances the Tribunal determined that an RRO of 90% of the monthly rent should be imposed to reflect the effect of the disrepair on the occupants. The Tribunal considered this to be a fair and

proportionate level of rent relief in the circumstances of the case. The RRO will take effect from the date 30 days from the date on which this Decision is sent to the parties until the RSEO is revoked or discharged.

13. The decision of the Tribunal was unanimous.

Right of Appeal

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.

M Kelly

Legal Member/Chair

Date: 3rd May 2024