

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Section 60 (5) (b) of the Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber Ref: FTS/HPC/RP/23/0930

1 The Square, Crarae, Furnace, Argyll, PA32 8YA, part of the estate of Cumlodden, referred to in the Disposition to George Ilay Campbell of Succoth recorded in the Division of the General Register of Sasines for the County of Argyll on 19th January 1927 (“the Property”)

The Parties:-

Miss Anita Skea, 1 The Square, Crarae, Furnace, Argyll, PA32 8YA (“the Tenant” and “the Applicant”)

Ms Cecilia Macgregor, Crarae Lodge, Crarae, Furnace, Argyll, PA32 8YA as representative of Lady Margaret Minette Rohais (deceased), Crarae Cottage, Crarae, Furnace, Argyll, PA32 8YA (“the Landlord” and “the Respondent”)

Tribunal Members:

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

Decision

The tribunal determined that the work required by a repairing standard order (RSEO), which was dated 16 January 2024 and was in terms of Section 24 (2) of the 2006 Act, has been complied with.

Background

1. By application dated 23 March 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 (1) of the 2006 Act (“the 2006 Act.”)

2. The Applicant and Respondent were parties to a private residential tenancy in respect of the Property. It is dated 24 October 2018. Lady Margaret Minette Rohais died after commencement of the tenancy and the administration of her estate has not been concluded. Ms Cecilia Macgregor is the daughter of Lady Margaret Minette Rohais and is dealing with the Property until resolution of the executry.
3. 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 structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order and that the Property does not meet the tolerable standard. Specifically, the application states that the Property has an inadequate source of heating, that there are issues with the carbon monoxide and smoke detectors and that there is mould and dampness throughout the Property, including the bedroom. The application states that the loft remains wet and unvented, that there are cracks on the building including the chimney, that fire bricks require replacement, that a window in the living room is cracked and that the front door is draughty.
4. On 15 May 2023, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.
5. The members of the tribunal inspected the Property on 25 July 2023 and a Hearing was held on the same day.
6. The members of the tribunal issued a decision on 2 August 2023 which stated that final determination of the application would be deferred pending the Landlord submitting a report from a dampness and mould specialist.
7. The Tenant intimated that the tenancy had been terminated on 24 August 2023.
8. On 2 September 2023 the tribunal issued a Minute of Continuation in terms of Schedule 2, Paragraph 7(3) of the Housing (Scotland) Act 2006.
9. On 16 January 2024, the tribunal, having received a copy of a report from a dampness and mould specialist, made a repairing standard enforcement order ("RSEO") which required the Landlord to do the following:

- 9.1 produce to the Tribunal a current Electrical Installation Condition Report (“EICR”) for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT, or other suitable 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. PAT testing documentation for any portable appliances supplied by the Landlord should also be produced which has been prepared by a similarly qualified and accredited electrician.**
- 9.2 Install a functional interconnected smoke detector in the living room which meets Scottish Government guidelines.**
- 9.3 Repair or renew the windows in the Property to ensure that they are in good and efficient working order and free from defect.**
- 9.4 Repair or renew the rainwater goods at the Property to ensure that they are effective in collecting rainwater and distributing it to the Property’s drainage system.**
- 9.5 Eradicate any dampness within the Property.**
- 9.6 Repair or renew the front door and surrounding frame to ensure that there are no draughts.**
- 9.7 Carry out works to ensure that the doors and windows are draught free.**
- 9.8 Repair or renew the rotten window sill to the rear of the Property.**
- 9.9 Replace cracked and missing slates.**

The tribunal determined that the works were to be completed by 15 April 2024.

10. The tribunal inspected the Property on 23 May 2024. Ms Cecilia Macgregor was in attendance. She explained that some electrical work was still outstanding.
11. The tribunal considered items 9.3-9.9 of the RSEO and determined that works had been carried out and that, in respect of those items, the Property complied with the repairing standard.
12. The tribunal noted that the Landlord had not yet complied with 9.1 and 9.2 of the RSEO. It accepted the Landlord’s position that works were in train and that she would forward appropriate certification in due course.
13. Subsequent to the inspection on 23 May 2024, the Landlord submitted an EICR dated 21 May 2024. This disclosed that there were faults in the electrics.
14. The Landlord submitted a Minor Electrical Installation Works Certificate dated 27 June 2024 which referred to the faults disclosed in the EICR of 21 May 2024.

The later certificate provided confirmation that the faults had been attended to and that the electrical installation and smoke alarms were in satisfactory order.

Decision

15. The tribunal determined that the RSEO had been complied with and it formed that view based on what had been observed at the re-inspection on 23 May 2024 and the electrical certificates submitted by the Landlord. The tribunal determined that a certificate be issued in terms of Section 60 (5)(b) of the 2006 Act.

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.

Martin McAllister

Martin J. McAllister,
Legal Member
23 July 2024