



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/23/3749

Re: Property at 2B Menzies Road, Aberdeen, AB11 9BA (“the Property”)

Parties:

Arran Davidson, c/o DJ Alexander, Neo House, Riverside Drive, Aberdeen, AB11 7DG (“the Landlord”); and

Mr John Harrington, 2B Menzies Road, Aberdeen, AB11 9BA (“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”) unanimously determined to vary the Repairing Standard Enforcement Order (“RSEO”) by allowing a further period of four weeks from the date of this decision for completion of the works specified therein.

Background

- 1 By application to the Tribunal, the Tenant sought an RSEO against the Landlord on the basis that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The Tribunal inspected the property on 5th March 2024 which was followed by a hearing in the Employment Tribunals Centre in Aberdeen. The Applicant was in attendance with his mother and the Landlord was represented by Samantha Bell of DJ Alexander. The Tribunal thereafter determined to make a repairing standard enforcement order requiring the Landlord to:-
 - (i) Carry out such works as are necessary to the exterior of the property to render the property wind and watertight; and

- (ii) Repair any water damage in the front bedroom and carry out internal redecoration following the completion of the works at (i).

Reference is made to the decision of the Tribunal dated 31st March 2024 which sets out in full the reasons for the decision.

The Re-inspection

- 3 The Tribunal re-inspected the property on 23 August 2024 at 11.30am. The weather conditions were dry and bright with recent showers of rain. The Tenant was present and allowed access to the property. The Landlord was represented by Samantha Bell.
- 4 From a ground level inspection of the exterior it was not apparent what external works had been undertaken to the building. From an internal inspection that the bedroom area of the property was unchanged from the initial inspection in March 2024. Staining from previous water ingress, damaged plaster and loose wallpaper were evident.
- 5 Ms Bell stated that repairs had been undertaken to the chimney above the bedroom window and she would submit copies of documents to the Tribunal regarding the repairs. The Tenant advised that there had been no water ingress since the completion of the repairs. Both parties confirmed that the outstanding internal repairs were due to be undertaken by the end of the first week in September.
- 6 A re-inspection report was prepared and issued to the parties for comment. Parties were given the opportunity to request a further oral hearing but were advised that the Tribunal may instead decide to proceed to a decision on the basis of the written representations before it.
- 7 On 29 August 2024 the Tribunal received an email from the Tenant who advised that the plasterer had not yet turned up to complete the internal works. He advised that he did not wish to request an oral hearing but did not think the RSEO could be revoked given that there were works that remained outstanding. In the event that the Tribunal decided the Landlord had failed to comply the Tenant requested a rent relief order of 40-50% due to the length of time it had taken to have the repairs completed. There was an ongoing impact to the Tenant in terms of plaster falling from the ceiling when the window was opened and a draft coming from a hole in the ceiling.
- 8 On 2 September 2024 the Tribunal received an email from Ms Bell of DJ Alexander. She provided copy invoices from Granite City Handyman which appeared to pertain to the repointing of the external bedroom window. She further confirmed that the plasterer had diarised the date incorrectly but had agreed a new date with the Tenant and would be attending the property that week.

- 9 On 6 September 2024 the Tenant sent a further email to the Tribunal confirming that the plasterer had completed the initial repair on 5 September 2024 and would be returning on the 9 September 2024 to complete beading and silicone on the ceiling. The painter would then attend once he had space in his diary.

Reasons for decision

- 10 The Tribunal was satisfied that it had sufficient information to determine the application, having regard to the outcome of the re-inspection and the written representations from the parties. Neither party had requested an oral hearing and the Tribunal did not consider one necessary at this particular stage in the proceedings.
- 11 The Tribunal therefore had regard to Section 25 (1) of the Act which states *“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.”*
- 12 With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. In light of the length of time it had taken the Landlord to carry out the repairs, and the ongoing impact on the Tenant, the Tribunal was not of a mind to revoke the RSEO.
- 13 The Tribunal then considered Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply.
- 14 The Tribunal had concerns about the length of time the Landlord had taken to address the repairs outlined in the application. There did not appear to be any credible explanation from the Landlord, nor his agent, as to why this was the case. The Tribunal would expect the Landlord and his agent to ensure that, moving forward, repairs are dealt with promptly to ensure ongoing compliance with the Repairing Standard.
- 15 However the Tribunal was ultimately satisfied that the Landlord has now made satisfactory progress in complying with the RSEO. Having considered the invoices provided by the Applicant’s representative which outlined the work carried out, and having noted that there had been no further water ingress as confirmed by the Tenant, the Tribunal accepted that the repairs required under part (i) of the RSEO had been completed. With regard to part (ii) of the RSEO the Tribunal also accepted, based on the Tenant’s most recent correspondence, that the majority of the plasterwork had been carried out with only the paintwork outstanding. The Tribunal therefore concluded that it would be reasonable to vary the RSEO to allow further time for the Landlord to comply.
- 16 The Tribunal therefore determined to vary the RSEO to extend the period for completion of the works by four weeks from the date of this decision.

17 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.

Ruth O'Hare

Legal Member/Chair

Date 12 September 2024