



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 60(4) of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RP/23/1250

Re: Property at 1 King Street, Lossiemouth, Morayshire, IV31 6QA (“the Property”)

Parties:

Laing Leasing Ltd, 6 Market Square, Oldmeldrum, Aberdeenshire, AB51 0AA (“the Landlord”); and

Angela Brannigan, 1 King Street, Lossiemouth, Morayshire, IV31 6QA (“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 that the Landlord has not completed the work required by the Repairing Standard Enforcement Order (“RSEO”) made on 3 November 2023 and refused to grant a certificate of completion.

Background

1 Reference is made to the decision of the Tribunal dated 21 March 2024 which determined that the Landlord had failed to comply with Repairing Standard Enforcement Order (“RSEO”) made by the Tribunal on 3 November 2023 which required the Landlord to:-

- (i) Carry out appropriate mould treatment and redecoration of mould affected areas within the lounge, bedrooms and bathroom;
- (ii) Carry out such works are necessary to ensure there is no dampness present at the lounge and bedroom windows;



- (iii) Repair, overhaul or replace the windows to the property to ensure they are in a reasonable state of repair and in proper working order;
 - (iv) Submit an up to date electrical installation condition report for the property to the Tribunal for further consideration;
 - (v) Repair or replace the storage heaters in the property on a like for like basis and replace the previously removed wall mounted electric panel heaters in the bedrooms on a like for like basis;
 - (vi) Repair the plasterwork in the bathroom;
 - (vii) Repair or replace the blinds, including blind fittings and tracks; and
 - (viii) Carry out such redecoration as may be required following completion of the works under (ii), (v) and (vi).
- 2 On 6 September 2024 the Tribunal received an email from Mr Neil Duffus on behalf of the Landlord advising that the works had now been completed and requesting advice on the next steps. On 12 September 2024 the Tribunal received an email from the Tenant to advise that the works were still outstanding.
- 3 The Tribunal proceeded to schedule an inspection of the property for 9 October 2024. Notification was given to the parties of the inspection date and time.
- 4 On 23 September 2024 the Tribunal received an email from the Landlord with an electrical installation condition report.
- 5 On 8 October 2024 the Tribunal received an email from the Tenant outlining the works that had been carried out and the matters outstanding. The Tenant provided photographs in support of her written representations.

The Re-inspection

- 6 The Tribunal re-inspected the property at 10am on 9 October 2024. The Landlord was represented by Mr Neil Duffus. The Tenant was in attendance.
- 7 The Tribunal proceeded to inspect the items narrated in the RSEO.
- 8 Within the lounge and the first bedroom mould growth remained to large areas of the ceilings and walls of the rooms. The second bedroom had been



redecorated but mould remained on the surfaces within the built-in wardrobe. Within the bathroom the walls had been redecorated.

- 9 Within the lounge moisture readings of 70 to 90% were observed to the window ingoes and soffits, co-incident with brown staining, as found at the previous inspections. Meter readings around the window of the first bedroom were generally 18-20% with the exception of the lower corners of the ingoes, where rusty nails were also visible as found at previous inspections. Within the second bedroom the window area had been redecorated along with the rest of the room. However, meter readings were similar to those observed at previous inspections, ranging from 18% to 99% in several locations.
- 10 The four windows of the property were all found to open and close as designed. The mechanisms of the front windows did not hold the windows in the stage open positions. Some of the trickle vents could not be opened.
- 11 An electrical installation condition report, prepared by R Massie Electrical and Boiler Services dated 28 August 2024 had been submitted to the Tribunal in advance of the re-inspection. The installations were described as being in good condition and satisfactory for continued use.
- 12 The storage heaters within the lounge and hallway had been replaced with new, wall mounted instantaneous heaters with programmable thermostats. Similar heaters had been installed in each of the bedrooms.
- 13 The plasterwork in the bathroom had been repaired and the area redecorated. Moisture meter readings to the plasterboard showed readings of up to 99% behind the WC and above the WC adjacent to the wall tiles.
- 14 The blinds had been repaired or replaced.
- 15 Mould and staining from damp remained in the lounge and the bedroom. The wall heaters in the lounge and hall were smaller than those present at the commencement of the tenancy. There were fixings visible from the old heaters and those areas had not been redecorated. The bathroom had been redecorated.
- 16 Parts of the flooring in the bathroom was visibly wet and the reason for this was not immediately clear from the Tribunal's inspection.
- 17 The re-inspection report, together with photographs taken during the re-inspection, was subsequently issued to the parties. Both parties were invited to make written representations.



- 18 On 16 October 2024 the Tenant emailed the Tribunal to query why the Landlord had not submitted a copy of the damp report that had allegedly been carried out, and raised issues with the Landlord's landlord registration.
- 19 On 24 October 2024 the Tribunal received written representations from the Tenant regarding the re-inspection report. The Tenant confirmed her agreement with the content of the report and stated that she did not wish to attend a hearing.
- 20 On 30 October 2024 the Tribunal received an email from the Landlord with two reports from Wise Property Care dated 26 April 2023 and 14 August 2024. The Landlord disputed the findings of the re-inspection report and stated that the works were all complete. The Landlord stated that he wished to request a hearing as he believed that the Tribunal had drawn incorrect conclusions from the evidence. The adverse damp readings were due to a lack of ventilation by the Tenant and the storage heaters should be assessed in terms of kilowatt power and not physical size.
- 21 In view of the fact that matters were in dispute between the parties the Tribunal determined that it would require to hold a hearing prior to making a decision on whether to issue a certificate of completion in this case. A hearing was therefore scheduled for 11 December 2024 to be held by teleconference. Notification was given to the parties by email on 19 November 2024.

The Hearing

- 22 The hearing took place by teleconference on 11 December 2024. The Tenant was in attendance. The Landlord was not present, nor represented. The Tribunal noted that he had been given notice of the date and time of the hearing to the email address he had been using to correspond with the Tribunal. The Tribunal was therefore satisfied that he had been given reasonable notice of the hearing under Rule 24(1) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and determined to proceed in his absence.
- 23 The Tribunal heard submissions from the Tenant on whether the works required by the RSEO had been completed. For the avoidance of doubt the following is a summary of those matters relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 24 With regard to the mould treatment, the Tenant advised that the Landlord had carried out some redecoration. However the decorators had not washed down



the walls nor applied any treatment. They had simply painted over the mould. The Tenant did advise that the Landlord had sprayed chemicals in the hallway but all that had done was spread the mould over the ceiling. There had been no damp treatment carried out. In response to questions from the Tribunal the Tenant clarified that only the second bedroom and the bathroom had been painted. The hallway had been washed with a chemical solution.

- 25 With regard to the windows the Tenant advised that the Landlord had painted the outside of the windows and had replaced the window in the kitchen. The brackets had been changed and it appeared that the Landlord was trying to grind them down and clean them. The Tenant explained that there were still issues with the operation of the windows. The window in the second bedroom was difficult to lock. Some of the trickle vents could no longer be opened. The Tenant did not think the windows were wind and waterproof. In response to questions from the Tribunal the Tenant confirmed that the windows did not stay open in one position. She had reported this to the previous Landlord but had been told that there was no mechanism to keep the windows in place. The windows would blow shut in the wind.
- 26 With regard to the electrical installation condition report, the Tenant expressed some doubts about the qualifications of the electrician but conceded that the report had been provided by the Landlord. She outlined a recent issue with a plug socket in the kitchen that had been damaged. It had been difficult to get the Landlord to address this. The socket had since been taped up.
- 27 With regard to the heaters, the Tenant noted that these were a lot smaller than the previous storage heaters. The Tenant had concerns about the operation of the heaters, explaining that she had to switch off the one in the second bedroom after it emitted a smell of smoke. The new heaters were a lot more expensive to run than the previous storage heaters. She did not feel that they were sufficient for the size of the property.
- 28 With regard to the plasterwork in the bathroom, the Tenant was of the view that the work carried out had been substandard. The paint was already beginning to bubble. The wall area felt wet and soft, as if the wall was caving in. Paint had started to come off. The Tenant had emailed the Landlord about this but he had not done anything to address the issue.
- 29 With regard to the blinds, the Tenant confirmed that the Landlord had installed new roller blinds in the living room and the bedrooms. The Tenant had not been given the opportunity to clean the fittings before the blinds were replaced.



- 30 With regard to the redecoration the Tenant advised that nothing had been done in the hall, living room and first bedroom. The redecoration in the second bedroom and the bathroom was of a poor standard.
- 31 The Tribunal asked the Tenant for her comments on the damp reports that had been submitted by the Landlord. The Tenant noted that there were recommendations in the report that had not been implemented by the Landlord. The Tenant felt the photographs portrayed an unfair picture of her occupation of the property, showing clothes in the photographs. She had raised this with Wise Property Care. The Tenant felt that the Landlord had ignored the recommendations in the report and was continuing to blame her for the ongoing damp and mould issues. The Tenant stressed that she regularly heated and ventilated the property. She would use the tumble dryer to dry clothes. It was vented outside. She had bought a dehumidifier with her own money and had it running continuously. She did not think the extractor fan in the bathroom was sufficient. The heater in the bathroom would cut out after a short period of time. The Tenant explained that the previous landlord had been told that the entire front wall of the property needed to be stripped back and filled with insulation. The previous landlord did not want to do the work.
- 32 The Tenant was given the opportunity to make any final comments. She explained that the relationship with the Landlord had broken down. She felt his attempts to address the disrepair were shoddy. He was doing the bare minimum. By doing things himself he was making the problems worse.
- 33 The Tribunal concluded the hearing and determined to issue its decision in writing.

Reasons for decision

- 34 The Tribunal determined the application having regard to the terms of the application, the written representations, the findings of the Tribunal's re-inspection and the submissions at the hearing. 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.
- 35 The Tribunal concluded, based primarily on the findings of the re-inspection that the Landlord has not fully complied with the RSEO. Whilst the Tribunal was content that the Landlord had provided an updated electrical installation condition report and had replaced the blinds in compliance with parts (iv) and (vii) of the RSEO, the remaining works required by the order remain outstanding.



- 36 It was clear from the Tribunal's re-inspection and the meter readings taken that the property continues to suffer from damp and mould. Whilst the Landlord appears adamant that this is the fault of the Tenant, the Tribunal was not satisfied based on the evidence before it that the issues can solely be attributed to a failure to adequately heat and ventilate the property. The Landlord had provided reports from Wise Property Care with various recommendations. However, it appeared that they had chosen not to carry these out. Furthermore it was not clear what work had been undertaken to address the dampness present at the lounge and bedroom windows, and what treatment had been applied to the mould, which was prevalent throughout various rooms in the property. The Landlord had made mention of applying an unidentified chemical to the ceiling in the hall but given no further information and had provided no further evidence of what measures had been taken to comply with the RSEO. The Tribunal therefore found that the Landlord had failed to comply with parts (i) and (ii) of the RSEO.
- 37 The Tribunal also concluded from the findings of the inspection that the windows are not yet in a reasonable state of repair. In particular, there are trickle vents that cannot be opened and no mechanism to ensure that the windows can be safely opened and fixed in place to allow for adequate ventilation. The Tribunal therefore found that the Landlord had failed to comply with part (iii) of the RSEO.
- 38 The Tribunal carefully considered part (v) of the RSEO, which specifically required the Landlord to repair or replace the previous storage heaters in the property on a like for like basis, and replace the previously removed electric panel heaters in the bedrooms, again on a like for like basis. Whilst the Landlord had replaced the panel heaters in the bedrooms, the heaters in the hall that had been installed following the RSEO were not a like for like replacement. The Tribunal would have expected new storage heaters to be installed, as were in place at the commencement of the tenancy, which would allow for the property to be heated on a more efficient and cost effective basis. The Tribunal therefore found that the Landlord had failed to comply with part (v) of the RSEO.
- 39 With regard to the plasterwork in the bathroom, the Tribunal noted that repairs had been attempted to address this. However it was clear from the findings of the Tribunal's re-inspection that the plasterwork is not in a reasonable state of repair, with high damp readings found in the area behind the WC. The Tribunal could not therefore be satisfied that part (vi) of the RSEO had been completed to a sufficient standard.



- 40 Finally, with regard to the redecoration, it was clear from the findings of the re-inspection that the Landlord has not complied with part (viii) on the basis that no redecoration had been carried out in the living room and the first bedroom.
- 41 The Tribunal therefore concluded that the works required by the RSEO have not been completed and therefore refused to issue a certificate of completion.
- 42 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

8 January 2025

Legal Member/Chair

Date