

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Sections 26 and 27

Chamber Ref: FTS/HPC/RP/22/1502

Re: Property at 87 Gatehead Road, Crosshouse, Kilmarnock, East Ayrshire, KA2 0JH (“the Property”)

Parties:

Mr David Reilly (“the Applicant”)

Mrs Irene Fowler, sometime residing at 1 Plann Road, Kilmarnock, KA2 0EN (“the Respondent” and “the Landlord”)

Countrywide and SHH Lettings, 3rd Floor, 26 Springfield Court, Glasgow, G1 3DQ (“the Respondent’s Representative”)

Tribunal Members:

Martin McAllister (Legal Member) and Donald Wooley, Chartered Surveyor, (Ordinary Member) (“the tribunal”)

Decision

The tribunal determined:

(One) that the Landlord has failed to comply with a repairing standard enforcement order (RSEO) dated 5 September 2022 and subsequently varied and that a notice of failure be served on the local authority (Section 26 of the Housing (Scotland) Act 2006 (“the 2006 Act”).

(Two) that parties be given until 5 February 2024 to submit written representations to the Tribunal with regard to its consideration of whether to make a rent relief order in terms of Section 27 of the 2006 Act.

Background

1. By application dated 18th May 2022, 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 2006 Act. The application is in terms of Section 22 (1) of that Act.
2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, that any fixtures, fittings and appliances provided by the landlord under the tenancy are 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 Landlord has failed to remedy dampness, mould and condensation in the Property, that there is dampness and mould in the porch, bathroom, living room, bedrooms and kitchen. The application states that the majority of kitchen units are unusable and that mould odour is becoming unbearable.

Repairing Standard Enforcement Order

3. On 30th August 2022, the Property was inspected by the tribunal and, following a Hearing, a repairing standard enforcement order ("RSEO") was made in the following terms:

The Landlord was required to:

- 3.1 Obtain a detailed report from a suitably qualified timber and damp treatment contractor confirming both the extent and the source of the dampness and mould throughout the property, together with any remedial action necessary to eradicate the problem. The report should include a detailed specification on any additional ventilation required to address the issue in the main bedroom (rear room right), the living room, the kitchen including wall mounted cupboards, and bathroom within the property. The report should be submitted to the Tribunal.
- 3.2 Complete all recommended repairs in accordance with the specification recommended and redecorate as required.
- 3.3 To replace or repair the lining of the kitchen units which are affected by dampness and/or mould.
- 3.4 The works required by the repairing standard enforcement order require to be completed by 31st October 2022.

Property Reinspection 29 November 2022

4. The members of the tribunal reinspected the Property on 29 November 2022 and determined that some works had been completed and that some were outstanding. The RSEO was varied and required the Landlord to comply with the RSEO by 31 March 2023.

Property Reinspection on 30 August 2023

5. The members of the tribunal inspected the Property on 30 August 2023.

Hearing 12 September 2023

6. A Hearing was held on 12 September 2023.
7. At the Hearing, it was noted that some works had been carried out since the inspection on 29 November 2022 but that no additional remedial action had been taken to address the outstanding mould and damp issues detailed in a report prepared by Peter Cox, a preservation company, and which had been prepared subsequent to that inspection.
8. A further Peter Cox Report dated 30 June 2023 had been obtained and Mr Graham of the Respondent's Representatives confirmed to the Hearing that he had received authority to proceed with repairs recommended in that report and that he awaited quotations for some pre and post contract works which would be required.
9. It was noted that the Peter Cox Report had not dealt with an issue of dampness in a bedroom and Mr Graham had indicated that he would seek authority from the Respondent for Peter Cox to prepare another report to address this.
10. The RSEO was varied and required the Landlord to comply with the RSEO by 25 November 2023.

Property Re-inspection 15 January 2024

11. The members of the tribunal inspected the Property on 15 January 2024 and a copy of the ordinary member's re-inspection report including photographs is attached to this Decision.
12. The Applicant was present at the inspection and he advised that, subsequent to the Hearing on 12 September 2023, an inspection of the Property had been carried out by a person who he understood to be from Peter Cox and that this inspection had included part of the sub-floor area.
13. The tribunal noted that the Respondent had carried out no works to the Property since the Hearing on 12 September 2023 with the possible exception of

replacement of the external soil pipe. It was not clear if this work had been carried out by the Respondent or the proprietor of the upper property.

14. The tribunal noted that no additional report from Peter Cox or any other preservation company had been submitted to the Tribunal.

Determination

15. The tribunal had regard to Section 26 (2) of the 2006 Act:

Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must-
(a) serve notice of the failure on the local authority, and
(b) decide whether to make a rent relief order.

16. The tribunal noted that, notwithstanding the Respondent's Representative statements at the Hearing on 12 September 2023, no progress had been made to comply with the RSEO and reference is made to the re-inspection report attached to this Decision. It determined that the Respondent had failed to comply with the RSEO.

17. The tribunal determined to serve appropriate notice on the local authority that the RSEO had not been complied with.

18. The tribunal considered whether a rent relief order should be made. It determined that parties should be given the opportunity to make written representations on the matter and that these should be submitted by 5 February 2024.

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.

M McAllister

Martin J. McAllister,
Solicitor, legal member of

Tribunal.
17 January 2024