

Housing and Property Chamber
First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 60

Chamber Ref: PRHP/RP/16/0298

Property at 2F/R, 140 Walker Road, Aberdeen, AB11 8BX
Land Register Title No. KNC13119
("The Property")

The Parties:-

MR LUCASZ SZCZYGIELSKI, 2F/R, 140 Walker Road, Aberdeen, AB11 8BX
("the Tenant")

MS RACHEL MARY MURRAY, 27 Menzies Road, Aberdeen, AB11 9AX
(represented by her agent, Jane Mullin, Cox & Co, 38 Holburn Street, Aberdeen,
AB10 6BT
("the Landlord")

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") in relation to the Property, and taking account of the subsequent inspection of the Property by the tribunal and the documentation submitted to the tribunal, determined that the Landlord had now complied with the terms of the RSEO and resolved to issue a Certificate of Completion in respect of the works required by the RSEO.

Background

1. By a determination dated 10 January 2017 the tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that she had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - (a) To investigate the cause of the water ingress around that window in the double bedroom and thereafter to carry out such works of repair or replacement as are necessary to ensure that the window, the frame thereof and the recess into which the window is set meet the Repairing Standard and are wind and watertight, and in a reasonable state of repair and in proper working order.

- (b) To repair or replace the radiator in the double bedroom to ensure that it is in a reasonable state of repair and in proper working order.
- (c) To adjust and/or repair the main entrance door to include in particular the installation of draught proofing to ensure that it is in a reasonable state of repair and in proper working order.
- (d) To produce a current Gas Safety Certificate confirming that the radiator in the double bedroom is in proper working order, safe to use and complies with the relevant regulations. The Landlord is to exhibit such Gas Safety Certificate to the Committee.

The RSEO gave the Landlord 3 months to carry out the works.

2. By email dated 9 March 2017 the Landlord's representative made representations to the tribunal attaching an exchange of emails with AJM Plumbing dated 10 February 2017, invoices from A Helping Hand Scotland Limited dated 7 November 2016 and 5 March 2017, and a Landlord Gas Safety Record dated 27 January 2017.
3. On 12 April 2017 the Ordinary (Surveyor) Member of the tribunal, Mr Colin Hepburn, re-inspected the Property on behalf of the tribunal. The Tenant was present with Mr Jarrek Nemeiel who acted as interpreter for the Tenant. The Tenant gave access to the Property. The Landlord was represented by her representative, Mr Anderson of Cox & Co.
4. The Ordinary (Surveyor) Member noted the following:-
 - (a) That the Landlord's representative claimed that the windows had been inspected and repairs carried out externally. The Tenant was unaware of any works having been being done. The Tenant alleged that the water ingress was still occurring. The plaster finishes around the window were tested with a damp meter and were found to be dry. No repairs had been carried out internally to repair damaged decoration and the window sill.
 - (b) The central heating radiator in the front bedroom had not been replaced but the Landlord's representative stated that the system had been inspected and repaired. The heating system was turned on and the thermostat turned up full. The pipes to the radiator did heat up and there was noticeable heat coming from the top of the radiator. The radiators in the lounge and rear bedroom were cold at the top indicating that the radiators needed bled. The Tenant stated that the front bedroom radiator was still producing inadequate heat. No invoices or reports on the central heating installation were available.
 - (c) A draught proofing strip had been added to the main door to the common hall and stairwell.
5. The Ordinary (Surveyor) Member noted that the following works remained outstanding:-

- (a) Repairs to decoration and the window sill in the front bedroom had not been undertaken. It was not clear whether the repairs undertaken by the Landlord to eliminate the water ingress had been successful.
- (b) Although the bedroom radiator was heating the other radiators needed bled. If the system has a tendency to become airlocked, the system would require to be inspected and repaired as necessary.
- (c) The Landlord required to provide to the tribunal a Gas Safety Certificate confirming that the bedroom radiator is in proper working order.
6. Following the Re-inspection Report being issued to the parties, by email dated 19 May 2017 the Landlord's representative made representations to the tribunal that the works required in terms of the RSEO were now complete. These representations included the documentation previously attached the Landlord's representative's email of 9 March 2017 together with an invoice from Thistle Cleaning Services dated 15 May 2017, a receipt from B&Q dated 12 May 2017, an invoice from AJM Plumbing dated 18 May 2017, an exchange of emails with AJM Plumbing dated 12 and 18 May 2017, an email from the Tenant dated 10 May 2017 and a photograph.
7. The Tenant also made representations to the tribunal dated 17 and received on 23 May 2017.
8. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr Colin Hepburn, Ordinary (Surveyor) Member, inspected the Property on the morning of 11 July 2017. Access was provided by Anna Gorka. The Tenant arrived during the inspection. The Landlord was represented by Jane Mullin of Cox & Co. Photographs were taken and are attached. The heating system was switched off on the tribunal's arrival. Mr Hepburn attempted to start the boiler to allow the tribunal to inspect the radiator in the double bedroom. The boiler would not properly ignite and the tribunal was unable to inspect the radiator.
9. At the time of the inspection it was fair and dry.
10. Following the inspection of the Property the tribunal held a hearing at Credo Centre, 14-20 John Street, Aberdeen, AB25 1BT and heard from the Tenant who was accompanied by Mr Jarrek Nemeiel who acted as the Tenant's interpreter. The Landlord was represented by Jane Mullin of Cox & Co.
11. The Tenant submitted as follows:-
- (a) (i) That the window in the double bedroom continued to leak from above the window at the ceiling.
- (ii) That the window leaks when rain is particularly heavy.
- (iii) That most recently the window leaked about a week previously.
- (b) (i) That the radiator in the double bedroom gets only slightly warm.

- (ii) That he had topped up the water in the boiler but this had made no difference.
- (c) That the main entrance door had been sealed but the gap between the door and the frame was still too big allowing cold air into the flat.

12. The Landlord's agent, Jane Mullin of Cox & Co, submitted as follows:-

- (a) That the double bedroom window had been repaired and redecorated. Invoices had been produced and no further reports of the window leaking had been received from the Tenant.
- (b) That, on the advice of the plumber, the radiator is properly working.
- (c) That the repairs required to the main entrance door had been undertaken and an invoice produced.
- (d) That a Gas Safety Certificate had been produced in adequate terms.

13. Following the inspection and hearing on 11 July 21017, the Landlord's representative made further representations to the tribunal by email dated 13 July 2017 and attaching a report from BPH Plumbing Heating & Gas Services Limited and Gas Safety Record dated 13 July 2013 confirming the boiler and the radiator in the double bedroom to be proper working order.

14. The Tenant also made further representations to the tribunal by email dated 9 August 2017 to the effect that the problems with the radiator are not resolved.

Decision

15. The tribunal carefully considered the evidence and the parties representations and was satisfied that the RSEO should be lifted and a Certificate of Completion discharging the RSEO under Section 60 of the Act should be granted.

16. The decision of the tribunal was unanimous.

Reasons for Decision

17. With regard to the window in the double bedroom, repairs have been effected by the Landlord and no evidence of ongoing water ingress was found.

18. With regard to the radiator in the double bedroom, whilst on inspection by the tribunal on 11 July 2017 the radiator could not be seen to heat due to the boiler not operating, the Landlord's representative subsequently produced evidence that both the boiler and the radiator were now in proper working order and an up to date Gas Safety Certificate has also been produced that complies with the terms of the RSEO.

19. With regard to the main entrance door, draught proofing has been installed by the Landlord and the main entrance door is now in a reasonable state of repair and in proper working order.

Right of Appeal

20. 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.

G Buchanan

Signed...

Date 13 September 2017

Chairperson & Legal Member

Schedule of photographs taken during the inspection of:

2 F/R, 140 Walker Road, Aberdeen AB11 8BX

By: Colin F Hepburn MRICS, Ordinary Member of the First-Tier Tribunal for Scotland (Housing and Property Chamber) on the 11th July 2017.



Front elevation



Front bedroom ceiling

*This is the Schedule of Photographs referred to in
the tribunal's decision dated 13 September 2017.*

G Buchanan

13 September 2017

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Front bedroom window recess



Front bedroom windowsill

