

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision made under Section 60 of the Housing (Scotland) Act 2006

Tribunal Ref: PRHP/RP/15/0155

Re : Property at 6 Salutation House, Carsphairn DG7 3TQ ("the Property")

The Parties:-

Miss Zoe Marshall, residing sometime at 6 Salutation House, Carsphairn DG7 3TQ ("the Tenant")

Formerly Ryan Maginess, 32 Masonfield Avenue, Cumbernauld G68 9DU and having a place of business at The Hub, Vicar Street, Falkirk FK1 1LL, now Purple Property Holdings Limited, a British Virgin Islands registered company 1906875 ("the Landlord")

Tribunal Members: George Clark (Legal Member/Chair) and Mike Links (Ordinary Member/Surveyor)

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order in respect of the Property made on 18 August 2015, determined that, as access to the Property had not been given, it could not decide whether the work required by the Order had been carried out and that it could not, therefore, accede to the Landlord's request for certification under Section 60 of the Act that the work had been completed or discharge the Rent Relief Order in respect of the Property made on 16 November 2015 .

Background

1. By application dated 12 May 2015, received on 14 May 2015, the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
 - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
 - (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,

- (d) 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
 - (e) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.
3. The Private Rented Housing Committee inspected the Property on the morning of 18 August 2015. The Committee comprised George Clark (chairman) and Mike Links (surveyor member).
 4. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Kenbridge Hotel, Ayr Road, New Galloway, Castle Douglas and heard from the Tenant. The Landlord was not present or represented at the hearing or at the earlier inspection.
 5. Following the inspection and hearing, the Committee made a Repairing Standard Enforcement Order ("the Order") in respect of the Property.
 6. The Order required the Landlord:
 - To obtain and exhibit to the Committee an Electrical Installation Condition report in respect of the Property.
 - To instruct suitably qualified electrical and plumbing contractors to complete the installation of the Triton Cara power shower in the bathroom.
 - To instruct a suitably qualified central heating specialist to prepare a report on the central heating system in the Property, including thermostatic valves. The report must, in particular, include confirmation as to whether the boiler is in proper and safe working order, is adequately vented and whether the flue to the external wall of the Property is properly sealed. Any remedial work recommended in the report must be carried out, by suitably qualified tradesmen.
 - To carry out such works as are necessary to bring the system within the Property for detecting fires and for giving warning in the event of fire or suspected fire up to the standard recommended in the Scottish Government's revised statutory guidance for smoke alarms in private lets and to the standard set out in the revised Domestic Technical Handbook.

The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed within the period of four weeks from the date of service of the Notice of the Order.

7. The surveyor member of the Committee reinspected the Property on 30 October 2015.
8. The surveyor member reported to the Committee that none of the work required by the Order had been carried out.
9. The Committee proceeded to make a Rent Relief Order in respect of the Property, the amount of rent relief being set at 50%.
10. The Committee reinspected the Property on 9 November 2016. The Tenant was present at the reinspection. The Landlord was neither present nor represented at the reinspection, but had made written submissions to the Committee.
11. Following the reinspection, the Committee held a hearing at Castle Douglas Community Centre, Cotton Street, Castle Douglas and heard from the Tenant. The Landlord was neither present nor represented at the hearing.

12. Following the inspection and hearing, the Committee determined that, whilst some of the work required by the Order had been carried out, on the basis of the recommendations contained in a report from Michael Ross & Son, Gas Safe and OFTEC registered contractors, which was undated, but was thought to have been issued on or shortly prior to 30 September 2016, the Landlord had not completed all of the work required by the Order. In that report, the contractors stated that, in order to comply with current OFTEC regulations, the fuel pipe to the boiler would require to be secured and the flexible oil pipe, presently located outside the boiler casing, would have to be fitted inside the boiler casing. The fuel tank would require to be banded as it was single skinned and it would have to be relocated to at least 1800mm distant from the flue exit. In addition, the tiger loop would have to be fitted externally, rather than being situated within the Property.
13. The Landlord, in the e-mail of 30 September 2016, had contended that the outstanding issues were minor and not safety related and had advised the Committee that the fuel tank was to be replaced prior to Christmas by a new plastic tank. The Tenant told the Committee that if the support for the replacement tank were lowered, it could be located more than 1800mm from the flue exit.
14. The jurisdiction of the Private Rented Housing Panel transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland with effect from 1 December 2016 and the members of the Committee were appointed to be the Tribunal members to continue to determine the application.
15. By e-mail dated 17 July 2017, the Landlord advised the Tribunal that the Property had been fully refurbished and the additional works completed, and asked for the Property to be reinspected.
16. At some point, between 9 November 2016 and the date of the reinspection, the Tenant vacated the Property. Accordingly, at the date of the reinspection, she was no longer the Tenant and no longer a party to the proceedings, but for ease of reference, is referred to throughout this Statement of Decision a "the Tenant".
17. The Tribunal members arrived to inspect the Property on the morning of 17 August 2017. The Landlord had been advised of the date of the inspection. The Landlord was neither present nor represented at the attempted inspection or the subsequent hearing. The Tribunal members were unable to obtain any response when they knocked on the door of the Property, so were unable to carry out the inspection. The Tribunal did, however, note that the fuel tank had not been replaced or relocated.
18. Following the failed attempt to inspect the Property, the Tribunal held a hearing at Castle Douglas Community Centre, Cotton Street, Castle Douglas. The Landlord was neither present nor represented at the hearing.

Summary of the issues

19. The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order and whether a Certificate of Completion to that effect should be issued and the Rent Relief Order discharged.

Reasons for the decision

20. The Tribunal, having been unable to inspect the Property, could not determine whether the Landlord had carried out the work required by the Order.

Decision

21. The Tribunal accordingly determined that the matter should be continued to a later date to be intimated to the Landlord, on which date the Tribunal would carry out a further inspection of the Property and thereafter hold a further hearing to determine whether the Landlord has carried out all the works required by the Repairing Standard Enforcement Order, including the requirements set out in the report from Michael Ross & Son.
22. The decision of the Tribunal was unanimous.

Right of Appeal

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.

Signed G Clark
Legal member/Chair

..... Date: 17 August 2017