

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

DECISION: Housing (Scotland) Act 2006 (“the 2006 Act”), Section 60

Chamber Ref: FTS/HPC/RP/21/1041

96 Croftpark Avenue, Glasgow, G44 5HT (Title number GLA140872) (“The Property”)

The Parties:-

Mr Hugh McElhone, 113 Brunton Street, Glasgow, G44 3NF (“the Respondent”)

Tribunal members

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Mr. Robert Buchan, Ordinary Member

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”), having taken account of the evidence and submissions from the Respondent and the former tenants, determined in terms of Section 26(1) of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”) that the Respondent has complied with the Repairing Standard Enforcement Order dated 8 October 2021, as varied on 13 January 2022 and further varied on 26 July 2022.
2. The tribunal issued a Certificate of Completion in terms of Section 60 of the 2006 Act.
3. The decision of the tribunal was unanimous.

STATEMENT OF REASONS

1. The tribunal made a Repairing Standard Enforcement Order (RSEO) on 8 October 2021. In terms of the RSEO, the Respondent was required to ensure that the Property meets the repairing standard, in particular:

“1. To repair or replace all windows in the Property so that they are in a reasonable state of repair and proper working order; the house is wind and watertight and in all other respects reasonably fit for human habitation; and meets the tolerable standard.

2. To make good all interior decoration following the repair or replacement of the windows.

3. To instruct a suitably qualified and competent roofing contractor to carry out an inspection of the roof and rainwater fittings at the property and to:

a. provide a report to the tribunal on the condition of the roof and rainwater fittings;

b. describe and comment on the work recently undertaken to the roof covering;

c. comment on why they consider that rainwater continues to penetrate to the interior; and

d. advise on what work should be undertaken to prevent continuing or further rainwater penetration.

Once the tribunal have the report and have considered its content, the tribunal will order what further work, if any, requires to be undertaken and vary this RSEO accordingly.”

2. The tribunal ordered that the works specified in the RSEO must be carried out and completed within 8 weeks from the date of service of the Notice.
3. The RSEO was later varied on 13 January 2022 and 26 July 2022, to extend the period for compliance to 8 February 2022 and then 31 August 2022, respectively.
4. Both parties lodged evidence and written submissions with the tribunal.
5. The Respondent produced evidence that the windows in the Property had been replaced and that the interior decoration had been made good following that work. The Respondent produced a roofing “estimate / survey” from Premier Roofing dated 19 February 2022, relative to roof works, but did not submit a report in the terms specified in the RSEO. He relied on the document as

evidence that the Property was wind and watertight. The former tenants (former Applicants) produced video evidence showing apparent ongoing water ingress in the Property, stating that in their opinion this was from the roof.

6. The tribunal issued Directions on 6 February, 22 February, 12 March, 11 April, and 17 May. There was a failure by the Respondent to comply with the Directions, although he remained engaged with the proceedings. The period for compliance with the RSEO was extended to 31 August 2022, by variation, as noted above.
7. On 6 July 2022, the Respondent made submissions, stating that in his opinion any interior moisture in the Property was caused by condensation rather than as a result of any ongoing problems with the roof. He further stated that there had been one isolated leak in February 2022, which had since been repaired, which was in a different area of the Property to the leaks which had been complained about in the Application. There remained a factual dispute between the parties about whether an adequate inspection of the roof had been carried out, whether there was current water ingress and whether the Property was wind and watertight. The Respondent had still not produced a report at that time from a suitably qualified and competent roofing contractor in the terms specified in the RSEO.
8. A hearing took place on 26 July 2022. The former tenants (former Applicants) attended. The Respondent attended. Both parties stated that the tenancy was due to end on 1 August 2022. The Respondent agreed to instruct a report from a suitably qualified and competent roofing contractor in the terms discussed at the hearing.
9. On 26 July 2022, the tribunal issued Directions to the Respondent to provide the following to the tribunal no later than 23 August 2022:
 1. *A report from Premier Roofing or another suitably qualified and competent roofing contractor following external and internal inspection of the Property, including close physical inspection of the roof and rainwater fittings, which includes the following information:*
 - a. *Name and business address of the roofer producing the report;*
 - b. *Details of the experience of the person producing the report;*
 - c. *Confirmation from the person producing the report that they understand that the tribunal may exercise its power to require that person to attend a hearing of the tribunal at such time and place as the tribunal may specify for the purposes of giving evidence (which may include teleconference);*
 - d. *Date(s) of inspection of the roof and rainwater fittings at the Property;*
 - e. *Method(s) of inspection;*

- f. A report on the condition and estimated life of the roof and rainwater fittings as at the date of the inspection;*
- g. Description and comment on any work undertaken to the roof covering from May 2021 to date; whether or not the roof is wind and watertight as at the date of the inspection; and whether or not the structure and exterior of the roof, including the rainwater fittings are in a reasonable state of repair and in proper working order, as at the date of the inspection;*
- h. If there is any evidence of current or recent water ingress into the Property, comment on why they consider that rainwater continues to penetrate to the interior; and*
- i. advice on what work, if any, should be undertaken to prevent any such rainwater penetration.*

10. On or about 1 August 2022, the former tenants (former Applicants) moved out of the Property.

11. On 1 August 2022, the Tenant's application to the tribunal ("the Application") was deemed to be withdrawn in terms of the Schedule 2, paragraph 7 of the 2006 Act. The tribunal considered whether it should continue to determine the Application or whether it should abandon its consideration of the Application in terms of Schedule 2, Paragraph 7 of the 2006 Act; and decided to continue to determine the Application. The former tenants (former Applicants) are no longer parties to the Application.

12. On 17 August 2022, the Respondent submitted a roof report from Mr W McFarlane, Premier Roofing dated 1 August 2022. Mr McFarlane stated that he has maintained the Property for the past 5 years and carried out various repairs in that time to the roof tiles and guttering. He stated that he had carried out a full inspection in August this year (2022) and that the method of inspection was a two tier ladder onto the roof. He stated that the roof has the original tiles and has some moss on gable end. He stated that some terracotta roof tiles are bare of cement but secure and watertight. He stated that the guttering is clear of debris and running true. He stated that there is no water ingress. He stated that he has checked the roof space and that he does not see any daylight or marks to timber. He stated that in his estimation the roof will be good for five to ten years depending on weather. In relation to his experience, he stated that he has been doing maintenance work in Glasgow for the past 40 years.

13. The tribunal accepted the written evidence from Mr MacFarlane relative to the condition of the roof, following external and internal inspection, and the fact there is no current water ingress.

14. The tribunal has also considered the evidence relative to replacement of the windows in the Property and the making good of the interior decoration, referred to above.
15. Having considered the evidence and submissions from both parties, including the evidence submitted in response to the tribunal's most recent direction, the tribunal does not consider that a further report or further investigations are required in order to reach a decision.
16. The tribunal is satisfied on the balance of probabilities, having considered the evidence and submissions of the Respondent and the former tenants (former Applicants) that the works in the RSEO have been completed and that the Property meets the repairing standard, in particular that *“(a) the house is wind and watertight and in all other respects reasonably fit for human habitation; (b) 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; and (h) the house meets the tolerable standard.”*
17. The tribunal therefore decided to issue a Certificate of Completion in terms of Section 60 of the 2006 Act.

Right of Appeal

- 18. A party aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**
19. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

S L M Tanner

Signed
Ms. Susanne L M Tanner, Queen's Counsel
Legal Member and Chairperson of the tribunal

Date 30 August 2022

Housing and Property Chamber First-tier Tribunal for Scotland



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

Certificate of Completion of Work under Section 60 of the Housing (Scotland) Act 2006 as amended (“the Act”)

Chamber Ref: FTS/HPC/RP/21/1041

96 Croftpark Avenue, Glasgow, G44 5HT (Title number GLA140872) (“The Property”)

The Parties:-

**Mr Hugh McElhone, 113 Brunton Street, Glasgow, G44 3NF
 (“the Respondent”)**

Tribunal members

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Mr. Robert Buchan, Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) hereby certifies that the work required by the **Repairing Standard Enforcement Order (“RSEO”)** relative to the Property dated 8 October 2021, as varied on 13 January 2022 and further varied on 26 July 2022, has now been completed.

Accordingly, the said RSEO relative to the property has been discharged.

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.

In terms of Section 63 of the Act, 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.

In Witness Whereof these presents type written on this and the preceding page(s) are executed by Ms. Susanne L. M. Tanner Q.C., legal member of the Tribunal, at Edinburgh on 30 August 2022 in the presence of the undernoted witness:-

S L M Tanner