

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Sections 26 and 27 of the Housing (Scotland) Act 2006

Property: South Barbeth Cottage, New Abbey, Dumfries DG2 8DB (“the Property”/ “the house”)

Title No: KRK2334 (part)

Chamber Reference: FTS/HPC/RT/19/2313

Parties:

Mr Scott Wright and Ms Bernadette Ellis, South Barbeth Cottage, New Abbey, Dumfries DG2 8DB (“the Tenant”)

Mr Hope Vere Anderson, Barbeth House, New Abbey, Dumfries DG2 8DB (“the Landlord”)

Dumfries & Galloway Council, Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD (“Third Party Applicant”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/Surveyor)

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 made by the Tribunal on 1 October 2019 , determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority and to the police. The Tribunal also decided to make a Rent Relief Order.

Background

By application, received by the Tribunal on 25 July 2019, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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”).

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.

Following an inspection and hearing held on 1 October 2019, the Tribunal made a Repairing Standard Enforcement Order ("the Order"). The Order required the Landlord to complete the following within a period of five weeks from the date of service of the Order.

- (1) Repair or renew the defective areas of the front timber entrance door and or surrounding timber frame, ensuring that they are in a reasonable state of repair, in proper working order and that the resultant internal damp within the porch is eradicated.
- (2) Sand down and repair delaminating and badly flaking top surface paint/varnish at side entry door and redecorate as necessary, ensuring that it is in a reasonable state of repair and in proper working order.
- (3) Repair or renew badly rotted boiler house door and defective hinge, ensuring that it in a reasonable state of repair and in proper working order.
- (4) Repair or renew the defective rainwater goods at the boiler house, specifically at the joint between the gutter and downpipe ensuring that the fittings are in a reasonable state of repair and in proper working order.
- (5) Obtain an Electrical Installation Condition Report (EICR) from a SELECT, NiCEIC or NAPIT registered electrician in respect of the property and undertake any work which is identified in said report to be of Category C1 or C2.
- (6) Establish the source of the water supply to the Property and obtain from Scottish Water, or other suitably qualified contractor, a more detailed report regarding the repair necessary to the water supply as highlighted by Scottish Water in their Leakage Detection Report which accompanied the application. Thereafter all necessary repairs should be completed and duly certified by a suitably qualified contractor or relevant statutory organisation confirming that the supply is in a reasonable state of repair and in proper working order. If it is subsequently established that it is a private water supply, appropriate certification should be exhibited confirming that the supply satisfies "The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017".

The Ordinary Member of the Tribunal reinspected the Property on the afternoon of 28 January 2020. The Tenant was present at the reinspection. The Landlord

was neither present nor represented. A copy of the Reinspection Report is attached to and forms part of this Statement of Decision.

The Ordinary Member reported that, since the original inspection, repairs had been completed to the rainwater goods and surrounding rendering at the boiler house, but that the Tenant had stated at the reinspection that it was the Tenant who had carried out the work, not the Landlord. The Ordinary Member reported that none of the other work required by the Order had been carried out.

A copy of the Reinspection Report was sent to the parties for comment. Neither party responded.

Summary of the issues

The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 20 March 2019 and, if not, whether a Rent Relief Order in respect of the Property should be made.

Reasons for the Decision

The Tribunal determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order and that, in terms of Section 26(2) of the 20016 Act, the failure must be reported to the local authority. The Tribunal also decided to make a Rent Relief Order in terms of Section 27 of the Act.

Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence.

The Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

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: **George Clark**

Legal Member/Chair Date: 16 March 2020

This is the Remembrance Book
signed & on the fore
Signed & Dated 9th March 2020
George Clark
Legal Member / Chair

Housing and Property Chamber First-tier Tribunal for Scotland



First-Tier Tribunal for Scotland (Housing and Property Chamber) Re-inspection report



Property South Barbeth Cottage, New Abbey, Dumfries, DG2 8DB

Ref No: FTS/HPC/RT-19-2313

Surveyor: Donald Wooley MRICS

Previous inspection

The subject property was previously inspected on 1 October 2019 by the First-tier Tribunal for Scotland (Housing Property Chamber). Following a subsequent hearing a Repairing Standard Enforcement Order (RSEO) was issued dated 1 October 2019

Access:

A re-inspection of the subject property was arranged for Tuesday 28th January 2020 at 02.00pm. I arrived at the property shortly before the appointed time and was accompanied by Kevin McCusker and Claire Wright of the Housing and Property Chamber.

Access to the property was provided by the tenant, Scott Wright, accompanied by his representative Ms Bernadette Ellis. Both were present throughout the re-inspection.

Also in attendance during the inspection was Mr Robert Rome of Dumfries and Galloway Council, Strategic Housing, the Third Party Applicant.

The landlord was neither present nor represented during the re-inspection. Weather conditions at the time of the inspection were dull and overcast. I left the property, accompanied by Kevin McCusker and Claire Wright, at 02.25 pm.

Purpose of re-inspection

The purpose of this re-inspection was to determine if the required works as detailed under the Repairing Standard Enforcement Order had been completed.

Work required under the Repairing Standard Enforcement Order (RSEO):

The following works were required to be completed by the landlord in accordance with the Repairing Standard Enforcement Order:

- (1) Repair or renew the defective areas of the front timber entrance door and or surrounding timber frame, ensuring that they are in a reasonable state of repair, in proper working order and that the resultant internal damp within the porch is eradicated.
- (2) Sand down and repair delaminating and badly flaking top surface paint/varnish at side entry door and redecorate as necessary, ensuring that it is in a reasonable state of repair and in proper working order.
- (3) Repair or renew badly rotted boiler house door and defective hinge, ensuring that it in a reasonable state of repair and in proper working order.
- (4) Repair or renew the defective rainwater goods at the boiler house, specifically at the joint between the gutter and downpipe ensuring that the fittings are in a reasonable state of repair and in proper working order.
- (5) Obtain an Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT registered electrician in respect of the property and undertake any work which is identified in said report to be of Category C1 or C2.
- (6) Establish the source of the water supply to the Property and obtain from Scottish Water, or other suitably qualified contractor, a more detailed report regarding the repair necessary to the water supply as highlighted by Scottish Water in their Leakage Detection Report which accompanied the application. Thereafter all necessary repairs should be completed and duly certified by a suitably qualified contractor or relevant statutory organisation confirming that the supply is in a reasonable state of repair and in proper working order. If it is subsequently established that it is a private water supply, appropriate certification should be exhibited confirming that the supply satisfies "The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017".

Site Observations:



Damp either side of front door – **1st October 2019**



Damp either side of front door with wall plaster to the right of the base of the entrance door collapsing due to saturation **28th January 2020**



Front door **1st October 2019**



Front door **28th January 2020**



Rotted boiler house door and defective hinge **1st October 2019**



Rotted boiler house door and defective hinge **28th January 2020**



Defective rain water goods and rendering **1st October 2019**



Repaired rain water goods and surrounding rendering **28 January 2020**

Since the original inspection repairs have been completed to the rain water goods and surrounding rendering at the boiler house. I was informed by the tenant that these repairs had been completed by the tenant and not by the landlord.

The tenant stated that he had not received an Electrical Condition Installation Report (EICR) from the landlord and none was exhibited during the inspection.

No report from Scottish Water or other suitably qualified contractor has been produced confirming the source of the water supply and there is no evidence of any repairs to the supply having been completed. No certification has been exhibited confirming that the supply satisfies "The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017". The tenant indicated that since the original inspection he has experienced several days with no water supply.



1 October 2019



28th January 2020

The flow of water from the cold tap at the bath, when in the off position, continues and appears to be slightly greater than that identified during the original inspection.

Outstanding Repairs:

Since the original inspection I can confirm that the only repair to have been addressed in relation to the RSEO is item 4 and I have been informed that these works were completed by the tenant.

I therefore confirm that item numbers 1, 2,3, 5 and 6 as detailed in the original Repairing Standard Enforcement Order (RSEO) dated 1st October 2019 remain outstanding.

Comments:

This report will be passed to the parties for comment before being submitted to the First-tier Tribunal for Scotland (Housing Property Chamber) for their decision.

Donald Wooley MRICS
Ordinary Member
First-Tier Tribunal for Scotland
29 January 2020