

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 26

References: PRHP/RP/15/0317 & PRHP/RP/16/0109

Re property at: Flat 4/2, 83 Candleriggs, Glasgow, G1 1LF, being the subjects registered in the Land Register of Scotland under Title Number GLA56406 ("the Property")

The Parties:-

Mr Iain Thomson per his Agents R & G Estate Agents Limited, having their place of business at 57 Townhead, Kirkintilloch, Glasgow, G66 1NN, ("the Landlord")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that this Landlord has continued to fail to fully comply with the Repairing Standard Enforcement Order (RSEO) dated 24th June 2016.

The Tribunal consisted of:-

Mr Andrew Cowan – Chairperson
Ms Carol Jones – Ordinary Member (Surveyor)

Background

1. On 24 June 2016, the Tribunal issued a determination which stated that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Act. On the same date the Tribunal issued a RSEO in respect of the property.

The RSEO made by the Tribunal required the Landlord to:-

- (a) instruct a certified Electrical Installation Condition Report ("EICR"), on the electrical installations of the Property, which check should be conducted by a suitably qualified and registered SELECT or NICEIC electrical contractor. Thereafter the Landlord is to carry out such works as may be recommended in terms of the EICR to ensure that the entire electrical installations within the Property are safe, functional and in proper working order. The Landlords are required to exhibit a copy of a final Electrical Condition Check Certificate when any necessary works are completed;
- (b) carry out such works as are necessary to provide blinds in the dining room, living room and on the mezzanine floor of the Property;
- (c) instruct a report from a damp specialist on the control and prevention of condensation in the Property and carry out such works as are recommended in this report to ensure that the Property is fit for human habitation so that it does not suffer from excessive condensation;

A Cowan

- (d) carry out such works as are necessary to ensure that the iron gate is repaired so that it is in a reasonable state of repair and in proper working order; and
- (e) carry out such works as are necessary to the common door to ensure that it is in a reasonable state of repair and in proper working order.

The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within the period of 6 weeks from the date of service of the RSEO upon the parties.

- 2. On the 8 September 2016 the surveyor member of the Tribunal re-inspected the property and found that with the exception of paragraph (d) no works had been carried out to comply with the terms of the RSEO. A further hearing was held on the 18th November and on the 24th November 2016 the Tribunal determined that the Landlord had failed to comply with the duty imposed by section 26 (1) of the Act in relation to the requirements of the RSEO and further determined that notice of that failure should be served on the Local Authority in which the property is situated. The Tribunal further determined to make a RRO in terms of section 27 of the Act.
- 3. By letter dated 21st April 2017 the Landlord's agents lodged further paperwork with the Tribunal. They also lodged a table of comments in relation to each aspect of the RSEO. Having considered the further documentation made available by the Landlord's agents the Tribunal determined to fix a further inspection of the property, and a hearing to determine whether the Landlord had now complied with the terms of the RSEO.
- 4. The Tribunal proceeded with a further inspection of the property on 6th July 2017. The Landlord's agents were represented at the inspection by:-

Mr Garry McNulty (Part owner, R&G Estate Agents Ltd) &
Mr James Maxwell (Employee, R&G Estate Agents Ltd).

The Tribunal thereafter held a hearing to determine whether the Landlord had now complied with the terms of the RSEO.
- 5. The former tenant had vacated the property on 24th May 2017. The tenancy between the former tenants and the Landlord has now terminated. The former tenant is no longer a party to the application.
- 6. Photographs were taken during the further inspection by the Tribunal. Copies of the photographs taken by the Tribunal are attached as a schedule to this report.
- 7. A summary of the Tribunal's own observations from the inspection together with evidence taken at the hearing in relation to each of the requirements of the RSEO is as follows.

Requirement (a)

instruct a certified Electrical Installation Condition Report ("EICR"), on the electrical installations of the Property, which check should be conducted by a suitably qualified and registered SELECT or NICEIC electrical contractor. Thereafter the Landlord is to carry out such works as may be recommended in terms of the EICR to ensure that the entire electrical installations within the Property are safe, functional and in proper working order. The Landlords are required to exhibit a copy of a final Electrical Condition Check Certificate when any necessary works are completed.

The Tribunal noted that no EICR had been instructed by the Landlord, or his agents, since the date of RSEO.

The Landlord's agents had made available to the Tribunal a copy of an EICR which was dated 20th February 2016. That EICR predated the RSEO issued by the Tribunal.

In his evidence to the Tribunal, Mr. McNulty explained that he had understood that this report would be sufficient to satisfy the requirements of the RSEO. The Tribunal explained that the terms of the RSEO were specific. The Tribunal expected to see a new EICR in respect of the property which was dated after the date the Tribunal issued the RSEO.

The Tribunal were accordingly not satisfied that the Landlord had complied with the requirements of the RSEO in relation to this matter.

Requirement (b)

carry out such works as are necessary to provide blinds in the dining room, living room and on the mezzanine floor of the Property;

The Tribunal noted that new blinds had been installed in the living room and on the mezzanine floor of the property. In addition, the Tribunal noted that the blinds in the dining room were now operable.

The Tribunal were satisfied that the Landlord has now carried out all the works necessary to comply with the terms of this requirement of the RSEO.

Requirement (c)

instruct a report from a damp specialist on the control and prevention of condensation in the Property and carry out such works as are recommended in this report to ensure that the Property is fit for human habitation so that it does not suffer from excessive condensation;

The Tribunal noted that the Landlord had produced a report from Advance Preservation Specialists dated 3rd May 2017. That report noted that black spotting was noted to a number of wall surfaces in the property and recommended upgraded windows/ door units to assist in retaining heat within the property. The report highlighted steps which could be taken to mitigate condensation occurring within the property. The report highlighted that a constant, moderate, room temperature, coupled with adequate ventilation should also alleviate the moisture laden air. It specifically stated that the risk of condensation can be considerably reduced by improving ventilation and raising the air and surface temperature by increased heating levels and/or adding more thermal insulation. The Tribunal had noted at the time of their inspection the property had recently been repainted. The windows on the upper floor of the property had now been painted closed and could not be opened. At the hearing, the Tribunal made reference to their decision of 24th June 2016. At that time the Tribunal had highlighted that the Landlord was required to carry out such works as required to ensure the property was fit for human habitation and so that it did not suffer from excessive condensation. The Tribunal had noted at the time of inspection that the Landlord had carried out no further steps to address the issue of condensation within the property. At the hearing the Landlord's agents explained that they were intending to install a new heating system within the property. The Tribunal recognised that this along with appropriate ventilation may have the effect of mitigating the condensation dampness within the property. As at the date of the hearing the Tribunal were, however not satisfied that the Landlord had taken steps to address the requirements of the RSEO and accordingly the Landlord continued to fail to comply with the terms of the RSEO in relation to this requirement.

Requirement (d)

carry out such works as are necessary to ensure that the iron gate is repaired so that it is in a reasonable state of repair and in proper working order

The Tribunal had previously noted that the iron gate entrance to the property had now been repaired and was in proper working order. The Tribunal were accordingly satisfied that the Landlord had now complied with this requirement of the RSEO.

Requirement (e)

carry out such works as are necessary to the common door to ensure that it is in a reasonable state of repair and in proper working order.

The Tribunal noted at the time of their inspection that the common door leading to the common stairway within the property appeared to be operating correctly and was in a reasonable state of repair and working order. The Tribunal were accordingly satisfied that the Landlord had now complied with this requirement of the RSEO.

8. The Landlord's agents did not seek to argue that they had complied with the terms of either Paragraph a or Paragraph c of the RSEO. They appeared to recognise that further work was required to be instructed in relation to the property.
9. In all the circumstances the Tribunal were not satisfied that the Landlord had carried out sufficient steps to comply fully with the terms of the RSEO issued by the Tribunal in June 2016.
10. The Tribunal accordingly determined that the Landlord has continued to fail to comply with the terms of the RSEO.
11. 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.

A Cowan

Signed
Andrew Cowan, Chairperson

Date 10/7/2017

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 4/2, 83 Candleriggs, Glasgow G1 1LF by the First-tier Tribunal for Scotland (Housing and Property Chamber) on 6 July 2017.

Reference Numbers : PRHP/RP/15/0317 and PRHP/RP/16/0109



Front Elevation



Dining Room windows



Dining Room - electric wall mounted heater



Living Room windows



Living Room



Mezzanine window



Bedroom



Bedroom window



Bedroom Window