

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as "the tribunal")

Under Section 26(1) of the Housing (Scotland) Act 2006 ("the Act")

Case Reference Number: PRHP/RP/16/0295

Re: 1 Essex Road, Greenock PA16 0JJ ("the house")

Land Register Title No: REN50262

The Parties:-

Mr Martin Allan, formerly residing at the house ("the former tenant")

Priya Properties Limited, having its registered office at 1 Mansion Avenue, Port Glasgow PA14 6QP ("the landlord")

Tribunal Members – Sarah O'Neill (Chairperson); Mike Links (Ordinary Member)

Decision

The tribunal determined that the landlord has failed to comply with the Repairing Standard Enforcement Order.

The tribunal's decision was unanimous.

Background

1. On 1 May 2017, the tribunal issued a determination that the landlord had failed to comply with its duties under Section 14(1) (b) of the Act. On the same date, the tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the house.
2. The RSEO required the landlord to:

1. Instruct a suitably qualified contractor to investigate the cause of the dampness along the bedroom wall next to the chimney, and to carry out such works as are necessary to treat the dampness, in order to ensure that the bedroom is wind and watertight and otherwise reasonably fit for habitation.
2. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal ordered that the works specified in this order must be carried out and completed within the period of **two months** from the date of service of the RSEO.

3. On 14 July 2017, the ordinary (surveyor) member of the tribunal attempted to re-inspect the house as arranged, but was unable to obtain access to the house. A letter advising the landlord of the arranged date and time of inspection had been sent by recorded delivery on 29 June 2017 to the landlord's address. However, Mr Simon Boparai, a director of the landlord, said that he was unaware of the re-inspection and was unable to provide access.
4. A further re-inspection of the house was then arranged for 13 September 2017. A letter confirming the date and time of the re-inspection was sent to the landlord by recorded delivery on 6 September 2017. A further letter giving notice to the landlord that entry was required to the house on that date for the purposes of re-inspection, in terms of section 181 (2) of the Housing (Scotland) Act 2006, was served on the landlord by Walker Love, sheriff officers, on 8 September 2017.
5. The ordinary (surveyor) member of the tribunal again attempted to gain access to re-inspect the house at 10am on 13 September 2017. The landlord was not present at the house. The door was opened by the current tenant, who was clearly unaware of the re-inspection. The ordinary member took the decision that it would not be appropriate in the circumstances to proceed with the re-inspection.
6. The tribunal issued a direction (no. 5) to the landlord on 9 November 2017. This direction, together with a letter advising the landlord that a further re-inspection had been fixed for 10am on 4 December 2017, was sent to the landlord by recorded delivery and email on 15 November 2017. These documents were also served on the landlord at its offices by Walker Love, sheriff officers, on 22 November 2017.
7. In the direction, the tribunal gave notice to the landlord that if the ordinary (surveyor) member were unable to obtain access to the house on the date arranged for the third re-inspection, it was likely to draw the inference that the landlord had failed to carry out the works required by the RSEO. It went on to

say that if it were to draw this inference, the tribunal would decide that there had been a failure to comply with the RSEO. The tribunal also invited the landlord to provide any report it had obtained from a suitably qualified contractor or any other documentary evidence showing that the works required by the RSEO had been carried out by 27 November 2017.

8. As indicated to the landlord in the direction, the tribunal also wrote to the current tenant, as an interested party, to make her aware that the re-inspection was to take place.
9. No response to the direction was received from the landlord by the deadline. The ordinary (surveyor) member of the tribunal attended the house at the scheduled time on 4 December 2017, but there was no-one present at the house. He was therefore unable to gain access to the house in order to establish whether the repairs had been carried out. A copy of his re-inspection report is attached.

Reasons for decision

10. The tribunal determines that the landlord has failed to comply with the RSEO. The landlord has had several opportunities to demonstrate that the RSEO has been complied with, but has failed to do so. The tribunal has unsuccessfully tried to gain access to the property on three occasions in order to carry out a re-inspection. It has therefore not been possible to ascertain whether the works have been carried out. No response from the landlord has been received to any correspondence from the tribunal since the date of the initial failed re-inspection on 14 July 2017. The tribunal is satisfied that every effort has been made to obtain access to the house and to ensure that the landlord was duly notified of its intention to re-inspect the property on three occasions.
11. The tribunal therefore draws the inference from the landlord's failure to provide access to the tribunal to re-inspect the property that the landlord has failed to comply with the RSEO. The tribunal advised the landlord in its direction (no. 5) dated 9 November 2017, that it was likely to draw such an inference, if access was not obtained for the scheduled re-inspection on 4 December 2017.

Decision

12. The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlord has complied with the RSEO, therefore determines that the landlord has failed to comply with the RSEO in terms of section 26(1) of the Act, and that a notice of this failure should be served on the local authority in whose area the property is situated.

13. The tribunal did not consider whether a Rent Relief Order should be made in terms of section 27 of the Act, as the former tenant no longer resides at the house.

Rights of Appeal

14. 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.
15. 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 will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

Signed.. **S O'Neill**
Chairing member

Date.....20/12/17.....

Housing and Property Chamber

First-tier Tribunal for Scotland



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

RE-INSPECTION REPORT



PROPERTY: 1 Essex Road, Greenock PA16 0JJ

HPC REF No: PRHP/RP/16/0295

SURVEYOR: Mike Links

IN ATTENDANCE: Neither the landlord nor the present tenant were in attendance.

Administration clerks Sinead O'Connor and Polly Bell attended.

WEATHER: Overcast with drizzle.

ACCESS:

I attended the property on Monday 4th December 2017 at 10am.

The Landlord and the present tenant were not present and therefore I did not gain entry to the house.

RSEO:

The following works are required by the RSEO following on from the Inspection and Hearing on 13th December 2016 and Hearing/Inspection on 12th April 2017. I have also attended the property for Re-inspection purposes on 14th July 2017 and 13th September 2017

1. Instruct a suitably qualified contractor to investigate the cause of dampness along the bedroom wall next to the chimney, and to carry out such works as are necessary to treat the dampness, in order to ensure that the bedroom is wind and watertight and otherwise reasonably fit for habitation.
2. On completion of all the works, ensure that all affected finishes and decoration are restored to an acceptable standard.

WORKS IN RSEO UNDERTAKEN:

The landlord had previously stated render repairs have been undertaken to the chimneyhead and that the level of dampness in the bedroom chimneybreast was lower at the second inspection from that noted at the first inspection.

I re-inspected the property on 14th July 2017. No access.

I refer to my re-inspection report dated 13th September 2017. No inspection.

My inspection today was to determine whether the dampness had further reduced or been eliminated.

As I could not obtain access to the property to carry out the inspection, I am unable to comment on the dampness.

WORKS IN RSEO OUTSTANDING:

Unknown

Mike Links

Ordinary Member (Surveyor)

Housing and Property Chamber

Date: 4th December 2017