

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

Chamber Ref: FTS/HPC/RT/18/2227

Title no: STG 35276

100 Springfield Road, Stirling, FK7 7QW (“The Property”)

The Parties: -

Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG (“the Third Party”)

Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG (“the Landlord”)

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 (“RSEO”) dated 6 December 2018 determined that the Landlord has failed to comply with the RSEO.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Ms Carol Jones, Ordinary Member

Background

1. On 31 August 2018 the Third Party applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) 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. Following an inspection of the property and hearing on the application, the Tribunal issued an RSEO. In terms of the RSEO the

Landlord is required;- (i) To complete the repair to and re-decorate the living room ceiling, (ii) To replace loose and damaged flooring in the hall and ensure that there are no gaps and that the flooring is in a reasonable state of repair, (iii) To instruct a suitably qualified plumber to investigate the cause of the leak from the bathroom and carry out any necessary remedial work to prevent further leaks; (iv) To replace the seal around the bath, install a new properly fitting bath panel and replace poorly fitting boxing around the pipes in the bathroom; (v) To instruct a registered Gas Safe engineer to carry out all necessary repairs and service the boiler and ensure that it is in proper working order; (vi) To instruct a competent licensed contractor to investigate the presence of asbestos within and around the entire obsolete warm air heating system in the property. Thereafter, remove the heating unit in the living room and any identified materials containing asbestos and, if required, provide evidence of proper removal and disposal under current Waste Management Regulations; (vii) To instruct a report from a suitably qualified damp proofing and condensation specialist to investigate the cause of dampness and/or condensation in the bedrooms, exhibit a copy of the report to the Tribunal, carry out any recommendations identified in the report and repair all damage; (viii) To repair the holes in the rear bedroom ceiling; (ix) To replace the damaged socket cover in the rear bedroom; (x) To instruct a suitably qualified contractor to investigate the cause of water penetration in the kitchen, carry out any recommended works to prevent further water penetration/leaks and repair and redecorate the damage to the ceiling and all affected plasterwork above the window; (xi) To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property to ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods: (xii) To install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance; (xiii) To install a CO detector in the property to comply with current regulations and guidance: (xiv) To instruct a suitably qualified Gas Safe engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a satisfactory Gas Safety Record, and (xv) To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property after the installation of new smoke and heat detectors, carry out any necessary repairs or alterations, and exhibit a satisfactory EICR to the Tribunal.

3. Following a re-inspection of the exterior of the property by the Tribunal on 1 November 2019, the Tribunal determined that the Landlord had failed to comply with the RSEO. A written decision with statement of reasons was issued to the parties.

4. On 18 March 2021, the Landlord notified the Tribunal that the work had been carried out, that the property was ready for a new tenant and asked for a re-inspection to be carried out. The Tribunal was initially unable to arrange this because of the pandemic. On 31 March 2021, the Landlord's representative submitted photographs of the property and a list of work which they said had been carried out. On 15 June 2021, the parties were notified that the Tribunal would carry out a re-inspection on 22 July 2021 and that a hearing would take place by telephone conference call on 29 July 2021. The Tribunal was notified that the current tenant would provide access.

The re-inspection

5. The Tribunal attended at the property on 22 July 2021. Access was provided by the current tenant who is not a party to the application. The Landlord did not attend and was not represented. The Third Party was also not represented. The Tribunal noted that the living room ceiling has been repaired and re-decorated and the floor covering in the hall replaced with a new carpet. There was no evidence of ongoing leaks from the bathroom to the kitchen below, although there was a damp patch on the boxed pipework above the toilet which the current tenant had noticed after she moved in. The Tribunal also noted that a new bathroom suite has been installed including a new sealed bath with bath panel and that all pipes are now boxed in. Although the Landlord did not provide the Tribunal with a report from a damp specialist, both bedrooms appeared to have been re-decorated and there was no evidence of damp or condensation. The holes in the rear bedroom ceiling have been repaired and the damaged socket cover replaced. The water damage in the kitchen has also been repaired and the kitchen redecorated. The Tribunal also noted that the damaged rainwater goods have been replaced and new ceiling mounted hard wired and interlinked smoke and heat detectors installed which appear to comply with current regulations and guidance. They were tested and found to be in working order. A carbon monoxide detector has also been installed but is located inside the boiler cupboard and less than 1 to 3 metres from the boiler so does not comply with current regulations. The Tribunal noted that the Landlord has not exhibited a gas safety certificate, EICR, or evidence of compliance with part 5 of the RSEO. No evidence has been produced that the boiler is in working order and the current tenant advised the Tribunal that the central heating

was not working. Although an engineer had attended, he had not returned to repair the boiler. Lastly, the Tribunal noted that the obsolete heating unit in the living room cupboard has been removed, although no evidence was provided that a licensed contractor had carried out the removal or investigated and dealt with any asbestos present within and around the heating system including the cupboard. Following the re-inspection, a report was issued to the parties, which included a schedule of photographs.

The Hearing

6. Neither party participated in the hearing, so no evidence was heard by the Tribunal.

Subsequent procedure

7. On 12 August 2021, the Landlord's agent submitted an invoice dated 27 July 2021 for a boiler repair, an EICR and gas safety certificate. He advised that the boiler had now been repaired. On 2 September 2021, the Tribunal issued a request for further information. In particular, the Landlord was asked to provide evidence of compliance with Part 6 of the RSEO and asked to address the issue of the location of the CO detector. In response the letting agent stated, "It is our understanding that this asbestos pipe was removed prior to Mr Horsburgh's purchase of the property so no evidence can be obtained, nor was this point raised in the initial report from the Property Chamber". They also advised that the CO detector had been relocated to a position on the wall outside the cupboard 1 to 3 metres from the boiler. No evidence was produced. In response to a further request for evidence, the letting agent responded on 2 November 2021. He submitted photographs of the cupboard where the obsolete heating unit had been located, now full of the current tenant's possessions. He also provided a photograph of the boiler and CO detector which appears to be in cupboard next to the boiler, in the same position as when viewed at re-inspection. The agent reiterated that the asbestos pipe had been removed prior to the Landlord's purchase of the property. The Third Party notified the Tribunal that they had no submissions to make regarding compliance with the RSEO.

Reason for decision

8. The Tribunal considered the condition of the property at re-inspection and the written representations, photographs and documents received from the Landlord's agent.
9. The Tribunal is satisfied that parts 1 – 5, 7 – 12, 14 and 15 of the RSEO have now been completed. The Tribunal is not satisfied that

the location of the CO detector is compliant with current regulations and guidance. At the re-inspection, the CO detector was in the cupboard with the boiler and less than the required 1 – 3 metres from the boiler. A photograph has been submitted by the Landlord. However, the photograph appears to show the CO detector in the same location as during the re-inspection and therefore not in a new position, as stated by the Landlord's agent. In the absence of evidence that it has been moved to a location which complies with current regulations and guidance, the Tribunal determines that the Landlord has not complied with Part 13 of the RSEO.

13. Part 6 of the RSEO requires the Landlord to "instruct a competent licensed contractor to investigate the presence of asbestos within and around the entire obsolete warm air heating system in the property. Thereafter, to remove the heating unit and any identified materials containing asbestos and, if required, provide evidence of proper removal and disposal under current Waste Management regulations" The heating unit has certainly been removed, but no evidence has been provided of investigation by a licensed contractor or that the removal was carried out by such a contractor. Furthermore, the only information about "materials containing asbestos" which has been provided is a statement from the Landlord's agent that an asbestos pipe was removed prior to his purchase of the property. The Landlord claims that this issue was not raised in the "initial report from the Property Chamber". It is not clear what is meant by this. The terms of the RSEO are quite clear. The RSEO was issued following an inspection and hearing in November 2018. The Landlord did not attend and did not provide the Tribunal with any information about the heating unit or the issue of asbestos. After the Order was issued, the Landlord did not challenge its terms or ask for permission to appeal or for a review of the decision. The previous failure to comply with the decision was also not challenged. The first information provided by the Landlord in relation to the living room cupboard was in September 2021, after the re-inspection which had been carried out at the Landlord's request. That information appears to confirm the presence (at some point) of asbestos in the cupboard. It also appears to confirm that the Landlord was aware that asbestos had been an issue when he purchased the property. However, no information or evidence has been provided which establishes that the matter has been properly investigated by a licensed contractor. Furthermore, the Landlord has not demonstrated that a licensed contractor was involved in the removal of the heating unit, if required, as specified in the Order. The Tribunal is therefore satisfied that the Landlord has not complied with the terms of Part 6 of the RSEO.

14. As the Landlord has not complied with Parts 6 and 13 of the RSEO, the Tribunal determines that a certificate of completion cannot be issued.

Decision

15. The Tribunal determined that the Landlord has failed to comply with the RSEO issued by the Tribunal.

16. The decision of the Tribunal is unanimous.

Right of Appeal.

A Landlord, Tenant or Third-party applicant 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.

J Bonnar

Josephine Bonnar, Legal Member

14 November 2021