

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision regarding a Failure to Comply with a Repairing Standard Enforcement Order (“RSEO”): Housing (Scotland) Act 2006 (“the Act”), Section 26

Chamber Ref: FTS/HPC/RT/18/3133

11 Ware Road, Peterhead, AB42 1NQ (“the Property”)

The Parties:-

Miss Ashley Graham, formerly residing at 11 Ware Road, Peterhead, AB42 1NQ (“the Tenant”)

Aberdeenshire Council, Housing Strategy, Gordon House, Balckhall Road, Inverurie (“the Applicant”)

Stuart John Badenoch McInally, residing at Kilmarnock Drive, Cruden Bay, Peterhead, AB42 0NG (“the Landlord”)

Tribunal Members:

E K Miller (Legal Member)

A Anderson (Ordinary Member)

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 had complied with the RSEO previously imposed by the Tribunal, determined that the Landlord had failed to comply with the RSEO. The Tribunal further determined that notice of the failure to comply with the RSEO should be served on the relevant Local Authority.

Background

1. The Tribunal had previously issued an RSEO against the Property dated 16 May 2019 which had determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The RSEO required the Landlord to:-
 - (a) Carry out such works of repair or replacement to the main bedroom and the second downstairs bedroom window to render them properly wind and watertight, capable of opening and closing properly and generally compliant with the repairing standard.

- (b) To carry out such works of repair or replacement to the French doors sufficient to render them sufficiently wind and watertight and generally compliant with the repairing standard.
- (c) To repair or replace the extractor fan in the en-suite bathroom and to ensure that it is vented externally correctly, to eradicate the mould and peeling paint and to carry out such works of redecoration as are appropriate to meet the repairing standard.
- (d) To carry out such works as are required to the en-suite bathroom to render it compliant with the repairing standard. In particular the Landlord requires to investigate whether there is damp affecting the walls and floor beneath the bath, providing a breeding ground for insects. The Landlord is to take such steps as is necessary to prevent such insect infestation.
- (e) To carry out appropriate works to render the main bathroom at the Property compliant with the repairing standard including reinstating the wall linings and installing the shower and completing it by redecoration and the addition of floor coverings.
- (f) Installing hardwired and interlinked smoke detectors in the upper hall and lounge.
- (g) Provide a gas safety certificate from a suitably qualified gas engineer confirming that the gas system within the Property is safe to use and compliant with the relevant regulations.
- (h) Provide an up to date electrical installation condition report describing the installation as satisfactory with no items marked "C1" or "C2" which will confirm that the electrical system within the Property is compliant within the repairing standard.

The RSEO specified that these works were to be carried out within two months of the service of the RSEO.

2. Once the period specified in the RSEO had passed, the Tribunal arranged for Mr Anderson (the Ordinary Member and a qualified chartered surveyor) to re-inspect the Property to see what, if any, progress had been made. Mr Anderson attended at the Property on 30 July 2019. A copy of his re-inspection report is annexed hereto for information. As can be seen from the report it appeared that the Landlord had carried out no further works.
3. The re-inspection report was circulated to the parties. The Landlord did respond to the Tribunal by way of an email dated 14 August 2019. This set out what he perceived as his difficulties in relation to the Property. He felt he had acted fairly to the Tenant and her partner but in the end he had simply been left owed rent and being pursued by the Tribunal. He indicated he felt he had no option but to evict the Tenant. Whilst the email

gave certain background information it failed to address why the Landlord had not yet carried out any works. It did not give any timescales or substantive information that the works were in hand.

4. In the absence of any progress or meaningful response, the Tribunal was of the view that it needed to make a further decision and to determine formally whether there had been a failure to comply with the RSEO. A further hearing was set. This took place at Peterhead Sheriff Court on 13 November 2019 again before Mr Miller and Mr Anderson of the Tribunal. The Landlord was neither present or represented. The Tenant did not attend. Ms Eilidh Mackay of the local authority was present.
5. Helpfully for the Tribunal, Ms Mackay was able to furnish some additional information about where matters stood. On 16th October 2019 the boiler at the Property had been condemned. As a result the Tenant had been rehoused in temporary occupation and would not be returning to the Property. It was not entirely clear whether the keys had yet been returned to the Landlord but it was apparent to the Tribunal that the tenancy was very shortly about to end if it had not already done so. Ms Mackay indicated that her understanding was that the Landlord was struggling to find the monies to carry out the necessary repairs. Her understanding was that no works had yet taken place
6. In terms of Section 28(1) of the Act it is an offence for a landlord to fail to comply with the terms of an RSEO without reasonable excuse. Whilst the Tribunal had some sympathy with the position in which the Landlord found himself, nonetheless there had been very limited attempts to engage with the Tribunal and no attempts, it would appear, to carry out any works to the Property. The Landlord had received rent for the Property in the past but did not appear to have ever used any monies to repair the Property. A number of the required repairs related to defects in the Property that had been present for several years.
7. The Tribunal considered matters and, viewing the circumstances in the round, was satisfied that there had been a failure to comply with the RSEO. It was apparent at the reinspection that no works had been done. The Landlord had not indicated in any correspondence that he was intending to commence works. There was corroborative evidence from Ms Mackay that the works remained outstanding at the date of the hearing.
8. In the circumstances the Tribunal had no option but to conclude that the Landlord had failed to comply with the RSEO without reasonable excuse and the Tribunal resolved to issue this decision noting the failure to comply.
9. In light of the Landlord's failure to comply the Tribunal are obliged in terms of Section 26(2)(a) of the Act to serve a notice on the Local Authority confirming the failure to them. The Tribunal resolved to do so.

10. The Tribunal noted that the Property was now vacant and therefore could not be re-let. The previous tenancy had come to an end and therefore it was not appropriate for a Rent Relief Order to be served. The Tribunal did note that it would have the option to refer the matter to the police. However given the Property was vacant and there was no-one going prejudice to any party the Tribunal resolved not to refer the matter for consideration for prosecution to the police at this point in time.

Decision

11. The Tribunal accordingly determined that the Landlord had failed to comply with the RSEO without reasonable excuse.

12. The decision of the Tribunal was unanimous.

Right of Appeal

13. **In terms of Section 46 of the Tribunal (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.**

Effect of Section 63

14. **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.**

E Miller

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Chairperson

...21/04/2020.....
Date