

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/RP/20/2344

Title Number: LAN19101

Property at 173 Low Waters Road, Hamilton, ML3 7QQ (“the Property”)

Parties:

Ms Lorraine Lamey, 173 Low Waters Road, Hamilton, ML3 7QQ (“the Applicant”)

Mr Christopher Winsborough, 3/9 Gipps Ave, Mordialloc, Victoria 3195, Australia (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Lori Charles (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 has complied with the Repairing Standard Enforcement order (“RSEO”) dated 1 October 2021 determined that the Landlord has failed to comply with the RSEO.

Background

1. The Applicant submitted an application to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. Following two case management discussions, the parties were notified that the Tribunal would carry out an inspection of the property on 7 September 2021 at 10.30am and that a hearing on the application would take place by telephone conference call on 15 September 2021 at 10am.

2. The Ordinary Member of the Tribunal inspected the property on 7 September 2021 at 10.30am. A hearing took place by telephone conference call on 9 September 2021. Ms Lamey participated, represented by Ms Young. Mr McGlone represented the Landlord. The Tribunal heard evidence from both parties in relation to the complaints.
3. Following the hearing, the Tribunal issued an RSEO. In terms of the RSEO the Landlord is required to complete the following repairs within ten weeks: -
 - (a) Instruct a suitably qualified window contractor to inspect the windows in the kitchen and front bedroom and carry out any necessary repairs to ensure that the windows are in proper working order; or to replace the windows.
 - (b) Relocate the heater in the kitchen so that the control panel is accessible.
 - (c) Repair or replace the heater in the hall.
 - (d) Instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation in the property, carry out any necessary repairs, and exhibit a satisfactory EICR to the Tribunal.
 - (e) Instruct a suitably qualified roofing contractor to replace any missing and damaged slates on the roof and carry out all necessary and recommended remedial work to prevent water ingress at the property.
4. The Tribunal re-inspected the property on 2 February 2022. The Tenant provided access. Neither the Landlord nor his representative attended. The Tenant advised the Tribunal that a window contractor had recently attended at the property and measured the living room and bedroom windows and that an electrician had also attended and is due to return. The Tribunal noted that the heater in the hall has not been replaced and is not working, the kitchen heater remains in the same location with the control panel inaccessible and that no further work has been carried out to the kitchen window. In the living room the Tribunal noted evidence on the ceiling of recent and historic water ingress. There is misting/condensation between the panes of glass in the bedroom and the glass in the hopper is broken. Recent water ingress was noted below the window with moisture levels in the medium range. The electrical cupboard is in the same condition as at the previous inspection and the roof is also in the same condition, with no evidence of repair work carried out. Damaged and missing slates are still evident, and a section of lead flashing has lifted at the soil vent pipe. A re-inspection report was issued to the parties
5. Following the re-inspection, the Landlord's representative notified the Tribunal that he had been unable to attend due to a bereavement. He stated that the Tenant had been obstructive about providing access for

repairs but that the window contractor and electrician had been arranged and were due to attend to carry out work. The Tenant lodged submissions with evidence that she had not been rude to contractors or obstructive about the repairs. The Landlord did not lodge an EICR

Reasons for decision

6. The Tribunal considered the condition of the property at the re-inspection and the submissions made by the parties and noted the following: -
 - (a) Although both parties indicated that a window contractor has recently attended to measure for new windows, the kitchen and bedroom window have not been repaired or replaced. No further update has been provided and the Landlord has not requested additional time for completion of the work. The Landlord has therefore failed to comply with Part 1 of the RSEO.
 - (b) The heater in the kitchen has not been relocated and the controls are still inaccessible. The Landlord has therefore failed to comply with Part 2 of the RSEO.
 - (c) The heater in the hall has not been repaired or replaced and is not in working order. The Landlord has therefore failed to comply with Part 3 of the RSEO.
 - (d) Both parties confirmed that an electrician has carried out an initial inspection and that he is scheduled to return to carry out work. No further information has been provided and the Landlord has not requested additional time. The Tribunal has not been provided with an EICR for the property. The Landlord has therefore failed to comply with this part of the RSEO.
 - (e) No roof repairs have been carried out at the property since the initial inspection by the Tribunal. The roof remains in the same, damaged condition. The Tenant continues to experience water ingress at the property which appears to be linked to the condition of the roof. The Landlord has not requested additional time to carry out this work and has provided no information to the Tribunal about any proposed or scheduled work to the roof. The Tribunal is satisfied that the Landlord has also failed to comply with this part of the RSEO.
7. Having determined that the Landlord has failed to comply with the RSEO, the Tribunal then considered whether to issue a Rent Relief Order (“RRO”) in terms of Section 27 of the 2006 Act. The Tribunal noted that the Landlord has failed to comply with all parts of the RSEO, with

the result that the Tenant is unable to access the controls for the heater in the kitchen. The heater in the hallway is not working and two windows at the property are defective. The property is also affected by draughts and water ingress due to the condition of the roof and windows. The Landlord has also failed to provide an EICR or any evidence that the electrical installation is safe and compliant with regulations and guidance. In the circumstances, the Tribunal is satisfied that a RRO should be issued, reducing the rent payable by the tenant by 50%.

Decision

8. The Tribunal determined that the Landlord has failed to comply with the RSEO issued by the Tribunal.
9. The Tribunal proceeded to make a Rent Relief Order in terms of Section 27 of the 2006 Act
10. 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.

Josephine Bonnar, Legal Member

15 March 2022