

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/18/2229

Title no: STG 49503

37 Park Crescent, Bannockburn, Stirling, FK7 0EN (“The Property”)

The Parties: -

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

Mr 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 (1) To instruct a suitably qualified window contractor to inspect the windows in the living room and all bedrooms and carry out any necessary repairs to ensure that the windows are in proper working order; or replace the windows. (2) To repair or replace the defective gas fire and ensure that the fire surround is securely fixed to the wall. (3) To replace the front door of the property with a new front door. (4) To complete the re-plastering of the kitchen ceiling and paint the ceiling. (5) To install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance. (6) To install carbon monoxide detectors at the property to comply with current regulations and guidance. (7) To instruct a Gas Safe registered engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a satisfactory gas safety record. (8) To 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, after the installation of the new smoke and heat detectors, carry out any necessary repairs, and exhibit a satisfactory EICR to the Tribunal. The work was to be completed within 6 weeks of the RSEO being issued to the Landlord.

3. The Ordinary Member of the Tribunal re-inspected the property on 7 February 2019. The Ordinary Member noted that since the first inspection new ceiling mounted hard wired interlinked smoke and heat detectors had been installed at the property which comply with current regulations and guidance and appeared to be in working order when tested. In addition, a carbon monoxide detector had been installed on the wall above the door of the cupboard which houses the boiler. Again, this appeared to be in working order. No other work in terms of the RSEO had been carried out. The former Tenant advised that a contractor attended at the property on 22 January 2019 and took measurements for replacement windows and a replacement front door, but no work had been undertaken since that visit. She further advised that the electrician who installed the smoke and heat detectors and sockets may have also carried out an inspection, but no EICR has been provided. The boiler had also been inspected but no gas safety record has been provided. The Ordinary member noted that the Landlord has not submitted an EICR or gas safety record to the Tribunal.

6. Following the re-inspection, a report was issued to parties regarding same. No response was received from the Landlord or Tenant. The Third Party responded confirming that it agreed with the terms of the

re-inspection report and indicating that the Tribunal should make a rent relief order reducing the rent payable by 90%.

7. The Tribunal proceeded to issue a decision that the Landlord had failed to comply with the RSEO and issued a rent relief order.
8. On 18 March 2021, the Landlord notified the Tribunal that the work required by the RSEO was being undertaken, that the property would be ready for a new tenant in the next few weeks and asked for a re-inspection to be carried out. The Tribunal was initially unable to arrange this due to the effects of the pandemic. 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. On 22 June 2021, the Landlord advised that the work had not yet been carried out. On 20 July 2021, the Landlord advised that his representative arrange access as the property is currently unoccupied.

The re-inspection

9. The Tribunal attended at the property on 22 July 2021 at 11.45am. Ms Rae attended on behalf of the Landlord. The Third Party was not represented. Ms Rae advised the Tribunal that access to the interior of the property could not be provided as the door had been nailed shut. She further explained that the property is unoccupied, has been stripped out and is awaiting refurbishment. From an external inspection of the property, the Tribunal noted that the living room window remains defective and does not close properly. The other windows at the property have not been replaced but it was not possible to assess their current condition. Through the living room window the Tribunal noted that the electric fire and surround have been removed and not replaced. The front door of the property remains damaged and defective.

The Hearing

10. Neither party participated in the hearing, so no evidence was heard about the property. On 12 August 2021, the Landlord sent an email to the Tribunal stating that "The property is currently vacant and will undergo refurbishment as soon as materials and contractors have the availability."

Reason for decision

11. The Tribunal considered the condition of the property at re-inspection and the written representations received from the Landlord.
12. The Tribunal re-inspected the property at the request of the Landlord. He notified the Tribunal on 18 March 2021, that the work would be completed soon and asked if a re-inspection could be arranged. Prior to the re-inspection, and again on 12 August 2021, the Landlord confirmed that the work has not yet been carried out and that a full refurbishment is planned. No timescales have been provided.
13. The Tribunal was unable to inspect the whole property as access to the interior was not provided. However, from an external inspection it was evident that the Landlord has not complied with Parts 1 to 3 of the RSEO. Furthermore, the reports specified in Parts 7 and 8 have not been provided. The Tribunal is therefore satisfied that the Landlord has still not complied with the RSEO

Decision

14. The Tribunal determined that the Landlord had failed to comply with the RSEO issued by the Tribunal.
15. 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:

Josephine Bonnar, Legal Member

30 August 2021