

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(1)

Chamber Reference: FTS/HPC/RP/21/0596

Title number: Subjects registered in the Land Register of Scotland under title number ABN61768

The Parties

Miss Anastasia Leligdowicz, Mr Pierre-Louis Cardin, 207 Hilton Drive, Aberdeen, AB24 4ND (“The Tenants”)

Mr Manu Mathew Mattamana, c/o Capital Letters Property Management, Springfield Property, Laurelhill Business Park, Stirling, FK8 2LJ (“The Landlord”)

Subjects: 207 Hilton Drive, Aberdeen, AB24 4ND (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr David Godfrey (Ordinary Member)

Background

1. By decision dated 22nd October 2021, the Tribunal issued a determination that the Landlords had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’). The Tribunal issued a Repairing Standard Enforcement Order (‘RSEO’) in respect of the Property, requiring the Landlord to:
 1. Install externally vented extractor fans in the kitchen and bathroom of the Property. The bathroom fan should be linked to the light switch with appropriate time delay incorporated such that the fan will continue to run for a reasonable period after the light has been switched off.
 2. Investigate suitable options to improve the thermal efficiency of the external walls and undertake such works as are necessary to ensure that the

Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

The Tribunal ordered that the works specified in the RSEO were to be carried out within a period of 12 weeks from the date of service of the RSEO.

2. A re-inspection of the Property took place on 25th February 2022. A report of the Tribunal's findings was issued to parties following the inspection, indicating the findings of the Tribunal as follows:

Works in Repairing Standard Enforcement Order carried out prior to reinspection:

1. Externally vented extractor fans have been installed in the kitchen and bathroom of the Property. The bathroom fan is linked to the light switch and the fan continues to run for a reasonable period after the light has been switched off.

Works in Repairing Standard Enforcement Order outstanding following reinspection:

1. No evidence was provided to confirm that any investigations into suitable options to improve the thermal efficiency of the external walls have been carried out. Despite a dehumidifier being installed in the property, condensation, dampness and mould was found to be still present in all the habitable rooms of the property as well as the kitchen and bathroom.

3. On 20th March 2022, the Landlord's representative requested a hearing and provided written representations as follows:

Following the visit, as has been previously discussed, the owner has already signalled his intention to install insulated plasterboard to the external walls in all rooms as per the advice received (not from tribunal). The landlord gave the tenants six months' notice to vacate, but the tenants advised they couldn't find alternative accommodation and requested the notice be revoked to allow them to stay on in the property. As the installation of insulated plasterboard to external walls can't be carried out whilst the property is occupied the works have not been completed. At the request of the tribunal fans have been fitted in the kitchen and bathroom. Despite the request at the last hearing for written confirmation regarding the suitability of cavity wall insulation being installed and the issue surrounding cavity wall insulation acting as a bridge for moisture to penetrate its way through the outer wall to the inner walls of the property. Contractors have tried to be sourced who can install cavity wall insulation. Owners/occupiers have been contacted and asked if this is something they would consider contributing towards once quotes were obtained and to date we have had no reply from owners. The report we have received from the tribunal highlights dehumidifiers having also been provided, but makes

no mention of the lack of attempts to clean the mould growth, nor living habits of tenants.

4. By Direction dated 31st March 2022, the Tribunal directed the Landlord as follows:

The Landlord is required to lodge all documentation on which he intends to rely at the hearing on 12th May 2022 ... by 2nd May 2022.

5. No response to the Direction was received.
6. The Landlord's representative was further notified of the hearing on 6th April 2022.

The Hearing

7. A hearing took place by telephone conference on 12th May 2022. There was no attendance on behalf of the Landlord. The Tribunal was satisfied that the Landlord's representative had been notified of the date and time of the hearing, and that the requirements of Rule 24(1) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 had been complied with.

Decision

8. The Tribunal considered that it was unlikely that the work required at paragraph 2 of the RSEO had been carried out by the Landlord.
9. The Tribunal considers that the Landlord has had sufficient time to carry out the works.
10. The Tribunal noted that the first Case Management Discussion ("CMD") took place on 7th May 2021, at which time, the Landlord's representative undertook to provide evidence to the Tribunal of surveys and work carried out. No such evidence was received.
11. There was a further CMD on 8th June 2022, at which time the Landlord's representative undertook to provide photographs, invoices, survey reports and any other relevant information to show that all areas complained of by the Tenant have been addressed. No such documentation was received.
12. The Landlord did not comply with the Direction of the Tribunal, and no documentation to support their position was received.
13. Accordingly, the Tribunal takes the view that the Landlord's failure to implement the RSEO amounts to a breach of the RSEO.
14. The Tribunal considered whether a Rent Relief Order should be made in terms of section 27 of the Act. It determined that given the extent of the landlord's failure to comply with the RSEO within the time allowed, such an order should be made.

15. The tribunal then considered the amount by which the rent payable under the tenancy should be reduced. The Tribunal acknowledged that paragraph 1 of the RSEO had been addressed, and that the problem with condensation, dampness and mould appears to have reduced since the application was initially made; however, the problem continues. Having weighed up these considerations, the Tribunal determined that an appropriate reduction would be to reduce the rent payable under the tenancy by 40% until the RSEO has been complied with. The Rent Relief Order will be effective from 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.
16. The Tribunal, having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that the Landlord has failed to comply with the RSEO in terms of section 26(1) of the Act and that a notice of the failure be served on the Local Authority for the area in which the Property is situated.
17. The decision of the Tribunal is unanimous.

Right of Appeal

- 18. 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.**

Where such an appeal is made, the effect of the decision and 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 decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed H Forbes

Date: 12th May 2022