

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
Statement of Decisions: Housing (Scotland) Act 2006 Section 26

Chamber Ref: FTS/HPC/RP/21/0143

Title Number: LAN99011

Re Property: 1D Meadowside Place, Clarkston, Airdrie, ML6 7AW

Parties:

**Mrs Helen McPhail, 1D Meadowside Place, Clarkston, Airdrie, ML6 7AW (“the Applicant”), and
Ms Laura Finlay 1D Meadowside Place, Clarkston, Airdrie, ML6 7AW (“the Applicant’s Representative”)**

Mr Alasdair Lawson and Ms Mary Lawson, both residing at 18 Finlayson Drive, Airdrie, ML6 8LU (“the Respondents”)

Tribunal Members:

**G McWilliams- Legal Member
L Charles - Ordinary Member**

Decisions

- 1. 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 or not the Respondents have complied with the Repairing Standard Enforcement order (“RSEO”) dated 8th October 2021 determined that the Respondents have failed to comply with the RSEO. The Tribunal have made a Rent Relief Order reducing the rent payable by the Applicant to the Respondents by 40%.**

Background

2. The Applicant submitted an Application to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006 (“the 2006 Act”). A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 26th April 2021. Reference is made to the Notes on the CMD and Notice of Directions, both dated 26th April 2021. The Tribunal Members inspected the Property on 23rd September 2021. The Applicant, Mrs McPhail, was present and represented by her daughter, Ms L Finlay. The Respondent Mr Lawson attended. Following the inspection, the Tribunal held a Hearing which proceeded remotely by telephone conference call on 30th September 2021. Mrs McPhail, Ms Finlay and Mr and Mrs Lawson attended.
3. Following the hearing, the Tribunal issued a Decision, stating that the Respondents had failed to comply with the duty imposed upon them as landlords by Section 14 (1)(b) of the 2006 Act and issued a RSEO. Reference is made to the Decision and RSEO, both dated 8th October 2021. A Schedule of Photographs, taken at the inspection, and Summary of the inspection, was attached to and formed part of this Decision. In terms of the RSEO the Respondent was required to complete the following repairs by 30th November 2021: -
 - a) The Respondent has to carry out such works as are required to ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation, all in terms of Section 13(1)(a) of the 2006 Act. Specifically, the Respondent has to instruct a window and door specialist to:
 - i) repair or replace the seals and handles in and on both windows in the living room and in and on the windows in the kitchen and in each of the three bedrooms, and storage room, in the Property, and ii) replace the sealed glazed units in the veranda door in the living room and in the second bedroom; and
 - iii) carry out such works as are necessary to ensure that all windows in the rooms in the Property are free from mist between their glazed units.
 - iv) replace the locking mechanism in the veranda door in the living room in the Property, and
 - v) repair or replace the safety lock in the front window in the living room in the Property, and
 - vi) refit/adjust the UPVC front door and replace the fascia surrounding that door.

- vii) Provide a full report, and invoice, in respect of the above works.
- b) The Respondent has also to carry out such works as are required to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and if carbon monoxide is present in a concentration that is hazardous to health, all in terms of Section 13 (1) (f) and (g) of the 2006 Act. Specifically, the Respondent has to:
- i) install a heat detector and CO monitor in the kitchen, which comply with current health and safety guidelines; and
 - ii) install a smoke detector in the hallway, which complies with current health and safety guidelines

Re-Inspection

- 4. The Tribunal re-inspected the property on 8th March 2022. Mrs McPhail, Ms Finlay and Mr Lawson attended.
- 5. Mrs McPhail and Ms Finlay advised the Tribunal, and Mr Lawson agreed, that a workman, instructed by Mr Lawson, had attended at the Property and carried out some works on the day before the re-inspection.
- 6. The Tribunal noted the following:
 - i) In the living room a new handle has been fitted and the original lock and key has been cleaned and refitted on the verandah door and the multi point locking systems is not operational and the door is only secured by a single lock. The Tribunal noted that the seal around the door appears to be original and is now dry and brittle and there were draughts. A secondary seal has been fitted but is no longer effective. The Tribunal also noted that the window in the living room is difficult to open, the handle appears to stick and the safety lock does not open without effort. The Tribunal noted that the seal around the window appears to be original, is now dry and brittle, there are draughts and there is visual evidence of historic water ingress
 - ii) In the kitchen the window is difficult to open, the handle appears to stick, the seal around the window appears to be original and is now dry and brittle, and there were draughts.
 - iii) In the first bedroom the window is difficult to open, the handle appears to stick, the seal around the window appears to be original and is now dry and brittle, and there were draughts. iv) In the second bedroom the window is difficult to open and the handle appears to stick. The seal around the window appears to

be original and is now dry and brittle. Taped areas have not been addressed and failed sections of the window have been filed with a paste or putty

- v) In the bathroom the window is difficult to open and the handle appears to stick.
 - vi) In the hall the front Upvc door facia has been reattached. A draught is noticeable at the bottom right-hand corner of the front door.
 - vii) Heat and smoke detectors are fitted in the hallway and kitchen, which comply with health and safety guidelines.
 - viii) The entrance system for the common close door at the Property has been damaged and is not secure.
7. The Tribunal were unable to re-inspect the third bedroom and storage cupboard as they were occupied.
8. The Tribunal's re-inspection report was issued to the parties following the re-inspection on 18th March 2022.

Reasons for Decisions

9. The Tribunal considered the condition of the property at the re-inspection and the submissions made by the parties. A workman had attended and carried out works at the Property on 7th March 2022. However, the Tribunal clearly noted the condition of the property, and that the repairs specified in Part a) of the RSEO have not been carried out, as set out in paragraph 5 above. Mr Lawson did not make any submissions regarding the condition of the Property as noted by the Tribunal other than to say that he had arranged for his workman to carry out repairs. He did not offer any contradictor to the Tribunal's noting of the condition of the Property. He did not say that he intended to have further works, specified in the RSEO, carried out. He did not seek further time to do such works, .
10. The repairs specified in Part a) of the RSEO have not been carried out. The Respondents have not provided any report and/or invoice in respect of any works carried out. The Respondents have not requested additional time for completion of the repair works specified in Part a) of the RSEO. The Tribunal have therefore determined that the Respondents have failed to comply with Part a) of the RSEO.
11. Having determined that the Respondents have failed to comply with the RSEO, the Tribunal have considered whether to issue a Rent Relief Order ("RRO") in terms of Section 27 of the 2006 Act. The Tribunal noted that as a result of the Respondents' failure to comply with all Part a) of the RSEO, the Property is not wind and watertight and not reasonably fit

for human habitation, in particular due to continuing draughts and the residual effects of water ingress, referred to in paragraph 5 above, In the circumstances, the Tribunal is satisfied that a RRO should be issued, reducing the rent payable by the Applicant by 40%. The Tribunal considers that it is just, and proportionate, to issue a RRO in these terms, given the Respondents failure to comply with the RSEO and as the Property is not wind and watertight and reasonably fit for human habitation. The RRO accompanies this Statement of Decisions.

Decisions

12. The Tribunal determined that the Respondents have failed to comply with the RSEO previously issued by the Tribunal.
13. The Tribunal proceeded to make a Rent Relief Order in terms of Section 27 of the 2006 Act
14. The decisions of the Tribunal are unanimous.

Observation

15. At the re-inspection the Tribunal noted that the entrance system for the common close door at the Property has been damaged and is not secure. The Tribunal again observe that it is to be hoped that the entrance system is repaired as soon as possible to ensure the safety of the occupiers of the flats in the block.

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.

G McWilliams

G McWilliams Legal Member

8th April 2022