

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 Ref: FTS/HPC/RP/22/1601

98 Maxwell Drive, Glasgow, G41 5PR (“the Property”)

Parties:

Sazia Amin, 98 Maxwell Drive, Glasgow, G41 5PR (“the Tenant”)

**Mohammed Saeed, Razia Saeed, 3 Rowan Gardens, Glasgow, G41 5BT
 (“the Landlord”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

Andrew Taylor (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 3 September 2022 determined that the Landlord has failed to comply with the RSEO.

Background

- 1. The Tenant lodged an application in terms of Section 22 of the Act claiming that the Landlord had failed to meet the repairing standard in relation to the property. In particular, the application stated that the windows were not wind and watertight, the property was affected by dampness and mould, there were cracked tiles and a defective extractor fan in the bathroom, the kitchen units were insecure, there was no heating or ventilation in the kitchen, there were incomplete repairs following leaks at the property, an unsuitable electrical supply to the**

cooker, defective sockets in the second bedroom and defective CO detectors.

2. The Tribunal inspected the property on 16 August 2022 at 10am. The Tenant provided access and Mr Saeed was present. Thereafter a hearing took place by telephone conference call at 2pm. The Tenant, her solicitor Ms Cochrane, and both Landlords participated.
3. Following the hearing, the Tribunal determined that the property did not meet the repairing standard. A decision with statement of reasons was issued together with a Repairing Standard Enforcement Order ("RSEO") dated 3 September 2023. In terms of the RSEO the Landlord is required to: -
 - (a) Engage a suitably qualified window specialist to repair or replace all windows ensuring that they are wind and watertight, that the ironmongery is in proper working order and the windows are capable of opening and closing securely.
 - (b) Engage a suitably qualified dampness/condensation specialist to report on the evident areas affected by mould, condensation and dampness and undertake all works recommended, including any enhanced ventilation; make good all plaster walls, ceilings and any woodwork affected by damp and mould, including historic leaks; include all necessary redecoration. Provide the Tribunal and Tenant with copies of the report.
 - (c) Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report on the gas fired heating and hot water supply installation including boiler, pipework, all radiators, valves, programmers and thermostats.
 - (d) Follow the recommendations of that report to ensure that the entire system is free from leaks, safe and in proper working order. On completion of the works provide a valid CP12 Gas Safety Certificate to the Tribunal and Tenant.
 - (e) Engage a suitably qualified plumber to inspect the complete plumbing system for leaks including sanitary fittings, supply, drainage and overflow pipework, bath and sink sealants and rectify any faults.
 - (f) Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property and including testing of the bathroom fan for safety and effectiveness. Follow the recommendations of that report to ensure that the entire system is safe and in proper working order. Provide a copy of the EICR and report to the Tribunal and Tenant.

- (g) Ensure that the kitchen wall cabinets are safely and securely fixed to the wall.
 - (h) Supply and fit a Carbon Monoxide detector compliant with the Scottish Government Statutory Guidance for the provision of carbon monoxide alarms in private rented housing.
4. The order stipulated that the work was to be carried out and completed within 8 weeks of the order being issued.
 5. Between 3 November 2022 and 24 February 2023, the Tribunal received a series of written submissions from both parties. The Landlord initially indicated that they had been unable to get work done due to contractors being unavailable, a family bereavement and the Tenant only providing access on two afternoons per week and Saturday mornings. The Tenant provided various updates stating that the guttering had been fixed in November 2022 and that the EICR, gas safety check and repair to the kitchen cupboards had been completed in December 2022/January 2023. The Landlord submitted the gas safety certificate and EICR on 2 January 2023. On 26 February 2023, the Landlord submitted a report from Russell Preservation dated 10 February 2023. This contained several findings and proposed remedial work.
 6. The Tribunal re-inspected the property on 9 March 2023. Access was provided by the Tenant. The Landlord Mrs Saeed was present.

The Re-inspection

7. The Tribunal noted that although a report from a dampness specialist had been obtained, the recommended remedial work had not been carried out. It was also noted that the kitchen units have been safely and securely fixed to the wall. The Landlord supplied a CP12 gas safety certificate and EICR. The remaining parts of the RSEO remained outstanding. A re-inspection report with photographs was issued to the parties on 14 March 2023
8. On 13 March 2023, the Tenant's representative lodged written submissions stating that the Tenant had not been unduly restrictive regarding access to the property, that she had been served with a Notice to leave, that the Landlords have stated that they will not carry out repairs while she remains in occupation and that the family have developed medical problems due to the condition of the property.
9. On 27 March 2021, the Landlords lodged a written submission which states that they disagree with the re-inspection report in relation to the windows. The Tenant had been provided with keys for the windows and shown that they open and close properly. Window specialists had

attended and stated that some windows needed re-sealed and some required new handles. The Landlord added that any outstanding work would be completed when the Tenant left on 17 April 2023. The Landlord lodged a number of documents with the submission which included an invoice for a gutter repair dated 9 November 2022 and an undated, handwritten note from an unidentified individual whose signature is illegible. The writer of the note indicates that they are a plumber and described plumbing work carried out in the kitchen and bathroom. The Landlord also lodged an invoice from Russell Preservation which refers to ceiling plaster repair work, PIV installation works and the supply of mould chemicals. Photographs were also lodged which appear to show that part of the ceiling in the kitchen and hall have been replastered, but not painted. The kitchen photograph shows that the mould in the kitchen is unchanged. The photographs also show new flooring in the bathroom.

10. On 28 March 2023, the Tenant's representative lodged written submissions together with a statement from the tenant and a letter from Children 1st. The representative states that the Tenant is vacating the property on 17 April 2023 following service of a Notice to leave. She also states that the Landlord has failed to comply with Parts 1 – 6 of the RSEO. A CO detector has been installed by the Landlord, but it is not clear if it complies with current regulations and guidance. The main repair issue at the property, the mould affecting several rooms, has not been addressed. Russell Preservation attended and replastered the parts of the ceilings which had been damaged by leaks. They left mould chemicals which had been removed by the Landlord. The representative also submitted a copy of a text message from the Landlord which states that, as the tenant had not provided a further date for work to be carried out, the remainder of the work will be carried out when she vacates the property.

Findings in Fact

11. Windows at the property are defective.
12. The Landlord has not repaired or replaced any windows at the property.
13. The property is affected by condensation and mould.
14. The Landlord has not carried out the work recommended by the specialist report to eradicate the mould.
15. Ceilings in the hall, kitchen and living room have been re-plastered but not re-painted.

16. The Landlord has failed to provide a report regarding the gas fired heating system which establishes that it is free from leaks and in proper working order.
17. The Landlord has not provided evidence that they have installed a carbon monoxide detector which complies with Scottish Government Statutory Guidance.
18. The Landlord has not provided a report from a suitably qualified electrician which establishes that the entire electrical installation, including the bathroom fan and cooker extension cable, are safe and in proper working order.
19. The Landlord has failed to provide evidence that a suitably qualified plumber has inspected the plumbing system and rectified any faults.

Reason for decision

20. The Tribunal considered the condition of the property at the re-inspection and the submissions and documents lodged by the parties.
21. The Tribunal is not persuaded by the Landlord's claim that they have been unable to carry out work specified in the Order because of a family bereavement and the Tenant limiting access to the property. The RSEO was issued on 3 September 2022. The order stipulated that the work was to be carried out within eight weeks. However, the Tribunal was unable to re-inspect the property until 9 March 2023, effectively giving the Landlord an additional 4 months to complete the work. During that time there were visits from contractors and some work was carried out. The Tribunal is therefore satisfied that the Tenant provided access and that it was unreasonable for the Landlord to expect unrestricted access simply because they were endeavoring to arrange for contractors to attend at short notice before the re-inspection. It is also of concern that the Landlord has elected to suspend work at the property because the Tenant has indicated that she intends to move out. She has chosen to do so because she has been served with a Notice to Leave and is not required to vacate the property on this date.

The Windows

22. The windows at the property are in the same condition as when the property was first inspected on 16 August 2022. The rear living room windows now have keys, but otherwise there is no evidence of repair or

replacement. This was confirmed by the Tenant and conceded by the Landlord who states that window specialists have inspected the windows and said that some require to be re-sealed and some need new handles. The Tribunal is satisfied that the Landlord has failed to comply with Part 1 of the RSEO.

Dampness/Condensation

23. The Landlord provided the Tribunal with a specialist report which recommended remedial work at the property. The report is dated 10 February 2023. However, no work had been carried out by the time the Tribunal re-inspected the property a month later. Since then, it appears that some of the work, including re-plastering, has been carried out. However, the mould has not been treated and the areas affected by mould and leaks have not been re-instated. The Tribunal is satisfied that the Landlord has failed to comply with Part 2 of the RSEO.

Boiler, heating, and hot water

24. The Landlord has not provided the Tribunal with a report from a Gas Safe Engineer, as specified in Part 3 of the RSEO. Part 4 required the Landlord to carry out any remedial work recommended in the report. Again, there is no evidence of compliance with this provision. The Landlord has provided a gas safety certificate. Otherwise, the Tribunal is satisfied that the Landlord has failed to comply with Parts 3 and 4 of the RSEO.

Plumbing works

25. At the re-inspection, the Landlord advised the Tribunal that a plumber was due to attend the following day to carry out the specified work. The Tribunal is therefore satisfied that the work had not been completed within the time limit specified in the RSEO. The Tenant maintains that Part 5 of the RSEO has not been completed. The Landlord has provided a handwritten note on blank notepaper. The note is not dated, and the name of the writer is not legible. The author of the note states that he is a plumber and has carried out certain works in the kitchen and bathroom. However, based on this evidence, the Tribunal cannot be satisfied that any work which has been carried out complies with the RSEO or that it was carried out by a "suitably qualified plumber". The Landlord has therefore failed to comply with Part 5 of the RSEO.

Electrical Installation

26. During both the inspection and re-inspection, the Tribunal noted that an extension cable in the kitchen is providing power to the cooker. The Tenant also complained of concerns regarding the safety of a plug point in one of the bedrooms and concerns regarding the bathroom fan. Part 6 of the RSEO firstly required the Landlord to obtain a certified EICR. This has been provided. However, the RSEO also stipulated that a report on the safety and effectiveness of the bathroom fan was to be obtained. This has not been lodged nor has the Landlord provided evidence regarding the safety and suitability of the power supply to the cooker. The Landlord has therefore not fully complied with Part 6 of the RSEO.

Kitchen wall cabinets

27. Prior to the re-inspection the Tribunal was told that the kitchen units had been secured to the wall. During the re-inspection, the Tribunal noted this to be the case. The Landlord has complied with Part 7 of the RSEO.

Carbon Monoxide Detector

28. During the re-inspection, the Tribunal noted the absence of a CO detector in the upper hallway where the boiler is located. The Landlord therefore failed to comply with this part of the RSEO within the time limit specified. Since the re-inspection, the Tenant has confirmed that the Landlord himself has installed a CO detector. It is not clear why this was not installed by the engineer who provided the gas safety certificate. No evidence has been provided regarding the location of the detector or whether it complies with Scottish Government Statutory Guidance. The Tribunal is therefore not satisfied that the Landlord has complied with Part 8 of the RSEO.

29. 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 most of the RSEO, with the result that the Tenant is still unable to use one of the bedrooms at the property, due to extensive mould. This also affects the living room and kitchen. In the circumstances, the Tribunal is satisfied that a RRO should be issued, reducing the rent payable by the tenant by 70%.

Decision

30. The Tribunal determined that the Landlord has failed to comply with the RSEO issued by the Tribunal.
31. The Tribunal proceeded to make a Rent Relief Order in terms of Section 27 of the 2006 Act
32. 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

31 March 2023