

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in terms of Section 26 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act

Chamber Reference number: FTC/HPC/RP/17/0543

Parties: Elspeth Adair residing at 35 Parklands Oval, Glasgow, G53 7SZ ("the Landlord")

Property: 40, Langton Road, Pollok, Glasgow G53 5DD registered in the Land Register of Scotland under Title Number GLA86822

Tribunal Members

Karen Moore (Chairperson)

Nick Allan (Ordinary Member)

This Decision should be read in conjunction with Statement of Decision and Repairing Standard Enforcement Order ("the RSEO") both dated 11 April 2018, Statement of Decision and Variation of RSEO both dated 16 October 2018 and Statement of Decision and Variation of RSEO both dated 15 February 2019.

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that it cannot be satisfied and so determines that the Landlord has failed to comply.

Background

1. By application received on 27 November 2017 ("the Application"), Gordon Barr formerly residing at 40, Langton Road, Pollok, Glasgow, G53 5DD as the tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property did not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b) and 13(1) (d) of the Act. The Application was referred to the Tribunal, and an Inspection and Hearing were held on 6 March 2018 following which the Tribunal determined that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act and imposed the RSEO as follows:-

"The Landlord must on or before 25 May 2018: -

1. *Instruct a Chartered Building Surveyor to carry out a full inspection of the Property to provide a fully documented report ("the Report") on the roof of the Property including the chimneys and chimney heads, the ridges, skewes, flashings, gutters and the supporting beams and sub-structure the purpose of which is to identify the source, or sources, of the water ingress to the Property and to recommend works to the roof, including replacement if necessary, to ensure that the roof is made wind and watertight and the roughcasting and external parts of the Property including the down*

pipes the purpose of which is to recommend works to the roughcasting and external parts of the Property including replacement if necessary, to ensure that the Property is made wind and watertight and in a reasonable state of repair;

2. *Submit the said Report to the tribunal and, at the same time, provide a copy to the Tenant;*
 3. *Instruct a roofing contractor capable of providing a 30-year guarantee to carry out the works recommended by the Report in respect of the roof and confirm in writing to the tribunal and the Tenant the identity of the roofing contractor, the date on which the works will commence and the estimated date for their completion;*
 4. *Instruct a Scottish Building Federation registered building contractor capable of providing a 10- year guarantee repair to carry out the works recommended by the Report in respect of the roughcasting and external parts and confirm in writing to the tribunal and the Tenant the identity of the building contractor, the date on which the works will commence and the estimated date for their completion;*
 5. *Instruct a SELECT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that, given the extent of dampness in the Property, the electrical installation in the Property is safe and fit for purpose, and to prepare an electrical installation condition report ("EICR")(ii) to repair or renew any parts which require to be renewed or repaired to ensure the installation is fully functioning and meets current regulatory standards and submit a copy of the EICR to the tribunal and the Tenant;*
 6. *Repair or renew the lock on the door at the top of the internal stairway to ensure that it is fully operative and*
 7. *Make good any décor damaged as a result of these works."*
2. Thereafter, the Tenant wrote to the Tribunal advising that he and his family had vacated the Property.

Re-inspections of the Property

3. The Ordinary Member of the Tribunal carried out further Re-Inspections and found that although some works required by the RSEO had been carried out at the Property, the Property remained affected by dampness following each of which the Tribunal varied the RSEO to allow the Landlord further time to comply with the RSEO and the RSEOs as varied.
4. In particular, the Ordinary Member of the Tribunal carried out a Re-Inspection on 30 July 2019 which was attended by the Landlord. Again, it was found that although some works required by the RSEO had been carried out at the Property, the Property remained affected by dampness. The Property was furnished. A copy of the Re-Inspection Report was issued to the Landlord who responded that the Property was not a "let property" and that repairs were ongoing.
5. Tribunal took the view that, in all the circumstances, it should hold a Hearing to afford the Landlord an opportunity to address the Tribunal in respect of her compliance with the RSEO. Therefore, a further Re-Inspection and Hearing were fixed for 14 November 2019 at 10.00 a.m. and 11.30 a.m., respectively.

Re- Inspection

6. The second Re-inspection took place on 14 November 2019 at 10.00 a.m. at the Property. The Landlord was not present at the Inspection and the Tribunal were unable to gain access to the Property.

Hearing

7. Following the Inspection, a Hearing was held at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT on the same day at 11.30 a.m. Again, the Landlord was not present at the Hearing.
8. Shortly before the Hearing, the Chamber administration advised the Tribunal that it had received emails from the Landlord at 07.24 a.m. and 07.33 a.m. on 14 November 2019 indicating that neither the Landlord nor her solicitor, whom she did not identify, could attend the Inspection and Hearing, that her solicitor intended to seek a meeting with the Tribunal, that the Property required to "dry out" and that the Property was "not rented". No reason was given for the late notification and no reason was given for the failure to attend. No solicitor contacted the Chamber or Tribunal on behalf of the Landlord.

Summary of the Issues

9. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or if it should make a finding of failure to comply with the RSEO.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

10. As the Tribunal had not been able to carry out an inspection of the Property on 14 November 2019, and, as the Landlord had failed to attend or be represented at the Hearing, the Tribunal could not be satisfied that the works required by the RSEO as varied had been carried out in full. The Landlord's emails of 14 November 2019 did not assist the Tribunal in this respect. Therefore, the matter before the Tribunal was how to proceed further.
11. The Tribunal then had regard to Section 25 (1) of the Act which states:- "*(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.*"
12. The Tribunal had regard to Section 25(1)(b) of the Act and gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the nature of the works required by the RSEO and the condition of the Property at the Re- Inspections and the last Re-Inspection in particular. All of the elements of the RSEO relate to the condition of the Property in respect of it being fit for human habitation and being in a condition which protects the health and safety of the occupants of the Property, both which are of paramount importance. As the Tribunal could not be satisfied that the Property meets these standards, the Tribunal was not of a mind to revoke the RSEO.
13. The Tribunal then considered Section 25(1)(a) of the Act, and again gave consideration to the nature of the works required by the RSEO and to the fact that some of the works had been completed and that some of the remaining works required by the RSEO might relate to common property. The Tribunal also had regard to the fact that it had already varied the original RSEO to allow substantial time for the Landlord to comply. The Tribunal had regard to the Landlord's various written representations by email to it and took the view that, in spite of the Tribunal setting out in its Statements of Decision the importance and consequences of the proceedings, the Landlord had

little regard for the judicial process and had not provided the Tribunal with any information or reason to allow it to vary the RSEO further. Accordingly, the Tribunal determined not to vary the RSEO to allow further time to comply.

14. The Tribunal had regard to Section 26 of the Act which states:- "*It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.*". The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO. The Tribunal had regard to the Landlord's representations to it during the proceedings. The Tribunal had regard to the fact that, whilst the Landlord advised that the Property is not occupied by a tenant at present, it could not be certain that the Landlord had no intention to re-let the Property.
15. The Tribunal, being satisfied that the Landlord had not complied with the RSEO as varied without reasonable excuse, therefore, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO as varied.
16. The decision of the Tribunal is unanimous.

Review of tribunal's decision

17. 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.

Signed
K Moore

Karen Moore, Chairperson

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Date ~~11~~ November 2019
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