

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 24(1)

Chamber Ref: FTS/HPC/RT/18/2227

Title Number : STG 35276

100 Springfield Road, Stirling, FK7 7QW (“The Property”)

The Parties: -

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

Ms Taylor Monaghan, 100 Springfield Road, Stirling, FK7 7QW (“the former Tenant”)

Mr Stewart Horsburgh, 53C Whins Road, Stirling; 7 Old Coleraine Road, Portstewart, County Londonderry, Northern Ireland BT55 7PZ (“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. By application dated 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. The Application stated that the Third Party considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Third Party stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, (iii) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, (iv) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (v) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed, (vi) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (vii) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Third Party complained of;- (1) Incomplete ceiling repair in living room, (2) Loose/poorly fitted floorboards in hallway, (3) Leak from bath/waste trap and poorly fitted bath panel in bathroom, (4) Boiler losing pressure and obsolete warm air unit with evidence of asbestos, (5) Water penetration or damp in two bedrooms and broken socket face plate and hole in ceiling in one bedroom, (6) Mould spores and damaged plasterwork in kitchen from bathroom leak, (7) Leaking and damaged gutters, (8) Insufficient number of smoke detectors and not hardwired (9) No carbon monoxide detector. The application also states that no EICR, gas safety certificate or energy performance certificate has been provided to the Tenant. The application further states that the Tenant wishes to be treated as a party to the application.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 3 October 2018. The parties were notified that an inspection

would take place on 5 November 2018 at 10am and that a hearing would take place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.

4. The Tribunal inspected the property on the morning of 5 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant's mother, Heather Monaghan, was present on behalf of the Tenant, who was in hospital. The Landlord did not attend. Thereafter the Tribunal held a hearing on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. Five other applications involving the Third party and the Landlord were also dealt with at the hearing under Chamber references FTS/HPC/RT/18/2235, 2232, 2229, 2226 and 2230. Mr Paterson attended on behalf of the Third Party. Also present were Blair McKie, Emma Jane McLaughlan, Shirley Kane and Mandy Rushforth, tenants in three of the other applications before the Tribunal. The Tenant was not present. The Landlord did not attend and was not represented. Written representations were submitted by the Landlord but not received until after the hearing. In terms of same the Landlord stated that he did not wish to attend the hearing. He also stated that he was in the process of "sorting this all out" and had engaged a new letting agent, O'Malley Property, who was in the process of doing all the repairs required to bring the properties up to an acceptable standard. Mr Paterson advised the Tribunal that he had been told that the Tenant may now have moved out of the property, although he had not been able to confirm this information.
5. Following the inspection and hearing the Tribunal proceeded to issue a repairing standard enforcement order ("RSEO"). In terms of the RSEO the Landlord is required (i) To complete the repair to and re-decorate the living room ceiling, (ii) To replace loose and damaged flooring in the hall and ensure that there are no gaps and that the flooring is in a reasonable state of repair, (iii) to instruct a suitably qualified plumber to investigate the cause of the leak from the bathroom and carry out any necessary remedial work to prevent further leaks, (iv) To replace the seal around the bath, install a new properly fitting bath panel and replace poorly fitting boxing around the pipes in the bathroom, (v) to instruct a registered Gas Safe engineer to carry out all necessary repairs and service the boiler and ensure that it is in proper working order, (vi) to instruct a competent licensed contractor to investigate the presence of asbestos within and around the entire obsolete warm air heating system in the property. Thereafter, remove the heating unit in the living room and any identified materials containing asbestos and, if required, provide evidence of proper removal and disposal under current Waste Management Regulations, (vii) To instruct a report from a suitably qualified damp proofing and condensation specialist to investigate the cause of dampness and/or condensation in the bedrooms, exhibit a copy of the report to the Tribunal, carry out any recommendations identified in the report and repair all damage, (viii)

To repair the holes in the rear bedroom ceiling, (ix) to replace the damaged socket cover in the rear bedroom, (x) to instruct a suitably qualified contractor to investigate the cause of water penetration in the kitchen, carry out any recommended works to prevent further water penetration/leaks and repair and redecorate the damage to the ceiling and all affected plasterwork above the window, (xi) To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property to ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods, (xii) to install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance, (xiii) to install a CO detector in the property to comply with current regulations and guidance, (xiv) to instruct a suitably qualified Gas Safe engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a satisfactory Gas Safety Record, and, (xv) to instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property after the installation of new smoke and heat detectors, carry out any necessary repairs or alterations, and exhibit a satisfactory EICR to the Tribunal. This order required the landlord to complete all works within a six week period from the date of service of the Notice dated 6 December 2018.

6. The Ordinary Member of the Tribunal attended to carry out a re-inspection of the property on 7 February and 15 May 2019. No access was provided on either occasion, although the Landlord had been notified that the inspection had been arranged and that access was required. On both occasions, the Ordinary Member was unable to establish if the internal work had been carried out. However, it was noted that the Landlord had not exhibited evidence to the Tribunal in relation to parts 6 and 7 of the RSEO and no reports in terms of parts 14 or 15 had been submitted. Furthermore, it was clear from an external inspection that part 11 of the RSEO had not been carried out. Following both re-inspections, a re-inspection report was issued to the Landlord.

7. On 12 and 18 September 2019 a Notice of Required Entry was served on the Landlord by a Sheriff Officer and Process Server. This advised the Landlord that a re-inspection had been arranged for 1 November 2019 at 10am when access was required. On 12 September 2019 the Landlord sent an email to his letting agents requesting that they provide access for the inspection. A copy of the email was sent to the Tribunal. On 14 October 2019 the agents sent an email to the Tribunal requesting a postponement of the re-inspection stating that the work had not been carried out. By email dated 17 October 2019 the Landlord and his agent were both advised that the postponement request was refused, and that the re-

inspection would proceed. On 31 October 2019 the Landlord sent an email to the Tribunal. It stated that he had obtained quotes for the work and that he was in the process of raising funds to instruct the work. He advised that as he is based in Northern Ireland, his sister is working, and the agent is unable to arrange access there would be no one to provide access to the property. He confirmed that no work had been carried out and that the re-inspection should be postponed for 6 weeks. As this email was only received by the Tribunal administration on 31 October 2019, the Tribunal was not made aware of same before attending at the property for the re-inspection

The Re-inspection

8. The Tribunal attended at the property on 1 November 2019 at 10am. Also present was Mr Paterson, on behalf of the Third Party. Neither the landlord nor his agent attended and no access to the inside of the property was provided. The Tribunal noted that the exterior of the property was in a similar condition to the first inspection and both previous re-inspections. The rainwater goods have not been repaired, cleaned or replaced. Several sections of the gutters continue to leak at the joints and are choked with vegetation. It was possible to view the living room ceiling through the rear kitchen window and it was noted that the ceiling has not been repaired or redecorated. It was also possible to see the hall floor and it was noted that the loose and damaged laminate floor covering has not been replaced. A re-inspection report with photographs was issued to the landlord following the re-inspection. No response was received.

Reason for decision

9. The Tribunal considered the condition of the property at re-inspection, the fact that access was not provided to the property for any of the re-inspections and the failure by the Landlord to provide the reports and other evidence to the Tribunal as required by the RSEO. The Tribunal also noted that the landlord notified the Tribunal on 14 and 31 October 2019 that the work has not been completed.
10. At the re-inspection on 1 November 2019 it was noted that parts 1, 2 and 11 have not been completed. Furthermore, the Landlord has not submitted evidence regarding the proper removal of asbestos, in terms of part 6 of the RSEO or a damp proofing and condensation

report in terms of part 7 of the RSEO. No gas safety record or EICR have been submitted in terms of Parts 14 and 15 of the RSEO. The Tribunal is therefore satisfied that parts 1, 2, 6, 7, 11, 14 and 15 of the RSEO have not been completed.

11. The Tribunal proceeded to consider the other aspects of the RSEO. The Tribunal is satisfied that it is entitled to draw an inference from the failure by the Landlord to carry out parts 1, 2, 6, 7, 11, 14 and 15 of the RSEO, that he has also failed to complete the other internal work. In any event, the Landlord has confirmed by email on 14 and 31 October 2019 that no work has been carried out. The Tribunal is therefore satisfied that the Landlord has not complied with the RSEO.
12. Although no request for a variation of the RSEO has been received, the Tribunal considered whether it would be appropriate to vary the RSEO to allow further time for completion of the work. The Tribunal noted that the Landlord refers to a further 6 weeks in his email of 31 October 2019. However, the Tribunal notes that no further information has been received from the Landlord since that date. Furthermore, the email also states that he was in the process of raising the money for the work, not that he was on the point of instructing same. The Tribunal also notes that the RSEO is dated 6 December 2018 and that the property has been unoccupied since 16 November 2019. The Landlord has therefore failed to progress the work required for almost 12 months. In the circumstances the Tribunal determined that it would not vary the RSEO and that the Landlord had already had sufficient time to comply with the Order.
13. As the property is currently unoccupied the Tribunal did not proceed to consider whether a Rent Relief Order should be made.

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

Signed.

..... 30 November 2019

Josephine Bonnar, Legal Member