

Housing and Property Chamber First-tier Tribunal for Scotland



REPAIRING STANDARD ENFORCEMENT ORDER

Chamber Ref: FTS/HPC/RP/21/1246

Re: Property at 44A Albert Road, Gourock, PA19 1NL registered in the Registers of Scotland under Title Sheet Number REN36337 (“the Property”)

The Parties:

Mark Rodger, care of his agents Best Move at Blair & Bryden, solicitors, 4 Cathcart Square, Greenock, PA15 1BS (“Landlord”)

Notice to Landlord and Registered Proprietors

Mark Rodger, care of his agents Best Move at Blair & Bryden, solicitors, 4 Cathcart Square, Greenock, PA15 1BS as Landlord and Mark Thomas Rodger and Lucy Margaret Rodger as registered proprietors of the Property.

Whereas in terms of its decision dated 2 November 2021, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the Landlord had failed to comply in respect of Sections 13 (1) (a) of the Act and has failed to ensure that the Property is wind and watertight and reasonably fit for human habitation the First-tier Tribunal now requires the Landlord to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlords must on or before 17 December 2021: -

1. Instruct a suitably qualified contractor to undertake an inspection of the roof covering and associated leadwork and thereafter complete all necessary repairs required to ensure that the roof is wind and watertight, in a reasonable state of repair and in proper working order;
2. Repair or renew the bathroom ceiling ensuring that it is in a reasonable state of repair and in proper working order and
3. Make good and decoration associated with the completion of the foregoing works.

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 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

In Witness Whereof these presents printed on this and the preceding page are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 2 November 2021 before this witness, Norman William Moore, solicitor, Muirfield Business Centre, 1A, South Muirhead Road, Cumbernauld, G67 1 AX

K Moore

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 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22 of the Act

Chamber Ref: FTS/HPC/RP/21/1246

Re: Property at 44A Albert Road, Gourock, PA19 1NL registered in the Registers of Scotland under Title Number REN36337 (“the Property”)

The Parties:

Mark Rodger, care of his agents Best Move at Blair & Bryden, solicitors, 4 Cathcart Square, Greenock, PA15 1BS, (“the Landlord”) per his agent, Ms. Linda Swan of the said Best Move (“the Landlord’s Agent”)

Tribunal Members:

Karen Moore (Chairman) and Donald Wooley (Ordinary Member)

Decision of the Tribunal

The Tribunal determined that the Landlord has failed to comply with the duty imposed on it by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(a) of the Act and has not failed to comply with that duty in respect of Sections 13(1) (b), 13(1) (c), 13(1) (d) and 13(1) (f) of the Act.

Background

1. By application received between 25 May 2021 and 2 June 2021 (“the Application”), the then 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 it by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), 13(1) (c), 13(1) (d), and 13(1) (f) of the Act. A letter from Inverclyde Council formed part of the Application.

2. The Application, including the letter from Inverclyde Council, noted the following heads of complaint and listed works required:-
 - i. Replace roof
 - ii. Repoint gable end wall
 - iii. Flooring to be levelled
 - iv. Renovate kitchen
 - v. Repair holes in flooring
 - vi. Repair ceiling at bathroom and living room caused by water ingress at roof
 - vii. Repair pipes "hanging off walls"
 - viii. Renovate bathroom
 - ix. Shower screen too low and
 - x. Living room light not working.
3. The Application was referred to the Tribunal.
4. A Case Management Discussion ("CMD") took place on 10 August 2021 at 10.00 by telephone conference call at which the then tenant's representative and the Landlord's Representative took part. The Landlord's Representative advised the Tribunal that works had been carried out to address the then tenant's concerns and explained that there had been difficulties with access to the Property which hampered all of the works being fully completed. The then tenant's representative disputed that the works were complete and so the The Tribunal adjourned the CMD for an Inspection and Hearing to take place.
5. The Tribunal and issued the Landlord as Respondent to the Application with the following Direction:

"The Respondent is directed to submit:

 1. *Evidence (for example receipted invoices) setting out the works carried out at the Property in respect of the matters complained of in the Application;*
 2. *A current Electrical Installation Condition Report (EICR) and Portable Appliance Testing (PAT) on appliances provided by the Respondent;*
 3. *A current Gas Safety Certificate and*
 4. *Evidence that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings together with a similarly powered and interlinked heat alarm in the kitchen"*
6. The Landlord complied with this Direction.
7. An Inspection and Hearing were fixed for 22 October 2021 and 29 October 2021 respectively.
8. Prior to the Inspection, the then tenant submitted a photograph of vermin in the kitchen of the Property. Also prior to the Inspection, the then tenant advised the tribunal chamber that he had vacated the Property. By Minute dated 15 October

2021, the Tribunal continued the Application of its own accord.

Inspection and Hearing

9. The Inspection of the matters complained of in the Application took place at the Property on 22 October 2021 in accordance with the tribunal chamber's Covid-19 protocol. The Landlord, the Landlord's Representative and Ms. Aundrey Dresh of the Best Move all attended. The Landlord accompanied the Tribunal members and the other parties remained outside of the Property.
10. Following the Inspection and before the date of the Hearing, the Inspection Report with a Schedule of Photographs was issued to the Landlord's Representative.
11. The Inspection Report noted the following in respect of each of the heads of complaint listed in the Application:
 - i) Replace roof: within the roof void and specifically towards the mutual wall with the adjoining property and around the shared chimney head there is evidence of penetrating damp affecting the timber rafters and sarking.
 - ii) Repoint gable end wall: Repointing had been carried out to the gable wall; internally there was no evidence of any significant water ingress stemming from weathered stonework at chimney-head;
 - iii) Level flooring: there is no significant run in flooring or obvious signs of recent or active subsidence;
 - iv) Renovate kitchen: kitchen units are of an age with one lower cupboard door missing but are not considered to contravene the Repairing Standard;
 - v) Repair holes in flooring: there is a gap in the kitchen flooring between the rear of the fridge freezer and the adjacent base unit but this is not significant and is not in contravention of the Repairing Standard;
 - vi) Repair ceiling at bathroom caused by water ingress at roof: there is evidence of significant damp staining affecting the ceiling plaster with moisture content at a level likely to cause further deterioration to the surrounding fabric;
 - vii) Repair ceiling at living room caused by water ingress at roof: there is a section of cracked and bossed plaster, towards the dormer projection, on the ceiling of the living room, although it remains generally stable, with no evidence of damp or significant deterioration;
 - viii) Repair pipes "hanging off walls": the exposed piping in both the kitchen and living room, identified in the application as "hanging off walls" has been secured with plastic clips;
 - ix) Renovate bathroom: the bathroom fittings are in a reasonable state of repair and in proper working order and do not require renovation;
 - x) Shower screen too low: the shower screen is of a standard size. However, the shower head projects above the screen;
 - xi) Living room light not working: This could not be tested as the electricity supply in Property had been cut off.
12. Although not part of the Application, no evidence of vermin was identified in the Property.

13. The Hearing took place on 29 October 2021 at 10.00 by telephone conference call. The Landlord did not take part and was represented by Ms. Swan, the Landlord's Representative. The Tribunal's Inspection Report was discussed and Ms. Swan agreed that it was accurate and the Landlord accepted that work was required to remedy the dampness in the Property.
14. In respect of the other matters, the Tribunal advised that the EICR lodged in compliance with the Direction satisfied the Tribunal that the living room light was in working order. Ms. Swan explained that the issue here had been simply that a light bulb required to be replaced.
15. Ms. Swan advised the Tribunal that the Property remained unlet and that she understood that it was the Landlord's intention to sell the Property. The Tribunal explained that if it made a determination the Property did not meet the Repairing Standard, the Tribunal was bound to impose a Repairing Standard Enforcement Order (RSEO), the effect of which was the Property could not be re-let. The Tribunal explained further that the RSEO did not prevent the Property being marketed for sale or sold, but it might have an impact on the same process and that the Landlord's solicitor would be able to advise on this.

Findings of Fact

16. The Tribunal's findings in fact were made from the Application, the CMDs and the Inspection and Hearing.
17. The Tribunal found the following matters established: -
 - a. There had been a private residential tenancy of the Property;
 - b. There is evidence of penetrating damp affecting the timber rafters and sarking in the roof void towards the mutual wall with the adjoining property and around the shared chimney head;
 - c. Repointing had been carried out to the gable wall and there is no evidence of water ingress at these points;
 - d. The stonework at the chimney-head is weathered but there is no evidence of any significant water ingress stemming from this area;
 - e. There is no significant run in flooring or obvious signs of recent or active subsidence;
 - f. The kitchen units are of an age but are adequate to meet the Repairing Standard;
 - g. There is a gap in the kitchen flooring between the rear of the fridge freezer and the adjacent base unit but this is not in contravention of the Repairing Standard;
 - h. There is evidence of significant damp staining affecting the bathroom ceiling plaster;
 - i. There is a section of cracked and bossed plaster on the living room ceiling but there is no evidence of damp or significant deterioration;
 - j. The exposed central heating piping has been secured with plastic clips;

- k. The bathroom fittings are in a reasonable state of repair and in proper working order;
- l. Shower screen of a standard size;
- m. There is a current EICR and a Gas Safety Certificate for the Property;
- n. There are smoke detectors and a carbon monoxide detector all of which comply with the current regulations in the Property;

Summary of the Issues

18. The Tribunal acknowledged the work carried out by Landlord, however, in these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (c), 13(1) (d), 13(1) (f), 13(1) (g) and 13(1) (h) of the Act at the date of the Inspection.

Decision of the Tribunal and reasons for the decision.

19. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the dampness within the Property in the roof void and the bathroom is such that the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
20. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal found that, taking account the age of the Property, the structure of the Property is stable and the exterior Property is in a satisfactory condition and so the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
21. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations 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, the Tribunal found that the Property is in a reasonable condition and so the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
22. In respect of the complaint in terms of Section 13 (1) (d) that the Landlord has failed to ensure that the fixtures, fittings and appliances provided by him under the tenancy are in a reasonable state of repair and in proper working order, the Tribunal found no evidence that this duty had not been complied of and so found that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

23. In respect of the complaint in terms of Section 13 (1) (f) that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the Tribunal being satisfied that there are sufficient heat and smoke detectors in the Property, the Tribunal found that the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

24. The decision is unanimous.

Repairing Standard Enforcement Order

25. Having determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

K Moore

Signed

Karen Moore, Chairperson

2 November 2021