

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 60

Chamber Ref: FTS/HPC/RP/16/0064

Title Number: LAN 15033

47 Stanmore Crescent, Lanark, ML11 7DF (“The Property”)

The Parties: -

George Stodart, 47 Stanmore Crescent, Lanark, ML11 7DF (“the former Tenant”)

Mr Paul Reilly, 9 Balmoral Crescent, West End, Carstairs ML11 8RX; 20 Clark Terrace, Carnwath ML11 8JB (“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”) relative to the property dated 29 June 2016, determined that the Landlord has complied with the order and that a certificate of completion to that effect should be issued.

The Tribunal comprised: -

Josephine Bonnar, Legal Member

Carol Jones, Ordinary Member

Background

1. By application received on 16 February 2016 the Tenant applied to the Private Rented Housing Panel 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 by the Tenant stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and specified the following issues:- draughts from the front door, lack of hot water, difficulty opening the bathroom door because the floor is swollen, damp in the living room and bedroom, difficulty heating the living room, damage to external plaster work at the base of the property and front door step and no carbon monoxide detector.
3. The Private Rented Housing Panel served a Notice of Referral in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 3 May 2016.
6. The Private Rented Housing Committee inspected the property on the morning of 13 June 2016. Only the Tenant and his partner were present during the inspection. Following the inspection the Committee held a hearing at Lanark Sheriff Court, Hope Street, Lanark. The Tenant was present and gave evidence. The Landlord did not attend the hearing.
7. Following the hearing the Committee proceeded to make a Repairing Standard Enforcement Order (RSEO). In terms of the Order the Landlord was required (1) To instruct a suitably qualified building contractor to inspect the property, investigate the cause of any dampness and condensation in the living room and bedroom and carry out any recommended repairs to eradicate same, (2) To repair the front door so that draughts are effectively excluded from the property, (3) To instruct a registered gas safe engineer to inspect the boiler and living room radiator to establish the cause of any leaks and carry out any repairs required to rectify same, and (4) To obtain and exhibit a current gas safety record in relation to the property. The work was to be completed within 4 weeks of service of the RSEO.
8. The RSEO was served on the parties.
9. On the 15 September 2016 the Ordinary Member of the Committee re-inspected the property. The Member noted that damp meter readings in the bedroom and living room still showed moderate to

high readings along the base of the walls. Mould was evident in the living room. The boiler and living room radiator continued to leak. The Tenant's partner stated that some adjustment to the front door had been made and draughts were not as severe. She also advised that two building contractors had visited the property and suggested different courses of action but neither had returned to carry out any work. The tenant had not been provided with a gas safety record. The Ordinary Member prepared a re-inspection report which was issued to the parties. Neither party submitted comments or representations in response to the report.

10. The Committee re-inspected the property again on 14 November 2016. The Tenant's partner, Ms Donnachie, advised the Committee that a contractor had attended on 11 November 2016 in connection with the dampness/condensation. He advised that extractor fans were needed. A gas engineer attended on 10 November 2016. He had repaired the boiler and living room radiator. The Committee noted that the leaks evident at the previous inspections appeared to have been addressed. The engineer had also altered the boxing around the boiler flue and created two hatches to allow inspection of the flue extensions which are located behind same. The Committee inspected the walls in the living room and bedroom. Low to moderate damp meter readings were obtained. There was no evidence of mould and Ms Donnachie confirmed that there had been no mould since the last inspection. The Tenant was continuing to use dehumidifiers in both rooms. The Committee inspected the front door. Ms Donnachie confirmed that the draughts had largely resolved. She also advised that a gas safety record had not been exhibited but that the engineer had promised to provide one.
11. On 21 November 2016 the Tribunal determined that the Landlord had failed to comply with the RSEO and issued a Rent Relief Order ("RRO") reducing the amount of rent payable by 20%.
12. On 1 December 2016 the PRHP transferred to the First-tier Tribunal for Scotland (Housing and Property Chamber).
13. On 19 April 2023, the Landlord's solicitor notified the Tribunal that the works specified in the RSEO had been completed and requested a re-inspection. They lodged a report from Curol Ltd and said that this established that there was no rising damp in the property. They also advised that a joiner had fitted a draught strip round the door and that a gas safety check had been instructed. A copy of a handwritten invoice from ASAP Joiners was also submitted.
14. The parties were notified that a re-inspection would take place on 5 July 2023. The Tribunal attended on 5 July 2023 at 10am. Access

was provided by the Landlord's representative, Ms Sommerville. The Landlord did not attend. The property was unoccupied and unfurnished and appeared to have been vacated by the former tenant.

The Re-inspection

15. The Tribunal noted the following: -

- (a) Moisture meter readings showed similar moderate readings in all living room and bedroom walls. There was no evidence of black spot mould.
- (b) Evidence of deterioration to the exterior seals of the front door, but new interior seals and brush strip at the base of the door have eliminated all gaps and signs of daylight.
- (c) No evidence of leaks from either the boiler or living room radiator.
- (d) The property did not comply with current regulations and guidance in relation to the provision of smoke and heat detectors.

16. A re-inspection report with photographs was issued to the Landlord. On 6 July 2023, the Landlord's solicitor notified the Tribunal that an electrician will attend and install the required smoke and heat detectors. They also provided a gas safety record dated 4 July 2023 from a Gas Safe registered engineer. On 10 July 2023 the Landlord's solicitor notified the Tribunal that the property has been unoccupied since the former tenant moved out and that the Landlord intends to sell it.

Findings in Fact

- 17. The property is currently unfurnished and unoccupied. The former tenant has vacated the property.
- 18. The bedroom and living room are affected by condensation but not dampness or water ingress.
- 19. The front door is not affected by draughts.
- 20. The boiler at the property is in proper working order. There are no leaks from the boiler or radiator.
- 21. A gas safety record has been provided by the Landlord.

Reasons for decision

- 22.**The Tribunal considered the condition of the property at re-inspection and the information and documents provided by the Landlord.
- 23.**Although there were moderate damp meter readings in both the living room and bedroom at the re-inspection, the Landlord has provided a report from a damp specialist dated 23 September 2022. This report states that an inspection was carried out to check the walls for rising damp. It concludes that the surveyor did not diagnose rising damp but identified a degree of condensation and some external defects. The report makes a number of recommendations to address the condensation including keeping trickle vents open and keeping a consistent temperature throughout the property. The report also makes reference to treating black spot mould at the property. There was no evidence of mould during the re-inspection. The Tribunal is therefore satisfied that the property is not currently affected by damp and that the Landlord has complied with part 1 of the RSEO which required the issue of dampness and condensation to be investigated and remedial action taken, if necessary.
- 24.**Based on the condition of the door on re-inspection, and the evidence of the repair carried out by ASAP joiners, the Tribunal is also satisfied that the door has been repaired and any residual issue with draughts has been addressed.
- 25.**The Tribunal noted at the re-inspection which took place in November 2016, that the leaks from the boiler and radiator had been addressed. The Tenant confirmed that a repair had been successfully carried out. The Landlord has now provided a gas safety record in satisfactory terms. The Tribunal is therefore satisfied that the Landlord has complied with parts 3 and 4 of the RSEO.

Decision

- 26.**The Tribunal determined that the Landlord has complied with the RSEO and that a certificate of compliance should be issued.
- 27.**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

30 July 2023