

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision under section 25(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/21/0747

Property at 35 Hoggan Crescent, Dunfermline, KY11 4PU (“The Property”)

The Parties:-

Mrs Orietta Pili, 35 Hoggan Crescent, Dunfermline, KY11 4PU (“the Tenant”)

Mrs Janine Winski, c/o The Morgan Law Partnership, 33 East Port, Dunfermline, KY12 7JE (“the Landlord”)

Subjects: 35 Hoggan Crescent, Dunfermline, KY11 4PU (“the Property”)

The Tribunal comprised:-

Mrs Ruth O’Hare - Legal Member
Mr Angus Anderson - Ordinary Member

Background

1. Reference is made to the decision of the Tribunal dated 26th August 2021 in terms of which the Tribunal made a Repairing Standard Enforcement Order (“RSEO”) requiring the Landlord to:-
 - (a) Take reasonable steps to investigate the leak in the living room chimney breast and to have said leak repaired;
 - (b) Repair or replace all faulty or leaking windows to ensure they are in a reasonable state of repair and in proper working order; and
 - (c) Repair or replace the living room radiator to ensure it is in a reasonable state of repair and in proper working order.

The Tribunal gave the Landlord a period of eight weeks to complete the works.

The Reinspection

2. A reinspection took place on 23rd February 2022. The weather was windy with showers of rain. The Tenant was present and accompanied by her son Mr Schintu. The Landlord was represented by Mr Russell McPhate, Solicitor.

3. The Tribunal noted from an invoice submitted by the Landlord that rectification works had been carried out to the chimney. Damp readings were taken and showed a moisture content below 20%, whereas there had been an area showing 48% at the previous inspection.
4. The Tribunal noted that an invoice had been submitted by the Landlord for works to the windows. The work appeared to have been renewal of most of the double glazed units; the original frames, casements and mechanisms remained. The operation and airtightness of the windows were assessed. The windows all seemed to seal effectively when closed, in that there was an absence of outside noise and draughts. The lower right catch to the kitchen window remained broken and the window could not be properly tilted. There were loose handles to a number of windows. The rear bedroom window caught slightly when turned open. The Tenant reported that the bathroom window leaked during heavy rain. No water ingress was evident at the time of the re-inspection.
5. The Tribunal noted that the Landlord had submitted an invoice for repairs to the lounge radiator. The air bleed valve had been changed. There were no apparent leaks and the radiator was warm.

The Hearing

6. The hearing took place by teleconference on 28th April 2022. The Tenant was present, accompanied by an interpreter. The Landlord was represented by Mr McPhate.
7. The Tribunal went through the findings of the re-inspection and sought comment from the parties on their respective positions. For the avoidance of doubt the following is not a verbatim account of what was said at the hearing but a summary of those submissions relevant to the Tribunal's determination as to whether the Landlord had failed to comply with the RSEO.
8. With regard to the windows, the Tenant confirmed that attempts had been made to repair the kitchen window however there was a broken piece that the contractor required to substitute and that had not been done. She had been waiting for a month and nothing had happened. The bathroom window had not been repaired, the glass had not been replaced. She was therefore not satisfied that the works required had been done.
9. Mr McPhate advised that contractors did have a look at the kitchen window and had tried to source the broken part but it was obsolete. They had not been able to source an alternative therefore the kitchen window would require to be replaced. A quote had been obtained and the contractor had been instructed to go ahead at the beginning of April however there was a lead in time of 10-12 weeks. Mr McPhate confirmed that the Landlord would push the contractor to do the work as quickly as possible but she was stuck with their timescale. Otherwise the Landlord was of the view that the remainder of the work required in respect of the windows had been done. Mr McPhate pointed out in response to questions from the Tribunal that all of the windows had been inspected and no issues had been found with the bathroom window which is why it was not repaired or replaced.

10. With regard to the radiators neither party had any substantive comments to make. The Tenant enquired whether she could make reference to the other radiators in the property. The Tribunal clarified that the focus was on those items in the RSEO.
11. With regard to the chimney, neither party had any substantive comment to make. The Tenant continued to argue that there were issues with damp and condensation at the property, as evidenced by photographs she had submitted in advance of the hearing. The Tribunal clarified that it had already considered these matters and with the exception of the chimney, had found no evidence of damp during the original inspection of the property therefore it had been unable to make any findings in this regard. Accordingly the only matters the Tribunal could consider at this stage in the process were those outlined in the RSEO.
12. The Tribunal explained that in the event of finding that the Landlord had failed to comply with the RSEO it would have to consider whether to make a rent relief order. The parties were asked to comment on this. The Tenant advised that the rent had already been halved and money was not the problem. She had been living in a house full of mould for a year and a half which was unacceptable. She was simply asking for the property to be repaired satisfactorily. She made reference to water coming in from the ceiling and stated that the roof required to be redone completely.
13. Mr McPhate confirmed that the Tenant had received a 50% reduction in rent whilst the issues were being investigated and that had been ongoing for the best part of a year. The only issue left from the RSEO was the single window catch for the kitchen window which was a minor issue that could be rectified. The Landlord was of the view that the property was fully habitable.

Decision

14. The Tribunal determined to vary the Repairing Standard Enforcement Order dated 26th August 2021 to extend the period for carrying out the works by ten weeks from the date of this decision.

Reasons for Decision

15. In reaching its decision the Tribunal took into account the findings of the reinspection together with submissions from parties at the hearing and the written representations. It is important to clarify that at this stage in the proceedings the Tribunal was unable to revisit the terms of its decision dated 26th August 2021 and therefore restricted to examining those items outlined in the RSEO. The Tribunal appreciated the frustration this may have caused the Tenant however it was pointed out to her that a further application could be made to the Tribunal if she was alleging issues of disrepair which fell out with the scope of the RSEO.
16. The Tribunal noted that the majority of the works required by the RSEO had been completed and the only item outstanding was the repair required to the kitchen window. Whilst the Tribunal had some concerns about the time it had taken for

the Landlord to rectify this, it did consider this to be a minor issue and therefore it ultimately concluded that reasonable efforts by the Landlord had been made to comply with the terms of the RSEO. The Tribunal therefore determined that it would be appropriate to vary to RSEO to allow the Landlord a final opportunity to repair the kitchen window.

17. Having regard to Mr McPhate's statement at the hearing that it would take approximately ten to twelve weeks for the contractor to complete the works, and noting the current supply chain issues in the country, the Tribunal determined that it would vary the RSEO to extend the period for completion of the works by a period of ten weeks. The Landlord should ensure that the Tribunal is notified once the repair has been done, with vouching to support this in the form of an invoice or report from the contractor.

18. The decision of the Tribunal was unanimous.

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.

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.

Signed

Ruth O'Hare
Legal Member

3 May 2022