

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25 of the Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber Ref: FTS/HPC/RT/22/1411

Title no/Sasines Description: STG60123

I Mochray Court, Dennyloanhead, Bonnybridge, FK4 1FE (“the House”)

The Parties:-

Falkirk Council, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”)

Ms Donna Kelly, 26 Bellaville Grove, Chryston, Glasgow, G69 9JT (“the Landlord”)

Tribunal Members:

Mrs N Weir, Legal Member and Mr N Allan, Ordinary Member

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), determined that, with reference to the Repairing Standard Enforcement Order (“RSEO”) dated 16 August 2022, further time should be allowed for the work required in terms of the RSEO to be carried out and that the RSEO should accordingly be varied by extending the time for completion of the work until 22 May 2023.

Background

1. By application received on 13 May 2022, the Third Party Applicant applied on behalf of the Tenant to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House, including issues with smoke alarms, heat and carbon monoxide detection; lack of gas and electrical safety certificates; cracks in the ceiling plaster in the kitchen from a previous leak; issues with the shower and a resultant leak and damage to the living room ceiling below; and issues around the doorway between the hall and garage conversion with cracks in the surrounding plasterwork and gaps around the door and at the skirting. Supporting documentation was submitted with the application, and subsequently. The application indicated that the Tenant wished to be party to the application too.
2. On 27 May 2022, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal and Inspection and Hearing was issued to the parties on 17 June 2022, requesting that any written representations should be lodged with the Tribunal by 8 July 2022. Written representations were lodged by the Tenant including further information on repair issues of which the Tenant had notified the Landlord direct, including a recurring fault with the boiler and issues concerning pigeons accessing the loft area and flies accessing the house through defects around the doorway between the hall and garage conversion. The Landlord did not lodge written representations with the Tribunal but some written communications she had had with the Third Party Applicant prior to submission of the application had been submitted by the Third Party Applicant in connection with the application.
3. The Tribunal Members carried out an Inspection of the House at 10.30am on 1 August 2022. The Tenant was present. A Photographic Schedule taken during the Inspection by the Ordinary Member dated 12 August 2022 was subsequently issued to the parties.
4. The Evidential Hearing took place by telephone conference call at 2pm on 1 August 2022. It was attended by the Tenant, the Landlord and also by Ms Kate Smith, Private Sector Officer of the Third Party Applicant. Following the Hearing, the Tribunal was satisfied that parts of the Repairing Standard were not currently met in respect of the House, namely Sections 13(1)(a), (b), (c) and (d), given the condition of the roof, the ensuite shower and surrounds, the living room and kitchen ceilings, the doorway and surrounds between the hall and garage conversion, the boiler/thermostat and the lack of a current EICR. The Tribunal accordingly issued an RSEO in respect of the outstanding matters dated 16 August 2022. Given the nature of the required works, the Tribunal was of the view that a period of 6 weeks was an adequate and reasonable timescale for these works to be completed.

5. Following expiry of the 6 week period, The Tribunal attempted to carry out a Re-inspection of the House on 9 January 2023. Neither the Tenant nor the Landlord were in attendance to provide access to the House which the Tribunal noted was now empty and unoccupied.
6. The Tribunal had no forwarding address for the Tenant but wrote to the Third Party Applicant and Landlord, requesting an update on the circumstances. No response was received from the Landlord but the Third Party Applicant confirmed that they had not heard anything from the Tenant and that their Council Tax records showed that the Landlord had taken back responsibility for the House in October 2022.
7. On 17 February 2023, the Tribunal, having considered the matter, deemed the Tenant to have withdrawn her application to the Tribunal, her tenancy having ended. However, the Tribunal considered that the application had included some issues which involved a health and safety risk for any future tenants of the House. Accordingly, the Tribunal decided to continue considering the application and issued a Minute of Continuation to that effect.
8. A further Re-inspection was subsequently scheduled to take place on 27 March 2023 at 10am, with a Hearing to take place at 2pm by telephone conference call, and the Landlord was advised in writing that, in the event that access was not granted that day, the Tribunal may apply for a Warrant for Entry.
9. On the afternoon of Friday 24 March 2023, the Landlord emailed the Tribunal to advise that access would not be granted for re-inspection on Monday 27 April 2023 as she was putting the House on the market that day and a photographer from her estate agents was attending the House on the Monday morning to take photographs. The Tribunal noted that the Landlord had not specifically requested a postponement and the Landlord was informed that the Tribunal intended to proceed with the Re-inspection and Hearing on 27 March 2023.
10. The Tribunal attended at the House on 27 March 2023 at 10am but were not able to Re-inspect as the Landlord was not in attendance to grant access and, although the Landlord's estate agent was at the House for another purpose, the agent was unable to get hold of the Landlord by telephone to get her consent to the agent permitting the Tribunal access. It was noted by the Tribunal that the House was still empty and unoccupied and that the estate agent confirmed that photographs were being taken with a view to the House being placed on the market imminently for sale.
11. A Hearing later took place by telephone conference call at 2pm on 27 March 2023. It was attended by the Landlord and Ms Kate McFarlane (formerly Ms Kate Smith) of the Third Party Applicant. The Legal Member summarised the position with regard to the RSEO which is still in place over the House and the two attempted Re-Inspections of the House by

the Tribunal for the purpose of ascertaining if the RSEO had been complied with or not. The Landlord apologised that she had not been contactable this morning as she had been at work. She explained that the Tenant had left last year without letting her know and had left some additional damage at the House. She has arranged to have some of the repairs required by the RSEO carried out since she got the property back but has now involved estate agents to just sell the House in the condition it is. As regards the issues listed in the RSEO, the Landlord confirmed that she has had a Gas Safety check done; that the works to the shower and wall in the ensuite bathroom have been done, the leak fixed and the damage to the living room ceiling below which had been caused by the leak have been rectified; that the damage to the kitchen ceiling from the previous leak has been fixed; and that some repairs have been carried out at the hall/garage conversion doorway, although there are some new skirting still to be attached. The Landlord advised that she had someone look in the loft but nothing was found to need rectified and that she has not yet had an electrical safety check carried out but will arrange for this to be done soon. The Landlord stated that she would be able to email in the Gas Safety Certificate to the Tribunal but not any invoices or receipts in respect of the repairs carried out as she did not employ a contractor, but rather, had assistance from her nephew. She did confirm that she would, however, be able to take some photographs showing some of the repair works done and undertook to submit these items to the Tribunal shortly. Having had the Tribunal's procedures regarding RSEOs and non-compliance with same explained to her by the Legal Member, the Landlord requested an extension of around 4 weeks to allow her to have the outstanding matters in the RSEO attended to. Ms McFarlane for the Third Party Applicant confirmed that their Council Tax records indicated that the Tenant had moved out during October 2022 when the Landlord had taken back responsibility for the Council Tax. As a Tenant is no longer living in the House, Ms McFarlane confirmed that she was quite happy with the proposal of an extension of the time limit for compliance with the RSEO.

Decision

9. The Tribunal determined that, in the circumstances, further time should be allowed for the work required in terms of the RSEO to be carried out and that the RSEO should accordingly be varied by extending the time for completion of the work for a further 8 weeks, until 22 May 2023.

10. The decision of the Tribunal was unanimous.

Reasons for decision

1. The Tribunal considered the issues of disrepair identified in the RSEO and the extent to which the Landlord states the RSEO has been complied with. Although some months have passed since the original date for compliance and the Landlord has not facilitated the Tribunal's

Re-Inspection of the House, the Tribunal was encouraged by the fact that the Landlord had attended the Hearing to explain her position, that the House has remained unoccupied since the Tenant vacated in October 2022 and that steps are underway by the Landlord to place the House on the market for sale imminently. The Tribunal was satisfied, in the circumstances, that it is unlikely that the House will be let out again by the Landlord. The Tribunal therefore considered it reasonable to extend the time for compliance with the RSEO until 22 May 2023 to allow remaining repairs to be completed and the sale of the House to be progressed. Although the Landlord only requested an extension of 4 weeks, the Tribunal was of the view that 8 weeks was a more realistic period to allow matters to be progressed.

2. Accordingly, in terms of Section 25 of the Act, the Tribunal decided to vary the RSEO in that respect and proceeded to issue a Variation.

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.

Signed..... Date: 29 March 2023
N Weir, Legal Member of the Tribunal