

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 25

Chamber Ref: FTS/HPC/RP/20/0875

253 Corkerhill Road, Glasgow, G52 1QR (“the Property”)

The Parties:-

Ms Kirsty Ann Stevenson (“the Tenant”) and (“the Applicant”)

Mrs Kiranjit Nijjar (“the Landlord”) and (“the Respondent”)

Tribunal Members:

Mr Martin McAllister, solicitor, Legal Member, and Mrs Sara Hesp, chartered surveyor, Ordinary Member (“the tribunal”)

Background

1. By application dated 11th March 2020, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (“the 2006 Act”). The application is in terms of Section 22 of the 2006 Act.
2. The application states that the Property does not meet the repairing standard set out Section 13 (1) (a), (c) and (g) of the 2006 Act in the following respects: The house is not reasonably fit for human habitation, the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, the Property has not got satisfactory provision for detecting fires and for giving warning if carbon monoxide is present in a concentration that is hazardous to health and that the house does not meet the tolerable standard.

3. The application gave detail on why the applicant considered that the Property did not meet the repairing standard:
 - 3.1 Kitchen ceiling requiring repair.
 - 3.2 Water ingress at the kitchen ceiling.
 - 3.3 The central heating boiler and heating system is not working effectively.
 - 3.4 Suspected burst pipe under the floorboards.
 - 3.5 No carbon monoxide detector.
 - 3.6 Unsuitable foam ceiling tiles.

4. On 8th February 2021, a legal member of the Tribunal, acting under delegated powers, referred the application to a tribunal for determination. Parties were notified of this. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.

5. Progress to determine the application was delayed as a consequence of the coronavirus pandemic.

6. An inspection of the Property was carried out on 6th August 2021 and a Hearing was held on 23rd August 2021. The Tribunal determined to make a repairing standard enforcement order (RSEO).

7. The tenancy has been terminated.

RSEO

8. The RSEO is in the following terms:
 - 8.1 The Landlord is required to produce a report from a suitably qualified Gas Safe Registered engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property and an appropriate supply of hot water.
(Section 13 (1) (c) of the 2006 Act)**

 - 8.2 The Landlord is required to produce a certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe.
(Section 13 (1) (c) of the Act).**

 - 8.3 The Landlord is required to make effective repairs to the kitchen ceiling.
(Section 13 (1) (a) of the 2006 Act).**

 - 8.4 The Landlord is required to remove any polystyrene ceiling tiles from the Property.
(Section 13 (1) (a) of the 2006 Act).**

**8.5 The Landlord is required to investigate the cause of water ingress to the kitchen and carry out any remedial work required.
(Section 13 (1) (a) of the 2006 Act).**

**8.6 The Landlord is required to ensure that the Property meets current standards for detecting fires and for giving warning in the event of fire or suspected fire.
(Section 13 (1) (f) of the 2006 Act).**

**8.7 The Landlord is required to ensure that the Property meets current standards for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
(Section 13 (1) (g) of the 2006 Act).**

The RSEO stated that the Landlord requires to comply with it by 30th November 2021.

The Re- Inspection

9 Mrs Hesp, chartered surveyor, ordinary member inspected the Property on 17th December 2021 and was accompanied by Mr McAllister, legal member. A copy of the inspection summary and schedule of photographs is attached to this Decision. The Respondent was present at the inspection.

10 Subsequent to the inspection, the Respondent submitted an invoice from AA Heating and Plumbing Services which *inter alia* stated "Heating and Hot Water Tested All OK."

The Hearing

11. A Hearing was held by video conference on 27th April 2022. The Respondent was not present and was represented by Mr Jwad Hanif, Solicitor.

12. The tribunal indicated that, following upon the inspection and the submission of the document from AA Heating and Plumbing Services, it was satisfied that there had been partial compliance with the RSEO. Mr Hanif said that his client had encountered some difficulties in getting contractors to do work and also in accessing materials.

13. The Tribunal indicated that there are were three matters where it considered that compliance had not been achieved: Items 8.3, 8.5 and 8.6 of the RSEO.

14. In relation to the kitchen ceiling, Mr Hanif said that this is still to be plastered.

15. Mr Hanif said that the source of the leak had been determined and a new pipe fitted in the bathroom. He said that the bath panel was in the position as shown in photograph number 7 of the re-inspection report to allow easy access to determine that the repair had been effective. He said that the panel has now been replaced and that the bathroom had been re-tiled.

16. Mr Hanif said that the smoke detector in the kitchen would be replaced by a heat detector.

17. Mr Hanif said that, because of the difficulties his client was finding in getting work done, it was difficult to estimate how long it would take before the RSEO was fully complied with. He said that he was confident that the works would be completed by the end of July 2022.

Decision

18. The tribunal noted that the RSEO had not been complied with at the date of inspection. It accepted that a considerable amount of work had been done and that the RSEO had been partially complied with.

19. The tribunal had regard to Section 25 of the Act:

Variation and revocation of repairing standard enforcement orders

(1) Where the First-tier Tribunal has made a repairing standard enforcement order, it may, at any time—

(a) vary the order in such manner as it considers reasonable, or

(b) where it considers that the work required by the order is no longer necessary, revoke it.

(2) Where subsection (3) applies, the First-tier Tribunal must vary the repairing standard enforcement order in question—

(a) so as to extend, or further extend, the period within which the work required by the order must be completed, and

(b) in such other manner as it thinks fit.

(3) This subsection applies where—

(a) the First-tier Tribunal considers, on the submission of the landlord or otherwise, that the work required by a repairing standard enforcement order has not been, or will not be, completed during the period within which the order requires the work to be completed, and

(b) the First-tier Tribunal —

(i) considers that satisfactory progress has been made in carrying out the work required, or

(ii) has received a written undertaking from the landlord stating that the work required will be completed by a later date which the First-tier Tribunal consider satisfactory.

20. The tribunal accepted that satisfactory progress has been made in carrying out the work required and that it would be appropriate to vary the RSEO in terms of

Section 25(2) (a) of the Act. It determined that the time for compliance of the RSEO be varied to be 31st July 2022. Mr Hanif was advised that he could submit evidence such as photographs and invoices to vouch that the RSEO had been complied with.

21. The tribunal adjourned proceedings to 8th August 2022 when a Hearing will be conducted by audio conference at 10 am. Mr Hanif was advised of the date prior to conclusion of the Hearing on 27th April 2022.

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.

M J McAllister

Martin J. McAllister,
Solicitor, legal member of the First-Tier Tribunal for Scotland
Tribunal.
8th May 2022