

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION OF THE HOUSING AND PROPERTY CHAMBER OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND UNDER SECTION 60(5) OF THE HOUSING (SCOTLAND) ACT 2006

Chamber Ref: PRHP/RP/15/0196

Title No: LAN52204

19 Craigneuk Street, Wishaw ML2 7DX
("the Property")

The Parties:-

MR KRZYSZTOF SIUTKOWSKI, residing at 19 Craigneuk Street, Wishaw
ML2 7DX
("the Tenant")

JOHN ALEXANDER STRANGE and PAUL McHUGH, as partners of and
trustees of the firm of S & M PROPERTIES, Strathclyde Business Centre,
120 Carstairs Street, Glasgow G40 4JD
("the Landlords")

Tribunal Members

Richard Mill (Legal Member)
Mike Links (Ordinary Member)

Background

The former Private Rented Housing Committee determined on 3 November 2015 that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act ("the Act"). A Repairing Standard Enforcement Order ("the RSEO") dated 3 November 2015 specified the following obligation upon the Landlords:-

1. To instruct a suitably qualified roofing contractor to inspect the whole roof above the property, both the front and rear elevations, and report on the necessary works required to eradicate any water ingress and to make the property wind and watertight. The works recommended for repair or replacement must thereafter be implemented by the Landlords.

2. The cold storage water tank in the attic of the property requires to be covered. The tank and water system supplied by it requires to be flushed to eradicate any bacteria.
3. To instruct a suitably qualified contractor to inspect and report upon the condition of the rear windows of the property. The Landlords require to implement the terms of such report to include repair and/or replacement as necessary and to include re-pointing and re-painting.
4. A full report on the condition of the boiler requires to be produced by a suitably qualified Gas Engineer for the committee's inspection. Such report is to specifically address the water pressure of the gas central heating system and to ensure that all steps have been taken to ensure that the water pressure is maintained and that it does not require to be frequently topped up. Additionally, the report to be produced should also advise upon the remote room thermostat and, if necessary, steps must be taken to ensure that this is working adequately.
5. A suitably qualified engineer requires to inspect and report upon the condition of the extractor fan in the bathroom and connecting venting duct, and advise upon any steps which must be taken to ensure that it is working efficiently and that it is capable of removing excess moisture. The Landlords must implement any repairs and/or replacement recommended.
6. A current Gas Safety Certificate must be produced for the committee's inspection.
7. An Electrical Installation Condition Report (EICR) must be produced for the committee's inspection.

The Private Rented Housing Committee requires that the works specified in this Order must be carried out and completed within 8 weeks from the date of service of this Notice.”

A first re-inspection of the property was conducted by the Ordinary member on 14 January 2016. This disclosed that some of the works required in terms of the Repairing Standard Enforcement Order had been carried out. However, the majority of the works had not. A written re-inspection report was issued to parties on 14 January 2016. No comments were received. The Tribunal proceeded to determine that the Landlords had failed to comply with the RSEO and directed that notice of the failure be served on the Local Authority for which the property is situated. A Rent Relief Order was also made.

Due to the lack of action on the part of the Landlords matters remained in abeyance for some consideration time until the autumn of 2019 when written submissions were received from the Landlords to the effect that the works required in terms of the RSEO had now been completed. At that stage, no documentation or vouching was produced in support of these submissions. In the circumstances the Tribunal issued a direction requiring the Landlords to produce a full written submission detailing all of the Reports obtained, works instructed and repairs undertaken with full documentary evidence, including receipts where relevant to evidence the seven items required to be remedied in terms of the Repairing Standard Enforcement Order. This must include, for the avoidance of doubt, the production of a current valid Gas Safety Certificate and Electrical Installation Condition Report as required by items 6 and 7 of the Repairing Standard Enforcement Order.

An email was received on 6 November 2019 in response to the Direction producing an EICR dated 3 June 2019, a Gas Safety Record dated 17 June 2019 and an invoice from Aaron Roofing Services Ltd dated 23 November 2017 referring to roofing works totalling £14,380 in respect of which the Landlord's one-quarter share was £3,595. On receipt of this documentation a further re-inspection was arranged.

A further re-inspection of the Property was carried out by the Ordinary member on 5 December 2019. Reference is made to the attached re-inspection report prepared dated 6 December 2019 by the Ordinary member which incorporates a Schedule of Photographs. Surprisingly it was found that the issues contained both items 4 and 5 of the RSEO had not been remedied.

Additionally, though not raised within the original application by the Tenant in 2015, it was identified that the Property did not comply with the current statutory requirements to have wired heat and smoke detectors.

Following numerous exchanges of correspondence with both parties the Tribunal ultimately identified from both of the parties that all items had been completed. The Tenant confirmed this clearly and produced a relevant photograph to satisfy the Tribunal as regards item 5. The Tribunal ensured that a fully up to date Gas Safety Certificate was in force which also certified that suitable detection for carbon monoxide was installed within the Property. Both parties also acknowledged that the heat and smoke alarms had been installed and the Landlords produced documentary evidence showing their installation on 17 June 2020.

Reasons

The Tribunal determined to issue a Certificate of Completion in terms of Section 60 of the Housing (Scotland) Act 2006 to the effect of discharging the RSEO. The Tribunal had regard to the condition of the Property at the time of the re-inspection on 5 December 2019 and the additional documentary evidence and submissions from both parties received thereafter. No element of the RSEO remains outstanding. Both parties agree and thus the RSEO should be discharged. Due to the fact that the condition of the Property has

now been made good and meets the Repairing Standard the corresponding Rent Relief Order made under section 27 of the Act is also now extinguished by virtue of the Completion Certificate being issued.

Right of Appeal

A Landlord, a Tenant or Third Party Applicant aggrieved by the decision of the Tribunal may seek permission to appeal to the Upper Tribunal 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.

Effect of Section 63

Where such an appeal is made the effect of the decision and the Order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal.

Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order will be treated as having effect from the day on which the appeal is abandoned or so determined.

R Mill

_____ Richard Mill, Legal Member
C Yule

_____ Witness

CHRISTOPHER YULE Name

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15 July 2020