

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(1)

Chamber Reference: FTS/HPC/RT/19/2579

345 Glasgow Road, Longcroft, FK4 1QR (“the property”)

The Parties:

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

Stuart Buchanan, 8 Hillhead Avenue, Banknock, Falkirk, FK4 1JN (“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 Repairing Standard Enforcement Order (“RSEO”) relative to the property dated 14 November 2019 should be varied in terms of Section 25(1) of the Act, determined that the RSEO should be varied by extending the time for completion of the work until 30 March 2022.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Ms Carol Jones, Ordinary Member

Background

1. The Third Party applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) 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”). The

Application stated that the Third Party considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. Specifically, the Third Party stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, (iii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and also states that (v) The house does not meet the tolerable standard. The Third Party complained of;- (1) Living room – no smoke detector, front door not watertight and lock broken, (2) Kitchen – no heat detector, pilot light on gas cooker faulty, (3) Hall – door is ill fitting and not watertight and the internal frame is loose, (4) Bathroom – leak at shower fittings causing water damage to wall in hall, flooring under bathroom tiles and under hall carpet (5) Downstairs bedroom – broken wall light fitting, patio door cannot lock and no key provided, (6) Upstairs bedroom – leak from roof allowing water ingress (7) Exterior rear – loose and missing slates at chimney, rendering on chimney damaged, leaking guttering, (8) Exterior front – gate missing, missing/loose roof tiles, gap in window sill, foliage in gutter. The application also stated that no EICR had been provided. The application further stated that the Tenant wished to be treated as a party to the application.

4. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act on 12 September 2019. The parties were notified that an inspection would take place on 1 November 2019 at 11.30am and that a hearing would take place on 1 November 2019 at 2pm at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. On 20 September 2019 the Third Party notified the Tribunal that the former tenant had vacated the property and confirmed that it wished to continue with the application.
5. The Tribunal inspected the property on 1 November 2019 at 11.30 am. The Landlord was present together with his partner, Amanda Newton. Mr Craig Beatt attended on behalf of the Third Party. Thereafter the Tribunal held a hearing at STEP Stirling, Enterprise Park, Stirling. Mr Buchanan, Ms Newton and Mr Beatt attended. Following the inspection and hearing the Tribunal proceeded to issue the RSEO. This required the Landlord to carry out certain specified work to the property within 8 months of the order being issued to the parties.

6. On 2 July 2020, the Landlord notified the Tribunal that he had been unable to complete the work due to the impact of COVID 19 and his own health issues. He requested additional time. The Tribunal requested further information from him to consider the request, but no response was received.
7. Under normal circumstances, the Tribunal would have arranged for the Ordinary Member to carry out a re-inspection of the property to assist in the decision by the Tribunal on compliance by the Landlord with the RSEO. Unfortunately, this was delayed due to the COVID 19 pandemic. A case management discussion (“CMD”) was arranged to discuss further procedure in the case. Prior to the CMD the Landlord lodged written submissions which stated that the work had not been carried out for several reasons.
8. The case was called for a CMD by telephone conference call on 21 January 2021. The Landlord participated. The Third Party was represented by Mr Beatt.

The CMD

9. During the CMD, Mr Buchanan told the Tribunal that the only work carried out so far at the property had been the stripping out of the bathroom and the fitted wardrobes in the adjoining hall. He had been unable to do anything else for the reasons stated in the written submission. Mr Buchanan advised the Tribunal that he was self-employed but was due to become an employee of the company he was working for. Once this happened, he would be able to apply for a mortgage or loan to do the work. He intended to do most of it himself but would instruct a contractor for the roof and chimney. He advised that he needed at least a further 6 months to do the work and confirmed that 9 months would be better. He also confirmed that it is his intention to move into the property when the work is completed, rather than letting it out. He stated that the property is currently unoccupied. Mr Beatt advised the Tribunal that he had no objection to a variation of the RSEO to allow a further 9 months for completion of the work.
10. Following the CMD the tribunal granted a variation of the RSEO and extended the time for completion of the work until 21 October 2021.
11. The Tribunal re-inspected the property on 3 December 2021. Access was provided by Mr Buchanan. The Third Party did not attend. The Tribunal noted that the property is in the process of being re-furbished. Materials for a new kitchen are currently being stored there. The property is largely unfurnished and Mr Buchanan advised that he only stays there from time to time. The Tribunal noted that parts 1 to 4, 6 to 9 and 12 of the RSEO appear to have

been completed. A new door has not been installed, although a new pvc panel has been installed into the existing door with a new letterbox. The door can be opened but significant force is required to close and lock it. The Tribunal noted that battery operated smoke and heat detectors have been installed. These are not hard wired or interlinked. No minor works certificate or up to date EICR has been provided. A re-inspection report was issued to the parties.

12. On 24 December 2021, Mr Buchanan sent an email to the Tribunal saying that interlinked smoke and heat detectors had now been installed. A door contractor had been arranged for mid-January 2022 and a new EICR would be obtained in the New Year. On 19 January 2022, Mr Buchanan advised that the front door had been adjusted but that he had been unable to arrange for an electrician to attend due to COVID 19 and the fact that he has been working away from home. He requested a further extension of time. No representations were received from the Third Party.

Reasons for decision

11. The Tribunal considered the condition of the property at re-inspection and the further information provided by Mr Buchanan.

12. The Tribunal notes that most of the work specified in the RSEO has now been completed. The Landlord has also confirmed that further work has been carried out since the re-inspection. The property is not currently occupied by a tenant and is occupied by the Landlord on a part time basis. In the circumstances, the Tribunal is satisfied that a further extension of time should be allowed for the remainder of the work to be completed.

13. In the circumstances, the Tribunal determines that the RSEO should be varied by extending the time for completion of the work until 30 March 2022.

Decision

14. The Tribunal determined that the RSEO should be varied by extending the time for completion of the work until 30 March 2022

15. 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.

Josephine Bonnar

23 January 2022

Josephine Bonnar, Legal Member