

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Section 25(1) Housing (Scotland) Act 2006 (“ the Act”)

Chamber reference number: FTS/HPC/RP/19/2609

Title Number: PTH32191

52C High Street Dunblane, FK15 0AY (“the property”)

The Parties:

Lisa Clare Thornton (“the former Tenant”)

Iain Wilkinson, 10 Baker Street, Stirling FK8 1BJ; Belvoir Stirling, 79 Barnton Street, Stirling, FK8 1HJ (“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 27 November 2020 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 7 July 2020

The Tribunal comprised: -

Josephine Bonnar, Legal Member

Nick Allan, Ordinary Member

Background

1. By application received on 21 August 2019 the former Tenant 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”).
2. The Application stated that the former Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. Specifically, the application 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 and (ii) The house meets the tolerable standard. The former Tenant complained of damage to roof leading to water ingress and mould in the property.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 25 September 2019. The parties were notified that an inspection would take place on 8 November 2019 at 10am and that a hearing would take place on 8 November 2019 at 11.30am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.
4. On 5 November 2019, the Landlord’s agent lodged a report from Richardson and Starling dated 5 November 2019. No documents or representations were lodged by the former Tenant.
5. The Tribunal inspected the property on 8 November 2019 at 10am. Mr and Mrs Curran of Belvoir Sales and Lettings attended on behalf of the Landlord. On arrival Mr Curran advised the Tribunal that the former Tenant had vacated the property on 18 October 2019, which was now unoccupied. Access was provided by Mr Curran. Thereafter the Tribunal held a hearing at STEP Stirling, Enterprise Park, Stirling. Mr and Mrs Curran attended. There was no attendance by the former Tenant or on her behalf.
6. Following the inspection and hearing the Tribunal issued a Repairing Standard Enforcement Order (“RSEO”). In terms of the RSEO the Landlord is required :- (i) To instruct a suitably qualified roofing contractor to investigate the cause of water ingress and dampness within the property, and (ii) To carry out all necessary and recommended remedial work to the roof and gutters to prevent any further water ingress and dampness. The Tribunal ordered that the work be completed within three months of intimation of the order.

7. A re-inspection of the property by the Ordinary Member of the Tribunal was arranged for 11 March 2020. On 20 February 2020, the Landlord sent an email to the Tribunal requesting a variation of the RSEO. He advised that he was seeking further time to complete the work. In the email the Landlord advised that he had experienced some difficulty in securing agreement from neighbouring owners to obtain estimates and instruct the work. He explained that there are 12 properties involved. Agreement has now been reached and estimates are awaited. Bad weather over the winter has contributed to the delay. He concluded by confirming that the property will not be re-let in the meantime. On 3 March 2020, the Landlord submitted further representations to the Tribunal. He advised that the proprietor of an adjoining tenement at Number 60 Main Street has historically been reluctant to agree to repairs being carried out but following intervention by the local authority agreement has been reached with this proprietor regarding the work.
8. On 7 March 2020, the Tribunal issued a Variation of the RSEO by extending the time for completion of the work until 15 May 2020.
9. On 20 April 2020 and 29 April 2020, the Landlord notified the Tribunal that he would not be able to complete the work specified in the RSEO by the date stipulated in the Variation of the RSEO. He explained that the lockdown imposed by the Government due to Coronavirus had made it impossible to get the necessary contractors to provide estimates or agree to carry out the work. He confirmed that the property remains unoccupied and that he intended to sell it, rather than re-let it, once the work was done. He asked for an “indefinite” extension of time

Reason for decision

10. The Tribunal considered the request for a variation of the RSEO.
11. The Tribunal notes that RSEO requires the Landlord to investigate dampness and water ingress at the property and thereafter to carry out extensive roof repairs. The Tribunal also notes that the Landlord has indicated that properties adjacent to the property are also affected and that the owners of these properties are also involved in the repairs which are to be instructed. The Tribunal accepts the Landlord’s submission that the lockdown imposed by the Government will have made it more difficult for the work to be carried out, with many contractors not working for the duration of the

lockdown. The Tribunal also notes that the Landlord has confirmed that the property remains unoccupied.

12. The Tribunal is satisfied that the Landlord is endeavouring to make progress regarding the work and concludes that further time should be given to complete same. The Tribunal is not satisfied that an unlimited period should be granted, as the Government restrictions will be lifted in due course. The Tribunal determined that an extension of time to the 7 July 2020 should be granted.

Decision

13. The Tribunal determined that further time should be allowed for the work to be completed and that the RSEO should be varied by extending the time for completion of the work until 7 July 2020.

14. 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.

J Bonnar

Signed..... 10 May 2020

Josephine Bonnar, Legal Member