

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

Chamber Ref: PRHP/IV16/198/11

Property at Flat 3 Forbes Buildings, Great North Road, Muir of Ord (“the Property”)

The Parties:-

MR DENNIS LAUGHTON, formerly residing at Flat 3, Forbes Buildings, Great North Road, Muir of Ord (“the Tenant”)

MR MARTIN FORBES, residing at 49 Drumsittal Road, North Kessock, Ross-shire, IV1 3JU (“the former Landlord”)

MR ANGUS MACLEAN, residing at Bareven, Muir of Ord, (“the Current 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 Current Landlord has complied with the Repairing Standard Enforcement Order (“RSEO”) in relation to the Property concerned and taking account of the recent re-inspections of the Property, determined that the Current Landlord had now complied with the terms of the RSEO and resolved to issue a Certificate of Completion in respect of the works required by the RSEO. The Tribunal also resolved to issue a revocation of the Rent Relief Order (“RRO”) in place over the Property.

Background

- 1. This matter was originally heard before a Committee of The Private Rented Housing Panel (“the Committee”) in 2012. On 1 December 2016 the power and functions of The Private Rented Housing Panel were transferred to The First Tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”). Accordingly the Tribunal has the necessary jurisdiction to continue with and determine this matter.**
- 2. By way of a Decision dated 28 March 2012, the Committee had issued a determination that the Former Landlord had failed to comply with the**

duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").

3. The Committee had placed an RSEO on the Property, also dated 12 March 2012. The RSEO required the Former Landlord:-

(a) to carry out such works of repair or replacement as are necessary to allow all the windows within the Property to be capable of being opened and closed properly and also properly wind and watertight.

(b) to carry out an overhaul of the downpipes, rhones and gutters within the larger building of which the Property formed part to ensure that these are in proper working order.

(c) to provide a clear Periodic Inspection Certificate by a suitably qualified electrician confirming that the electrical system within the Property is safe.

(d) to carry out such works of repair or replacement as are necessary to ensure the hot water system within the Property is in proper working order

(e) to install a mains hardwired interlinked smoke alarm detection system within the Property to the appropriate current regulations.

The RSEO had required the Former Landlord to carry out the works within a period of ten weeks from the date of service of the original RSEO.

In due course a further inspection of the Property was carried out on 29 June 2012 by Mr A Anderson, the Surveyor Member of the Committee. The Former Landlord was neither present nor represented. It was readily apparent that no works at all had been carried out since the original inspection and issuing of the RSEO to the Former Landlord..

The Committee had then, in light of the terms of Section 26 (1) of the Act, determined that an RRO should be imposed on the Property. The Committee also reported the matter to the Police for consideration for prosecution as a result of the failure of the Former Landlord in terms of Section 28 (1) of the Act.

Thereafter the Committee's powers had been exhausted and matters simply fell into abeyance. In 2018, as part of a routine check of properties with outstanding RSEOs, the Tribunal noted that the Current Landlord had acquired the Property. Contact was made with the Current Landlord who stated that he had been unaware of the RSEO in place over the Property but that he had carried out improvement works in any event. Accordingly, the Tribunal arranged for a reinspection to take place. Mr Angus Anderson again attended at the Property on 6 April 2018. Unfortunately access was unable to be obtained to the Property. However the Surveyor Member was also there to reinspect Flat 1 which was the subject of a separate RSEO.

The Surveyor Member was able to see from an external inspection of the larger block in which the Property was located that improvements had been made to the gutters and drains and that the windows at the Property had also been replaced. It was also evident from the inspection of Flat 1 that significant refurbishment had taken place. The Landlord had acquired the whole block at the same time and confirmed he had carried out works to all the flats in the block that he had acquired at the same time. Subsequent to the inspection the Landlord forwarded copies of the EPC and EICR for the Property, all of which were in order.

A further reinspection was arranged for both Flats 1 and 3 on 26 April 2018. Again unfortunately the tenant at Flat 3 was unable to provide access. One minor defect that had been noted in the downpipes and gutters at the first inspection had now been rectified. The Landlord was also able to provide pictures of the internal aspects of the flat. Again it was clear from the photographs that significant internal upgrading had been carried out and it was possible to identify the installation of a hardwired interlinked smoke system from the photographs.

The Tribunal members (comprising Mr E K Miller, Chairman and Legal Member, Mr A Anderson, Surveyor Member and Mrs L Robertson, Ordinary Member) considered matters. Whilst it would have been preferable for an internal inspection to have taken place the Tribunal was satisfied that it was now appropriate to allow the RSEO to be revoked. It was clear from an external inspection that all of the windows within the Property had been replaced and were of a modern construction. The external inspection also confirmed that the downpipes, rhones and gutters were in proper working order. An electrical installation condition report had been provided. The EPC showed that a modern heating system had been installed. The internal photographs provided by the Landlord showed that a hardwired smoke alarm system had been installed. The Tribunal had the benefit of knowing that the Landlord had carried out a similar refurbishment in relation to the other flats within the block and, considering matters in the round, had no reason to doubt that Flat 3 was now compliant with the repairing standard.

The decision of the RSEO was therefore to lift the RSEO and grant a Certificate of Completion discharging the RSEO and also to revoke the RRO.

4. The decision of the tribunal was unanimous.

Right of Appeal

5. 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.

Effect of section 63

6. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and 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.

E Miller

Signed

Date

21/9/18

Chairperson