

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 25 of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Chamber Ref: FTS/HPC/RP/3599

Re: Property at 98, Main Street, East Kilbride, G74 4JY registered in the Registers of Scotland under Title Number LAN189570 (“the Property”)

The Parties:

Ms. Yvonne Paterson residing at the Property (“the Tenant”)

And

Mr. Peter More residing at Bayview Hotel, 21/22, Mount Stuart Road, Rothesay, PA20 9EB (“the Landlord”)

Tribunal Members:

K Moore (Chairman) and L Charles (Ordinary Member)

Decision

This Decision should be read in conjunction with Decision and Repairing Standard Enforcement Order (RSEO) both dated 10 February 2023

The Tribunal determined to vary the RSEO in terms of Section 25 (1) of the Act and that for the reasons set out below.

Background

1. By application received on 3 October 2022 (“the Application”), the Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), 13(d) 13 (e) and 13(1) (h) of the Act. The Application comprised a copy of the tenancy agreement between the Tenant and the previous owner of

the Property and copy correspondence from the Tenant to the Landlord and his solicitors Agents regarding repairs to the Property.

2. Following an Inspection of the Property and a Hearing, the Tribunal imposed the RSEO:

*“The Landlord must on or before **31 March 2023** carry out all of the following:-*

1. *Obtain a report from a suitably qualified roofing contractor confirming the condition of the roof tiles (“the Roof Report”) and submit the Roof Report to the Tribunal and the Tenant. The Roof Report should include details of the remedial action necessary to bring the roof covering into a reasonable state of repair, proper working order and wind and watertight condition. Thereafter, the Landlord must ensure that all works recommended in the Roof Report are completed and finished in accordance with the specifications as proposed in the Roof Report;*
2. *Obtain a detailed report from a suitably qualified pest control contractor in respect of vermin infestation and bird nesting at the Property, specifically within the kitchen and in the ornamental gutter boxes at the front of the Property (“the Pest Control Report”) and submit the Pest Control Report to the Tribunal and the Tenant. The Pest Control Report should include details of the remedial action necessary to address all issues with vermin, nesting birds and other pests in the Property. Thereafter, the Landlord must ensure that all works recommended in the Pest Control Report are completed and finished in accordance with the specifications as proposed in the Pest Control Report;*
3. *Instruct a suitably qualified stonemason to repair (i) the boundary walls at either side of the stone steps which form the entrance to the Property and (ii) the boundary walls which surround the side and front garden at the Property to ensure that the boundary walls are in good order, that the coping stones are properly fixed and to address any damage caused by the movement in the stonework;*
4. *Repair or replace the skirting throughout the Property to ensure that there are no gaps and that the walls at the skirting are draught-free and are wind and water-tight;*
5. *Repair or replace the kickplates in the kitchen to ensure that there are no gaps and that the kickplate area is draught-free and wind and water-tight;*
6. *Repair or replace the flooring in the kitchen to ensure that is not a trip hazard and, in doing so, ensure that the underfloor is secure;*
7. *Repair or replace the hall carpet to ensure that it is not a trip hazard;*
8. *Repair or replace the doors of both fitted wardrobes to ensure that they are fully functional and in good working order;*
9. *Repair or replace the en-suite door lock to ensure that it is fully functional and in good working order;*
10. *Repair or replace the shower tray to ensure that it is fully functional and in good working order;*

11. *Redecorate as necessary following completion of all repairs and works required to comply with this Order.*”

3. By email dated 15 February 2023, the Tenant pointed out that although the disrepair of the oven in the Property was noted in the Tribunal’s Decision, reference to the oven had been omitted from the RSEO. The Tenant also requested that the RSEO be clarified in respect of the works required to the soffits. applied to the Tribunal in terms of Section 25(3) of the Act to vary the RSEO in respect of both the wording of the RSEO and the time given for compliance. A Re-inspection of the Property was arranged for 3 April 2023 and intimated to the Parties.

Re-Inspection

4. The Re-inspection took place on 3 April 2023 at 10.00 a.m. at the Property. The Tenant was present. The Landlord was not present and was not represented. A Schedule of Photographs was taken at the Re- Inspection and is annexed hereto.

5. The Tribunal inspected the parts of the Property referred to in the RSEO and also complained of in the Application.

6. The Tribunal noted that the Landlord had not carried out any of the works required by the RSEO and had not made any repairs to the oven or to the soffit boards

Relevant Legislation

7. The relevant legislation is Section 25 (1) of the Act which states: *“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.”* and Section 26 (1) of the Act which states: *“It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal”.*

Decision of the Tribunal and reasons for the decision.

8. The Tribunal’s decision is based on all of the information before it whether specifically referred to or not.

9. The Tribunal had regard to the RSEO as issued and to Section 26 of the Act. Although the Tribunal was satisfied that the Landlord had not carried out the work required by the RSEO, the Tribunal agreed with the Tenant that the RSEO as issued was incomplete. Therefore, the Tribunal took the view that as the RSEO is incomplete, the Tribunal should not make a finding of failure to comply at this stage.

10. The Tribunal then had regard to Section 25 (1) of the Act and took the view that the RSEO should be varied to include the work required to both the oven and to the soffit boards and to allow the Landlord further time to comply. Therefore, the Tribunal varied the RSEO.

11. This decision is unanimous.

Appeal

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.

Effect of Section 63

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.

Signed

K Moore, Chairperson

Date 6 April 2023