

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(1) of the Act

Chamber Reference number: FTC/HPC/RP/19/0913

Parties:

Mr. Peter Chinskie Durnion, residing at 14, Lauranne Place, Bellshill, ML4 3HX ("the Landlord")

Property: 231B, Main Street, Bellshill ML4 1AJ being the subjects registered in the Land Register for Scotland under Title Number LAN53079 ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Andrew Murray (Ordinary Member)

This Decision should be read in conjunction with (i) Decision and Repairing Standard Enforcement Order relating to the Property both dated 17 May 2019, (ii) Decision and Variation of Repairing Standard Enforcement Order relating to the Property both dated 19 June 2019 and (iii) Decision and Variation of Repairing Standard Enforcement Order relating to the Property both dated 27 November 2019

Decision

The Tribunal, having regard to the progress made by the Landlord determined that Repairing Standard Enforcement Order relating to the Property be varied to allow further time for compliance.

Background

1. By application received on 21 March 2019 ("the Application"), the then tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13(1) (f) and 13(1) (g) of the Act. Although, the Application does not specifically refer to a failure to comply with Section 13(1)(c), the Application does complain of a lack of safety certificates and lack of ventilation in the bathroom and so the Tribunal dealt with this under Section 13(1)(c).

2. An Inspection and Hearing took place on 15 May 2019 at 10.00 a.m. and 11.30 a.m., respectively after which the Tribunal imposed a Repairing Standard Enforcement Order (“the RSEO”). By email dated 12 June 2019, the Landlord requested that the RSEO be varied to allow a further three months to complete the works required by the RSEO citing family health problems as his reason for his request and advising the Tribunal that Property in unlet. The Tribunal took the view that was reasonable to vary the RSEO to allow further time to complete the works and so, in accordance with Section 25 of the Act varied the RSEO to allow further time to comply.
3. The Ordinary Member of the Tribunal carried out a re-Inspection of the Property on 22 October 2019 which was attended by the Landlord and found that although works required by the RSEO had been carried out at the Property, the electricity and gas safety certificates were outstanding. The Re-Inspection Report was issued to the Landlord who did not respond. Nonetheless, the Tribunal determined to vary the RSEO further to allow the electricity and gas safety certificates to be produced. Following the expiry of the variation, the Tribunal, not having received the electricity and gas safety certificates and so the RSEO not being complied with, fixed a further Inspection and Hearing to determine if it should make a finding of failure to comply.

Further Inspection and Hearing

4. A further Inspection and Hearing were fixed for and took place on 21 February 2020. The Tribunal carried out an Inspection of the Property at 10.00 am which was attended by the Landlord’s father-in -law, Mr. Alex Good. The Tribunal noted that the works required by the RSEO had been carried out at the Property and that the Property was undergoing a refurbishment. The Tribunal noted some water staining to the bedroom ceiling but was satisfied that this was minimal and had likely been caused by loose tiling moving in the recent extraordinary windy weather.
5. The Hearing took place at 11.00 am at the Glasgow Tribunal Centre. The Landlord did not appear and was not represented, although he had emailed to explain his absence and to confirm that the electricity and gas safety certificates would be obtained.

Summary of the Issues

6. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or make a finding of failure to comply with the RSEO.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

7. The Tribunal had regard to Section 26 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.”* As on previous occasions, the Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO and having

regard to the fact that the Property is not occupied by a tenant at present, considered that a finding of this nature was still not appropriate at this stage.

8. The Tribunal then had regard to Section 25 (1) of the Act which states:- *“(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”*
9. Again, the Tribunal had regard to Section 25(1)(b) of the Act and gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the fact that the certificates required ensure the health and safety of the occupants of the Property, both which is of paramount importance. As the Tribunal could not be satisfied that the Property meets these standards, the Tribunal was not of a mind to revoke the RSEO.
10. The Tribunal then considered Section 25(1)(a) of the Act, and took the view that, as the works had been carried out, it should afford the Landlord an opportunity to obtain electricity and gas safety certificates. The Tribunal, in its own professional opinion, recognised that the electricity and gas safety certificates could not be obtained until the kitchen refurbishment was complete and so the Tribunal determined to vary the RSEO to allow further time to comply.
11. The decision of the Tribunal is unanimous.
12. The Tribunal draws the Landlord’s attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence and to Section 28(5) of the Act which states that it is an offence for a landlord to enter into a tenancy or occupancy arrangement in relation to a house which is subject to a repairing standard enforcement order.

Review of tribunal’s decision

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.

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.

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

Karen Moore, Chairperson

25 February 2020