

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) under rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the regulations”)

Housing (Scotland) Act 2006 (“the Act”) Section 60 (5)

Chamber Ref: FTS/HPC/RP/19/3193

Title number: REN109320

Property: 5 Sunnyside Place, Barrhead, Glasgow, G78 2RT (“the property”)

The Parties: -

Mr Kehinde Sojobi-Alogi, 5 Sunnyside Place, Barrhead, Glasgow, G78 2RT (“the tenant”)

Mr Rizwan Akhtar, 7 Witchwood Grove, Newton Mearns, Glasgow, G77 6GS (“the landlord”) represented by Ms Angela Wylie, Infiniti Properties, 1016 Argyle Street, Finnieston, Glasgow, G3 8LX (“the letting agent”)

Tribunal Members: - Simone Sweeney (Legal Member) Nick Allan (Surveyor Member)

Decision

The Tribunal having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the Repairing Standard Enforcement Order (“RSEO”) relative to the property dated 3rd February 2020, determined that the landlord has complied with the RSEO and issues a certificate of completion.

Background

1. Reference is made to earlier procedure, to the Tribunal’s decisions, inspection reports and RSEO of 3rd February 2020.

2. The tenant submitted an application to the Tribunal on 9th October 2019 for determination of whether the landlord has complied with the duties imposed by section 14 (1) (b) of the Act.
3. The tenant alleged that the landlord had failed to comply with following parts of the repairing standard of section 13 (1) of the Act:-

“(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;

(g) that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and

(h) that the house does not meet the tolerable standard.”

4. Specifically the tenant alleged the existence of the following issues:-

“Hot water is not working since 3 mths, all window are leaks for water during rain, all doors are broken, toilet pipe are leaking of water, wall are damp, kitchen roof has broken since 2017...”

5. Following an inspection of the property and hearing on 6th January 2020, the Tribunal determined that the landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Housing (Scotland) Act 2006, and issued a RSEO.
6. Reference is made to the written statement of reasons and RSEO of the Tribunal, dated 3rd February 2020.
7. The RSEO required that, within the following six weeks, the landlord complete the following works:

“1. To repair or replace the installations in the house for the supply and heating of water to ensure that there is an adequate supply of hot water in the property.

2. To repair or replace as necessary all windows to ensure that they are wind and water tight.

3. To repair or replace as necessary the trickle vents at the windows to ensure that they are in a reasonable state of repair and in proper working order.

4. To repair or replace as necessary the internal doors at the living room, kitchen, bathroom and bedroom 1 to ensure that they are in a reasonable state of repair and in proper working order.

5. To have a suitably qualified expert investigate the source of the dampness throughout the property and to produce a report showing findings.

6. To produce an Electrical Installation Condition Report ("EICR") from a registered member of SELECT or NICEIC post dating this order.

7. To repair or replace as necessary the ceiling in the kitchen and kitchen cupboard ensuring that the ceiling is dry."

8. As a result of the national lockdown imposed by the UK Government on 23rd March 2020, this application (together with all similar applications before the Tribunal) was placed in abeyance.
9. A case management discussion ("CMD") took place on the telephone on 28th January 2021. The tenant and the landlord's representative were present and made submissions to the Tribunal. In light of progress by the landlord to comply with the terms of the RSEO and given the undertakings provided by the landlord's representative that further repairs were to be completed, the application was continued to another CMD on 12th March 2021. Reference is made to the Tribunal's CMD note of 3rd February 2021 following that hearing.
10. The application was continued to another CMD on 12th March 2021. The tenant and the landlord's representative were present and made submissions to the Tribunal. The Tribunal allowed the application to be continued for further repairs to be completed. Reference is made to the Tribunal's CMD note of 17th March 2021 following that hearing.
11. After the hearing of 12th March 2021, repairs were carried out at the property. The works were completed in April 2021. Between March and June 2021 various communications regarding the works were received from both parties.
12. The tenant provided information and evidence of the property, including video footage. Comment and update on progress of the works was provided by the tenant at regular intervals.

13. By email dated 29th March 2021 the tenant admitted that, *“a lot has been achieved”* since he brought his application before the Tribunal. However he considered there to be issues which required attention by the Tribunal. The tenant specified these issues to include the conditions of the property, the alleged failure of the landlord to act on complaints timeously, the length of time it has taken for repairs to be effected and the fact that they remain incomplete. The tenant alleged that the length of time had caused inconvenience, *“hardships and sufferings”* to himself and his family. The tenant requested compensation from the Tribunal for these alleged failures. The Tribunal does not have jurisdiction to deal with an action for compensation. The tenant should seek independent legal advice on this matter.
14. By email, dated 12th April 2021, the tenant reported *“awkward treatment”* he and his family experienced from painters attending the property to carry out re-decoration. It was alleged that the painters either failed to attend on the dates agreed with the landlord’s representative or, arrived on days, never agreed. Also, the painters were reported to have left the heaters uncovered which posed a danger to the tenant’s family. Within the email of 12th April 2021, the tenant enquired if it was a good thing for him to continue to pay rent. That is a matter on which the tenant must seek independent legal advice. The Tribunal cannot provide legal advice to the tenant.
15. Video footage was lodged by the tenant by email of 14th May 2021 and intimated to the landlord’s representative. Reference is made to the footage.
16. Written representations, information, evidence and photographs from the landlord’s representative were also before the Tribunal.
17. The Tribunal had previously been provided with a report from contractors, Bromac Limited, dated 10th March 2020. The report had been completed following an inspection of the property on 9th March 2020. The contractors had identified evidence of condensation. It was recommended that greater ventilation and heating would reduce the issue of condensation.
18. Insofar as is relevant, the report provided, ,

“Our Surveyor visited the above property to carry out an inspection of walls and ceilings...The inspection of the property was generally restricted by furniture and

floor coverings...Where inspection was possible we noted slight evidence of black spot fungus germinating in the following areas: Room Front Right- Window ingles Room Front Left- Window ingles and lower front elevation wall. Room Rear Left- Window Ingles rear elevation wall Room Rear Centre- Window ingles Room Rear right- Window Ingles and ceiling. This is due to the effects of air-borne moisture ie. condensation. Property was noted to have storage heaters and portable electrical heaters noted throughout for heating source. These types of heating sources promote condensation. At the time of our inspection we saw no evidence of deterioration to internal walls or any evidence of water being able to penetrate the building fabric, and as the mould can be cleaned from the wall surface this confirms the moisture is air borne."

19. Recommendations were provided by Bromac Limited in the report. These included improving ventilation, ensuring the trickle vents are kept open at all times, applying a constant heat source, ensuring heavy furnishings are kept from perimeter walls to improve air flow and applying mild bleach solution to areas worst affected by black spot fungus.
20. An Electrical Installation Condition Report ("EICR") dated 23rd March 2021 was submitted by the landlord by email dated, 19th May 2021. The EICR was completed by Quinnergy Limited, 4 Barn Street Mews, Strathaven. A summary of the condition of the electrical installation at the property was described to be in, "good condition." The overall assessment of the electrical installation was described as, "satisfactory."
21. By separate email of 19th May 2021, the landlord's representative lodged an extract from the SELECT website. This confirmed that Quinnergy Limited, 4 Barn Street Mews, Strathaven, was registered as a SELECT member.
22. Photographs were provided. These had been taken by the landlord's decorating contractor, Senako. The photographs showed redecoration to the walls where new heaters had been fitted.
23. Moreover the landlord's representative provided a response to the tenant's video footage on 19th May 2021. The email response provided, insofar as is relevant,

“It is not clear which rooms the footage reflects and the quality of the video isn’t clear in sections to enable me to identify which rooms. The tenant refers to painting of the windows - this was not on the remit for Senako to carry out. Senako where (sic) instructed to carry out cosmetic repair to the walls where the new heaters had been fitted - due to the difference in size of the heaters there were patches of missing lining paper and paint...Senako...they discussed the work with the tenant prior to leaving and he was happy.”

24. The Tribunal determined that a re-inspection was required once it was considered safe for inspections to re-commence. The re-inspection was arranged to take place on 12th July 2021.

Re-inspection

25. The re-inspection went ahead on 12th July 2021. The tenant and his wife were present. There was no attendance by the landlord or his representative.
26. The Tribunal identified that there were four new radiators attached to the walls of the living room, hallway and each of the two bedrooms. The tenant confirmed that the radiators are working effectively. They can be operated individually and are not controlled centrally.
27. The windows throughout were in full working order and could be opened and closed easily. The windows in the living room, front facing bedroom bathroom and kitchen were open at the time of inspection.
28. The tenant confirmed that the trickle vents in the windows of the living room are open, permanently. The Tribunal noted that the trickle vents were open at the time of inspection. The tenant submitted that water comes through the trickle vents of the windows of the living room during wet weather.
29. All rooms (kitchen, living room, bathroom and two bedrooms) had internal doors which were in full working order. A lock had been attached to the bathroom door which working effectively.
30. The ordinary member carried out investigations on the walls of the bedrooms and living room to ascertain if there was any sign of moisture or dampness was present. The investigations revealed no dampness on the walls of the bedrooms or living

room under the windows. There was no evidence of black mould on the wall of the front facing bedroom.

31. The kitchen ceiling had been plastered and painted. A new boiler was fitted inside a cupboard in the kitchen and covered by a door. The kitchen ceiling was dry. The ceiling of the kitchen cupboard was dry.
32. In the bathroom, the Tribunal identified water on the tiled floor near the W.C. The tenant submitted that there was an on-going leak from the W.C. Investigations carried out by the ordinary member of the Tribunal revealed no evidence of below surface dampness in the bathroom at the area where the water was evident.
33. Finally the tenant drew to the Tribunal's attention to an issue in the bedroom facing towards the rear of the property. The landlord's decorators had painted around the headboard of the bed. The lower part of the wall behind the bed remained unpainted. The Tribunal noted that the decorators equipment remained within the room. The tenant understood that the decorators had completed their work and did not expect them to return.
34. Prior to leaving the property, the Tribunal asked the tenant if there was anything else which he wished to raise in relation to the issues on his application form of 9th October 2019. The tenant confirmed that there was nothing further he wished to show to the Tribunal. The tenant accepted that repairs had been completed.

Re-inspection report of 26th July 2021

35. The ordinary member prepared a report and schedule of photographs following the inspection. The report, dated 26th July 2021, was intimated to both parties.
36. The tenant returned written representations and rent relief order response forms, both dated 13th August 2021. On the written representations form the tenant submitted that he disagreed with the findings of the re-inspection report of 26th July 2021. The form provided,

"I totally disagree with the report of the Surveyor as so many things pointed out to him when he came for inspection which were not done or properly done by the landlord were not included in his report despite the several pictures he took of the half done jobs. There were peeling off wall papers due to too many layers of paint on it;

dampness by the bed side; heater in the bathroom was not changed as instructed; handle of the bedroom door was not working properly; paintings in the living room and the kitchen were not done as instructed by the tribunal; the boiler pipe was also tied with a "ZIP". All these things were shown to the Surveyor and he took pictures but for some reason(s) he left those parts UNREPORTED. This is actually draining as the person who is supposed to be just in now unjust...the work in the property is incomplete and requires attention...we have been subjected to inhumane living conditions for over 5 years. In the course of fighting for our right we have been denied by the landlord, we had a little baby born into such cruelty and wickedness. This continued until we reported to the tribunal, and if not for that, nothing would have changed. They would have continued to trample on our rights and subject us to a very poor living condition. All through this period, we have never missed rent payments and it was not even reduced."

37. On the rent relief response form, the tenant submitted that he believed a rent relief order should be made by the Tribunal. Insofar as is relevant, the tenant submitted,

"The end of this whole mess is not even in sight as there are still some works to be carried out in the property. My son will be clocking 2 next month and he too has been adversely affected. This has to do with the mental state of all the occupants at the property."

38. By email dated 20th August 2021 the landlord's representative responded to the tenant's submissions and the content of the report. Insofar as is relevant, the email provided,

"Please note that we have carried out all the works and dealt with all the issues as raised in the applicants initial claim. The applicant remains dissatisfied and raises additional issues. The landlord has gone to considerable expense in remedying all of the applicant complaints and is considering serving notice to sell the property."

Reasons for decision

39. In terms of the RSEO, the Tribunal ordered the landlord to, *“repair or replace the installations in the house for the supply and heating of water to ensure that there is an adequate supply of hot water in the property.”* A new heating system and boiler have been fitted in the property. At the re-inspection on 12th July 2021, the tenant confirmed that the heating system is in full working order. The Tribunal is satisfied that the landlord has satisfied this part of the order.
40. The Tribunal ordered the landlord to, *“repair or replace as necessary all windows to ensure that they are wind and water tight.”* At the inspection on 12th July 2021, the Tribunal was satisfied that the windows were in full working order. The windows in the front facing bedroom, bathroom and kitchen were open at the time of inspection. The Tribunal is satisfied that the landlord has satisfied this part of the order.
41. The RSEO required the landlord to, *“repair or replace as necessary the trickle vents at the windows to ensure that they are in a reasonable state of repair and in proper working order.”* At the time of the re-inspection on 12th July 2021, the Tribunal was satisfied that the trickle vents were in proper working order. The trickle vent at the living room window was fully open, allowing greater ventilation into the property. The Tribunal is satisfied that the landlord has satisfied this part of the order.
42. The RSEO required the landlord to, *“repair or replace as necessary the internal doors at the living room, kitchen, bathroom and bedroom 1 to ensure that they are in a reasonable state of repair and in proper working order.”* At the time of the re-inspection on 12th July 2021 all internal doors were in a reasonable state of repair. They were all capable of opening and closing. The Tribunal is satisfied that the landlord has satisfied this part of the order.
43. The RSEO required that the landlord, *“have a suitably qualified expert investigate the source of the dampness throughout the property and to produce a report showing findings.”* The Tribunal is satisfied that the landlord has satisfied this part of the order by producing the report from Bromac Limited of 10th March 2020. The report revealed no evidence of dampness at the property. This was supported by the findings of the ordinary member from the areas of the property which were investigated for dampness.

44. The RSEO required that the landlord, *“produce an Electrical Installation Condition Report (“EICR”) from a registered member of SELECT or NICEIC post dating this order.”* The landlord lodged an EICR dated 19th May 2021. The EICR was completed by Quinnergy Limited and evidence was produced to show that they are registered as a SELECT member. The Tribunal is satisfied with the findings of the EICR. By producing this report, the Tribunal is satisfied that the landlord has satisfied this part of the order.
45. The RSEO required that the landlord, *“repair or replace as necessary the ceiling in the kitchen and kitchen cupboard ensuring that the ceiling is dry.”* At the time of the re-inspection on 12th July 2021, the Tribunal was satisfied that the ceiling in the kitchen had been plastered and painted. The ceiling was dry. The ceiling of the kitchen cupboard was dry. Therefore the Tribunal is satisfied that the landlord has satisfied this part of the order.

Issues raised by the tenant

46. The Tribunal does not accept the submissions of the tenant that the W.C is leaking. It is accepted that there was water on the tiled floor around the W.C. However there was no evidence of a leak from the W.C. or that this was the source of the water. The ordinary member undertook investigations at this area which revealed no evidence of below surface dampness. There was no evidence presented to the Tribunal at the re-inspection on 12th July 2021 which supports this submission by the tenant.
47. Finally, the issues raised by the tenant on 13th August 2021 of,

“peeling off wall papers due to too many layers of paint on it; dampness by the bed side; heater in the bathroom was not changed as instructed; handle of the bedroom door was not working properly; paintings in the living room and the kitchen were not done as instructed by the tribunal; the boiler pipe was also tied with a “ZIP”.”

These are new matters. They do not form part of the application of 9th October 2019 to be determined by the Tribunal. Should the tenant consider there to be additional issues for determination of whether the landlord has failed to comply with the duties

imposed by section 14 (1) (b) of the Act, it is open to the tenant to make a separate application to the Tribunal.

48. The Tribunal determined that the landlord has complied with the full terms of the RSEO and that a certificate of completion should be issued.

49. The decision of the Tribunal is unanimous.

Appeals

50. 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 within 30 days of the date the decision was sent to them.

51. 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.

S Sweeney

... \ / /

Legal Chair, at Glasgow on 26th August 2021