



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 60 of the Housing (Scotland) Act 2006

Property: 25 Clerwood View, Edinburgh EH12 8PH (“the Property”/ “the house”)

Title No: MID58627

Chamber Reference: FTS/HPC/RP/19/3581

Parties:

Mrs Gillian Muir, 25 Clerwood View, Edinburgh EH12 8PH (“the Tenant”)

Miss Katherine Ogden, care of Braemore Sales and Lettings, Orchard Brae House, 30 Queensferry Road, Edinburgh EH4 2HS (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/Surveyor)

Decision

The Tribunal decided that the works required by the Repairing Standard Enforcement Order in respect of the Property made on 24 January 2020 have been carried out and that a Certificate of Completion of Works should be issued in terms of Section 60 of the Housing (Scotland) Act 2006 (“the Act”)

Background

By application, received by the Tribunal on 7 November 2019, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (“the Tribunal”) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) of the Housing (Scotland) Act 2006 (“the Act”).

The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard.

Following an inspection and hearing held on 24 January 2020, the Tribunal made a Repairing Standard Enforcement Order (“the Order”). The Order required the Landlord

to complete the following within a period of six weeks from the date of service of the Order:

1. Provide the Tribunal with an Electrical Installation Condition Report (EICR) in respect of the entire electrical installation within the Property issued by a SELECT, NAPIT or NICEIC registered electrician and containing no C1 or C2 items of disrepair and to provide the Tribunal with evidence of the electrician's registration with one of the three aforementioned bodies.
2. Install a carbon monoxide monitor in the loft space, suitably sited to detect carbon monoxide gas at the central heating boiler and interlinked with a further carbon monoxide monitor on the first floor landing, adjacent to the loft hatch.
3. Investigate the cause of the damp smell under the bath in the en-suite bathroom and carry out such remedial work as is required.
4. Investigate and carry out such repair works as are required to ensure the waste pipe from the toilet in the en-suite bathroom is not leaking.
5. Securely replace the bath panel.
6. Replace the toilet cistern in the bathroom.
7. Carry out such repairs as are necessary to render the outside front step safe and secure.

Following on the making of the RSEO, the Landlord's agents provided the Tribunal with various documents relating to works carried out.

As a result of ongoing COVID-19 restrictions, the Tribunal was unable to inspect the Property and, with no way of estimating when that position might change, the Tribunal decided to hold a Case Management Discussion in an effort to progress the case. The Case Management Discussion was held on 13 January 2021 at which it was agreed that the work required by Items 3-7 inclusive of the RSEO had been carried out but that, although the Landlord's agents had indicated that the work required in respect of Items 1 and 2 of the RSEO was due to be carried out imminently, the delay of almost a year in complying with the Order was unacceptable, given that the Landlord would be well aware that the outstanding items were matters which had potentially serious health and safety implication for the Tenant.

Following the intimation to the Parties of the Tribunal's Decision, the Tenant asked the Tribunal to review its decision to defer making a Rent Relief Order. The Tribunal granted the application for review as, despite indications given at the Case Management Discussion that the Items outstanding in the RSEO would be resolved imminently, a further four weeks had passed, and the Landlord had still not provided the EICR as required by the RSEO. Accordingly, the Tribunal decided to make a Rent Relief Order and issued a failure to Comply Decision and made a Rent Relief Order on 15 February 2021.

On 12 March 2021, the Landlord sought permission to appeal the Decision of 15 February, but before the Tribunal issued its Decision on that application, the Landlord's agent provided the Tribunal, on 13 May 2021, with an EICR from Lomond Maintenance, Edinburgh, along with evidence of registration with NAPIT of the operative who prepared the Report and the supervisor who authorised its issue. The EICR was dated 29 April 2021, the Overall Assessment of the installation was "Satisfactory" and the Report contained no C1 or C2 items of disrepair. The Landlord's agent also provided photographs showing the location of carbon monoxide monitors at the top of the stair and in the attic of the Property and stated that they had been

installed by the operative who prepared the EICR. The EICR covered the whole installation in the Property.

Summary of Issues

The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 24 January 2020 and whether a Certificate of Completion to that effect should be issued.

Reasons for Decision

The Tribunal was satisfied that the EICR satisfied the requirements of the Repairing Standard Enforcement Order and that the carbon monoxide detectors had been installed as required by the RSEO. Accordingly, all the works required by the RSEO had been carried out and a Certificate of Completion should be issued.

In these circumstances, as the Tribunal had not issued its Decision on the application for permission to appeal its Failure to Comply Decision of 15 February 2021 and the Rent Relief Order, the Decision of 15 February and the Rent Relief Order no longer have any effect.

The Tribunal's Decision was unanimous.

Right of 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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

G. Clark- Legal Member

27 May 2021

Date