

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25 of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RT/22/0728

Re: Property at 74 Murray Street, Paisley, PA13 1QT (“the House”)

Parties:

Renfrewshire Council, Renfrewshire House, Cotton Street, Paisley, PA1 1JD (“the Third Party Applicant”)

Mr Stuart Henderson, formerly 37 Kinpurnie Road, Paisley, PA1 3HG and 15/2 Carriagehall Drive, Paisley, PA2 6JG and now 4/8, The Elipta, 110 Saucel Crescent, Paisley, PA1 1SX (“the Landlord”)

Tribunal Members:

Nicola Weir (Legal Member) and Nick Allan (Ordinary Member)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), determined that, with reference to the Repairing Standard Enforcement Order (“RSEO”) dated 13 September 2022, further time should be allowed for the work required in terms of the RSEO to be carried out and that the RSEO should accordingly be varied by extending the time for completion of the work until 27 September 2023.

Background

1. The Third Party Applicant submitted a Repairing Standard application in respect of the House on 11 March 2022, together with supporting documentation. A Notice of Acceptance was issued by a Legal Member of the Tribunal acting with delegated powers of the Tribunal President on 24 March 2022 in terms of Rule 9 of the Regulations. A Notice of Referral, Inspection and Hearing was issued

to the parties on 7 April 2022. A response was submitted by the Third Party Applicant but no representations were received from the Landlord.

2. An Inspection of the Property took place on 6 June 2022 at 11am and was attended by Ms Marion Maxwell on behalf of the Third Party Applicant and by the Landlord. It was noted by the Tribunal Members that the Tenant had vacated the House and that various works were underway to the House. A Photograph Schedule Report prepared by the Ordinary Member dated 10 June 2022 was subsequently circulated to parties.
3. A Hearing was due to take place on 13 June 2022 at 10am by telephone conference call. However, neither party joined the Hearing. It was accordingly postponed to 22 August 2022 at 2pm and parties were notified of this. No written representations were received from either party prior to the postponed Hearing.
4. The Evidential Hearing took place by telephone conference call on 22 August 2022 at 2pm. Ms Marion Maxwell attended on behalf of the Third Party Applicant. The Landlord did not attend. Following the Hearing, the Tribunal was satisfied that Sections 13(1)(a)(b)(c)(d)(f)(g) and (h) of the 2006 Act were not met and that repairs and other actions required to be carried out to ensure that the House met the Repairing Standard in all respects. The Tribunal accordingly issued a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters dated 13 September 2022, specifying a period of 12 weeks for the works to be completed.
5. Following expiry of the 12 week period, the Tribunal attempted to carry out a Re-Inspection of the House on 9 January 2023. Ms Maxwell was in attendance for the Third Party Applicant but the Landlord was not in attendance to provide access to the House, which was noted by the Tribunal still to be unoccupied. It was also noted from a look at the rear exterior of the House that some further work appeared to have been carried out to the kitchen roof structure since the Tribunal's Inspection on 6 June 2022 but other items were still in a state of disrepair.
6. A further Re-Inspection was scheduled to take place on 27 February 2023 at 2pm and the Landlord was advised in writing that, in the event that access was not granted that day, the Tribunal may apply for a Warrant for Entry. Said notification was served on the Landlord by Sheriff Officer.
7. On the morning of 27 February 2023, the Landlord indicated that he was unable to attend at the House at 2pm due to a conflicting engagement and that he had no one to attend in his stead. He offered to leave a key for the Tribunal to take entry but was advised that this was not possible and that the Re-inspection would be required to be postponed in the circumstances.
8. Following further communication between the Tribunal Administration and the Landlord, the Landlord emailed the Tribunal on 6 March 2023 and sought an extension of time for compliance with the RSEO. He indicated that the kitchen extension roof had been repaired, the brickwork in the extension repaired and

rendered, the gutters repaired and that the House was now wind and watertight. However, the rest of the repairs and certification required remains cost-prohibitive to him at the present time and he does not anticipate being able to complete the required works within the next 6 months. He stated that the House will not be let out and will remain unoccupied until the works are completed.

Decision

9. The Tribunal determined that, in the circumstances, further time should be allowed for the work required in terms of the RSEO to be carried out and that the RSEO should accordingly be varied by extending the time for completion of the work for a further 6 months, until 27 September 2023. The Tribunal did note, however, that, in terms of the RSEO, the Landlord had been required to obtain appropriate expert reports in respect of the kitchen roof structure and in respect of damp/mould and rot and submit same to the Tribunal prior to the relevant works being commenced. The Tribunal noted that no such reports have been lodged and request that the Landlord submit same as soon as possible, albeit the time limit for compliance with the RSEO has been extended for 6 months.
10. The decision of the Tribunal was unanimous.

Reasons for decision

1. The Tribunal considered the issues of disrepair identified in the RSEO and the extent to which the Landlord states the RSEO had been complied with. Although some months have passed since the original date for compliance and the Landlord has not facilitated the Tribunal's Re-Inspection of the House, the Tribunal was encouraged to note that the Landlord is now communicating with the Tribunal, that he has provided an explanation for the RSEO not having been fully complied with and, most importantly, that the House remains unoccupied and the Landlord has indicated that it will not be let out again until the works required have been completed. The Tribunal therefore considered it reasonable to extend the time for compliance with the RSEO until 27 September 2023 to allow the repairs to be completed.
2. Accordingly, in terms of Section 25 of the Act, the Tribunal decided to vary the RSEO in that respect and proceeded to issue a Variation.

Right of Appeal

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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.

Date: 5 April 2023

Nicola Weir, Legal Member of the Tribunal