

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RT/18/3063

Re: 5 Royal Crescent, Edinburgh, EH3 6PZ ("the Property"/ "the house")

Parties:

City of Edinburgh Council, Private Rented Services, 101 Niddrie Mains Road, Edinburgh, EH16 4DS ("Third Party Applicant")

Freeworld Holdings Limited, 13 Castle Terrace, Edinburgh, EH1 2DP ("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 20 March 2019 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

Following an inspection and hearing, the Tribunal, on 20 March 2019, made a Repairing Standard Enforcement Order ("the Order"). The Order required the Landlord:

- (1) to carry out such works as are required to ensure that the provision of smoke detectors and heat detectors within the Property complies with the Fire Protection in Rented Properties Guidance published by the Scottish Government on 7 February 2019, effective 1 March 2019 and available on the Scottish Government website.
- (2) to restore the door entry phone system in the Property to a good state of repair and proper working order.
- (3) to carry out such repairs to the windows in the master bedroom, office and kitchen of the Property as are necessary to ensure they are wind and watertight, in a good state of repair and in proper working order.
- (4) to carry out such repairs as are necessary to restore the dishwasher to proper working order.
- (5) to replace the vinyl flooring in the kitchen.

(6) to carry out such work as is necessary to ensure the light under the kitchen wall units is in proper working order, including repairing the baton holder in the kitchen cupboard and

(7) to exhibit to the Tribunal a satisfactory current Electrical Installation Condition Report, containing no C1 or C2 items of disrepair and covering the dishwasher and the smoke and heat detectors in the Property, the Report to be issued by an electrical contractor who is registered either with NICEIC, SELECT or NAPIT and, in the event that the dishwasher in the Property is deemed to be a portable appliance and not covered by the Electrical Installation Condition Report, to exhibit to the Tribunal a satisfactory PAT Test report in respect of the dishwasher.

The Ordinary Member of the Tribunal reinspected the Property on the morning of 19 June 2019 and reported that new smoke detectors had been installed in the hallway, kitchen and living room, but there was no heat detector in the kitchen. The door entry system was still in a state of disrepair. The windows in the master bedroom and kitchen had been repaired and the sash cords were in working order, but the office window was stuck in a closed position and could not be opened. The cracking noted at the previous inspection remained evident and some minor cracking was noted to the kitchen window. The Tenant's representative had confirmed that the dishwasher was now in working order, although the fascia panel was missing. The vinyl flooring in the kitchen had been replaced and the lights under the kitchen units were now in working order. An updated Electrical Installation Condition report meeting the criteria specified in the Order had not been provided to the Tribunal.

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. On 14 December 2020, the Tribunal issued a Direction requiring the Landlord to provide dated photographs and receipts in respect of the works carried out at the Property following the making of the Order.

On 6 January 2021, the Landlord's representatives, Nisbets solicitors and solicitor advocates, emailed the Tribunal and provided copies of a number of Invoices for works and materials and a number of photographs showing various items that were relevant to the Order.

Case Management Discussion

A Case Management Discussion was held on 11 January 2021 at which the Tribunal accepted that the only outstanding issues related to the office window and the Electrical Installation Condition Report. The issue at the reinspection had been that the office window was stuck shut. The Tribunal had seen an Electrical Installation Condition Report ("EICR") dated 11 April 2019, in which the overall assessment had been satisfactory. The Tribunal had not, however, seen a report which post-dated the installation of the new smoke and heat detectors. Ideally, the Tribunal would like to have seen a new EICR, as that would have satisfied its requirements that the smoke and heat detectors comply with the Fire Protection in Rented Properties Guidance provided by the Scottish Government but, accepting that current COVID-19 restrictions might prevent an electrical contractor from attending a property other than for repair works, the Tribunal indicated that it would accept instead a Completion of Minor Works Certificate issued by the electrical contractor who installed the smoke and heat

detectors and the contractor's confirmation that the installation complied with the Guidance.

Following the Case Management Discussion, the Tribunal issued a Direction requiring the Landlord to provide photographs showing the office window in both the open and closed positions and a Completion of Minor Works Certificate in relation to the installation of the smoke and heat detectors, with confirmation that the installation complies with the Scottish Government Guidance on Fire Protection in Rented Properties.

On 31 January 2021, the Landlord's representatives provided the Tribunal with photographs showing the office window in both the open and closed positions and a Certificate from Premier Electrics Scotland Ltd, SELECT registered contractors, dated 18 January 2021, confirming that the smoke and heat detectors in the Property comply with the Scottish Government's Guidance on Fire Protection in Rented Properties.

A further Case Management Discussion was held by means of a telephone conference call on the afternoon of 24 February 2021. Neither the Third Party Applicant nor the Landlord participated in the Case Management Discussion. The Tenant, having vacated the Property, was no longer a Party in the case.

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide whether or not to issue a Certificate of Completion of Works.

The Tribunal was satisfied with the photographs of the study window, provided on 31 January 2021. The Tribunal noted that the Landlord had not provided a Completion of Minor Works Certificate and that the Certificate provided by Premier Electrics Scotland Ltd was on a form relating to non-domestic properties. As, however, it contained the verification required by the Tribunal, the Tribunal, on balance, decided to accept it. Accordingly, all the work required by the Order had now been carried out and the Tribunal decided that a Certificate of Completion of Works should be issued in terms of Section 60 of the Act.

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

24 February 2021

Date