

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision; Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/2531

Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG ("the Property")

The Parties:

MR ALI LOUAHEM M'SABEH (otherwise known as Lohavem M'Saben Ali) residing at Flat 2/2, 11 Craigie Street, Glasgow, G42 8NG ("the Tenant")

AQA PROPERTY LIMITED, 585 Cathcart Road, Glasgow, G42 8AB trading as Aaron Properties, 584 Cathcart Road, Glasgow, G42 8AB represented by Mr Bukhari ("the Landlord's representative")

JARNIAL TUMANI, 1 Lammermuir Place, Kirkcaldy, KY2 5RD ("the Landlord")

Tribunal Members:

MR E K MILLER, Chairman and Legal Member and MR N ALLAN, Ordinary Member

DECISION

The First Tier Tribunal for Scotland (Housing & Property Chamber) (the "Tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") previously imposed by the Tribunal, determined that the Landlord had now complied with the RSEO. The Tribunal resolved that a Certificate of Completion discharging the RESO should be issued. The Rent Relief Order ("RRO") should also be discharged.

BACKGROUND

1. On 4 January 2019, the Tribunal issued a Decision determining that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The Tribunal issued an RSEO against the Property also dated 4 January 2019. In terms of the RSEO the Landlord was required to carry out the following works:-
 - i. To instruct a suitably qualified independent pest control contractor to eradicate the rodent issue within the Property and to rodent proof the House and thereafter to produce to the Tribunal a copy of the Report and receipted invoices for any works carried out at conclusion of any action taken;
 - ii. To subsequently repair any damage caused by rodents to the skirtings and

walls in the Property;

- iii. To instruct a suitably qualified joiner to repair the floor boards in the kitchen to make them even and securely fitted and eliminate any holes; thereafter to replace the damaged linoleum with a suitable new kitchen floor covering and properly fitted and secured to the floor edges;
- iv. To instruct a suitably qualified independent contractor to repair or replace the washing machine and thereafter to produce to the Tribunal a copy of the Report and receipted invoice for any works carried out at conclusion of any action taken or the receipt for a new washing machine;
- v. To exhibit an Electrical Installation Condition Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the Property is satisfactory in all respects.
- vi. To carry out infilling to the affected walls, ceilings and floors in the living room to complete the remedial works following on the flood damage to ensure they are properly sealed, wind and watertight;
- vii. On completion of all the above works, to instruct contractors to professionally deep clean the Property and restore all affected finishes and to carry out re-decoration to the Property to a reasonable finish; And to produce to the Tribunal receipted invoices specifying the work carried out.

The RSEO gave the Landlord 6 weeks from the date of service of the RSEO to carry out the works.

3. A re-inspection had taken place on 15 April 2019, when it was apparent that the majority of works had not been done. A further re-inspection had taken place on 24 July 2019. Again, whilst a little more progress had been made in addressing the matters listed in the RSEO, compliance was still some way off. Following the re-inspection of 24 July 2019, a decision stating there had been a failure to comply with the RSEO was issued on 17 September 2019 along with a Rent Relief Order under Section 27 of the Act, reducing the rent payable under the tenancy by 90%.
4. In due course the Landlord's representative provided further documentation submitting that the Property now complied with the RSEO. There were a number of pictures of the Property included within this. It seemed from the photographs that the Landlord's representative had made more substantive progress on this occasion. As a result the Tribunal determined to again re-inspect the Property to ascertain whether compliance had been achieved. This further inspection and hearing took place on 24 January 2020 again before Mr E K Miller, Chairman and Legal Member, and Mr N Allan, Ordinary Member
5. Again, whilst some more progress had been made there were works still outstanding. A further decision was issued in February 2020 that highlighted the outstanding works. In summary the Landlord and his agents required to:-
 - Infill the hole behind the bathroom sink to ensure no rodent infestation.

- To infill the holes around the pipework in the cupboard under the kitchen sink to ensure no rodent infestation.
 - Properly repair the hole that has been filled with sealant in the kitchen.
 - To exhibit an EICR and PAT Certificate.
 - To properly repair and redecorate in relation to the hole in the living room ceiling and the small area in the kitchen.
6. There then appeared to be limited further progress, perhaps initially due to the Covid-19 pandemic. On 4th August 2020 the Landlords agent emailed the Tribunal to advise that all works had now been completed. An EICR was provided but no further information or evidence to substantiate the remaining works had been carried out was provided. The Tenant disputed the agents evidence and provided some pictures which appeared to suggest works remained outstanding.
 7. The Tribunal wished to carry out a further inspection but at that time this had to be postponed due to the Covid-19 restrictions. The Tribunal did, however, wish to discuss progress with the parties and to see if any other evidence could be provided to ascertain the current position. Accordingly, a teleconference hearing was set for 22 March 2021 at 10am, again with Mr Miller and Mr Allan. Regrettably, neither party attended the hearing itself. The Tribunal had little additional information before it on that date and accordingly determined that there was insufficient evidence to allow it to reach a determination. Accordingly the RSEO and RRO would remain in place
 8. In due course a further teleconference hearing was arranged for 10am on 4 June 2021, again before Mr Miller and Mr Allan. The Tenant was present on the call and was supported by his careworker Rosemary Bruce. The Landlords representative Mr Bukhari was also on the call.
 9. In brief summary, the parties gave diametrically opposing views at the hearing. Mr Bukhari submitted that all works had been done and that any areas that were damaged remained so because the Tenant was deliberately damaging work that had taken place. Mr Ali submitted that little or no work had been done and that the vast majority of issues remained. He expressed concerns over who the tradesmen were and the level of qualification they had.
 10. Mr Bukhari had submitted various invoices that he said supported his position. However, these were simply prepared by his office and recorded the costs invoiced to his client, the Landlord. He did, however, undertake to send on the underlying invoices from the contractors. Mr Bukhari had some of the contractors with him on the call.
 11. The Tribunal considered matters further. Given the parties gave diametrically opposing views on the day it was difficult to determine what the position was without being able to see the areas being complained of. Both parties had provided pictures of various areas at various times but, again, it was difficult to determine exactly what areas they covered. The Tribunal noted that due to the easing of Covid-19 restrictions it was possible to now carry out re-inspections of the Property. The Tribunal explained at the Hearing that that would now be their preferred option to progress matters. Both parties agreed on the day that this was a sensible way to

proceed and that they were agreeable to this. If Mr Bukhari wished to lead evidence from contractors it was agreed that it would be best to do so at the hearing that would follow the inspection. By that point, the Tribunal would have seen the Property and be better informed as to the physical condition.

12. Accordingly, the Tribunal was satisfied that it was appropriate for the RSEO and the RRO to remain in place, but that a reinspection and hearing would be held as soon as practicable possible to allow matters to be progressed.
13. In due course a further reinspection was organised for 6 July 2021. Mr Miller and Mr Allan of the Tribunal again attended at the Property. The Tribunal did note that some further progress had been made since the previous full inspection. As noted in paragraph 6 above, an EICR and PAT Certificate had been exhibited. The Tribunal also noted during its inspection that the hole in the living room ceiling had now been properly repaired and wallpapered over to an acceptable standard. There had also been a proper repair carried out in the corner of the kitchen where there was previous damage. However the holes behind the bathroom sink and under the kitchen sink had not been carried out properly and there were still gaps where rodents could enter the Property. The Tenant also advised that the washing machine was not working again. The Tenant complained that the Landlord never provided a proper replacement but had simply got another cheap secondhand washing machine which constantly broke down. At the date of inspection it did indeed appear that the washing machine was not in working order. Given this had previously been raised as a matter of complaint under the original application, the Tribunal was content to accept this matter was still live.
14. The Tribunal's reinspection report confirming the above matters was then circulated to the parties. In due course the Landlord requested a further Hearing. On 9th November 2021 the Tribunal held another hearing. Again Mr Miller and Mr Allan were the Tribunal members present. The Hearing was carried out by teleconference. Mr Bukhari appeared for the Landlord. The Tenant did not appear.
15. Mr Bukhari, for the Landlord, advised that the washing machine was in working order when it had been put into the Property. The Landlord's agent suggested that it was the Tenant deliberately damaging the washing machine that was causing the problem rather than the quality of the washing machine. The Landlord's agent had with him on the conference call the tradesmen who had installed the washing machine and who alleged that it was working when installed. Mr Bukhari indicated that the remaining items of repair had also been carried out.
16. The Tribunal considered matters. Whilst the Tribunal were keen for this matter to reach a resolution one way or another, it was impossible for the Tribunal to determine whether the works had been fully carried out since the last reinspection. The Tenant, whilst not present, had emailed in on numerous occasions complaining about the condition of the Property, the washing machine and rodent infestation still ongoing. On balance the Tribunal determined that the only way they could try and reach a landing on the exact position was to again reinspect the Property.
17. The Tribunal set two dates for reinspection in late 2021 and early 2022. The Tenant did not respond to the Tribunal ahead of either of these dates and did not comply with the Tribunal's Covid requirements. Both reinspections were cancelled at the last minute. The Tribunal was of the view that it could not keep on giving the Tenant

chances to put forward his case when he did not provide access. However the Tribunal were also very cognisant of the fact that the Tenant had some significant health issues that he had disclosed to the Tribunal with both his physical and mental health. Accordingly the Tribunal resolved to give the Tenant one final chance to provide access.

18. A further reinspection was organised on 11 March 2022. Mr Allan and Mr Miller again attended at the Property. On this occasion the Tenant did provide access. The Tribunal noted that the holes behind the kitchen and bathroom sinks had been repaired to a reasonable standard, sufficient to prevent rodent infestation. The Tribunal inspected the washing machine. The drum was half full with dirty stagnant water and it did not appear to be operating correctly. The Tribunal set the washing machine onto a spin cycle but the washing machine started to go through what was clearly a rinse cycle. The water did not drain from the drum at any point. It appeared to the Tribunal that the washing machine was in fact defective. The Tribunal did not view it as realistic to suggest that the Tenant had tampered with it. This would have required rewiring parts of it given that it clearly did not follow the cycles that were selected. The Tribunal noted from the Tenant that he was unhappy about the condition of the boiler, which did indeed appear to be temperamental on the day of the Tribunal. The Tenant also complained of bed bugs. The Tribunal noted that neither of these matters had been complained of in the original application and therefore the Tribunal did not feel it appropriate to pick up these points during the course of the Hearing. It was, of course, open to the Tenant to lodge a new application on these matters provided sufficient notification had been given to the Landlord. Following upon the reinspection a report was issued to the parties highlighting that the washing machine appeared to be the principal item remaining outstanding
19. In due course the Landlord requested a further hearing as he advised that he had carried out a replacement of the washing machine. In advance of the Hearing, the Landlord's agent emailed on 3 May 2022 with evidence that a new washing machine had been delivered and installed at the Property on 21 April 2022. The appropriate invoices from Currys, the electrical suppliers, was provided. Mr Bukhari also provided an email from the gas engineer confirming that the boiler had been attended to. However, as highlighted, the Tribunal was not satisfied that it was appropriate for it to become involved in any issues regarding the boiler.
20. At the Hearing, Mr Bukhari submitted that the works had been carried out and he was not aware of any other outstanding issues with the Property. As far as they were concerned they had achieved compliance. The Tenant was not present at the Hearing although he had continued to email the Tribunal office complaining about a variety of matters including rodent infestation again.
21. The Tribunal considered matters. Whilst it had been a long process for the Landlord and his agent to achieve compliance, it did appear to the Tribunal that the Property did now meet the repairing standard. The Tribunal did note that a majority of the repairs over a period of time had been carried out to the most basic standard. This had led some of them to not having been at the requisite standard or having failed shortly thereafter. It would be a lesson for the Landlord and his agent to carry out better quality repairs in future to ensure compliance was achieved and that the repairing standard was met. However, as stated, the Tribunal was satisfied that compliance had now been achieved. The Tenant had submitted numerous emails on

other matters in the interim, which did not suggest there was any issue with the washing machine. On the basis that the Landlord had provided confirmation that a new washing machine had been installed, the Tribunal was prepared to accept that this had now been dealt with. Accordingly the Tribunal was satisfied that compliance had been achieved and that it would be appropriate to issue a Certificate of Completion discharging the RSEO. The Rent Relief Order, upon expiry of the relevant appeal period, could then be discharged.

22. Subsequent to the Hearing on 6 July 2022, the Tenant emailed into the Tribunal office advising that he had tried to dial into the call but no one had been on the call and he had been unable to gain entry to the conference call room. The Tribunal did note, however, that the email from the Tenant was dated 8 July and stated that he had tried to dial into the Tribunal call that day. The Hearing call was, as noted above, on 6 July 2022 and not 8 July 2022. Whilst the Tribunal would have preferred to have had the benefit of the Tenant's evidence he had submitted numerous emails setting out his position. The error was on the part of the Tenant and it did not seem reasonable or fair to the Landlord to have to try and get another Hearing date. The Tribunal was satisfied that it was appropriate to still continue and reach a decision as noted above.

Decision

23. The Tribunal determined that the Landlord had now complied with the terms of the RSEO and resolved to discharge the RSEO and issue the appropriate Certificate of Completion. The Tribunal also resolved to discharge the Rent Relief Order.
24. The decision of the Tribunal was unanimous.

Right of Appeal

25. 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.

Effect of section 63

26. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

E Miller

Signed Chairperson

Date 12/9/22