

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 60 of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act

Chamber Ref: FTS/HPC/RP/21/2723

Re: Property at 5 Gigha Place, Broomlands, Irvine, Ayrshire, KA11 1DS registered in the Registers of Scotland under Title Number AYR79476 (“the Property”)

The Parties:

Mrs Kae McFetridge otherwise Margaret Kathleen McFetridge and Mr. Brian or Ben McFetridge otherwise Samuel Brian McFetridge care of Hovepark Lettings Ltd., 56, Hamilton Street, Saltcoats, KA21 5DS (“the Landlords”) per their agents, the said Hovepark Lettings Ltd. (“the Landlords’ Agents”)

Tribunal Members:

Karen Moore (Chairman) and Donald Wooley (Ordinary Member)

Decision

The Tribunal determined that the Landlord has complied with the Repairing Standard Enforcement Order (RSEO) made by it on 4 August 2022 as varied by Variation of RSEO dated 23 September 2022.

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 31 March 2022 affecting the Property and Decision; the Decision of Failure to Comply dated 30 August 2022 and Review Decision and Variation of RSEO both dated 23 September 2022.

Background

1. By application received on 3 November 2021 (“the Application”), the then Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (b), 13(1)

(c), and 13(1) (f) of the Act. The Application comprised a copy of the tenancy agreement between the Parties, copy email correspondence between the Tenant and the Landlords' Agents regarding repairs to the Property and photographs of the condition of the Property.

RSEO

2. The Application was referred to the Tribunal. An Inspection of the Property fixed for 1 February 2022 and a Hearing fixed for 8 February 2022 were re-scheduled for 21 March 2022 and 31 March 2022 respectively, following which the Tribunal imposed a Repairing Standard Enforcement Order (RSEO) as follows:-

*“The Landlords must on or before **1 May 2022** carry out all of the following:-*

- 1. Obtain a report from a suitably qualified building contractor confirming both the extent of the defective, cracked and badly bossed rendering on the front and “gable” elevations and the condition of the roof tiles (“the Report”) and submit the Report to the Tribunal. The Report should include details of the remedial action necessary to bring the rendering and roof covering into a reasonable state of repair, proper working order and a wind and watertight condition. Thereafter, the Landlords must ensure that all repairs and works recommended in the Report are completed and finished in accordance with the specifications as proposed in the Report.*
 - 2. Obtain a detailed report from a “timber and damp specialist”, registered with the “Property Care Association”, confirming the cause of the dampness and condensation within the property, specifically around the front entrance door, the kitchen, the bathroom, front bedroom and roof void (“the Dampness Report”) and submit the Dampness Report to the Tribunal. The Dampness Report should include details of the remedial action necessary to address the dampness and condensation, bringing the property into a reasonable state of repair and in all respects reasonably fit for human habitation. Thereafter, the Landlords must ensure that all repairs and works recommended in the Dampness Report are completed and finished in accordance with the specifications as proposed in the Dampness Report.*
 - 3. Redecorate as necessary following completion of all repairs and works required to comply with this Order.”*
3. A report prepared by Kerelaw Building Preservation, who do not appear to be members of the “Property Care Association”, was submitted to the Tribunal in part compliance with the RSEO. This report recommended that certain works be carried out.

Re-Inspection

4. A Re-inspection of the Property took place on 15 July 2022. At the Re-Inspection the Tribunal noted that no repairs or any form of remedial action had been completed to the rendering and no remedial works have been undertaken to the roof. The Tribunal were informed that an inspection of the roof had been completed by “Roofguard”, Old Quarry Road, Stevenston and that their report

was awaited. The Tribunal noted that there was no evidence of recent water ingress and noted the insulation between the ceiling joists has been adjusted to increase ventilation to the area.

5. At the Re-Inspection, the Tribunal noted that the Property had undergone a comprehensive scheme of redecoration. However, the Landlord's Agent was unable to confirm if the preparatory work included treatment with a "mould inhibitor" or that the materials used were as recommended by Kerelaw Building Preservation. The Re-inspection Report was issued to the Landlord's Agents, following which the Landlord's Agents submitted an invoice from the decorating contractor showing that mould inhibitor had been applied as part of the decoration. No further reports or evidence of completion of works required by the RSEO were submitted.
6. Accordingly, the Tribunal, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.
7. By email dated 16 September 2022, the Landlord's Agents submitted an application for review of the Decision in terms of Rule 39 of the Rules ("the Review Application"). The Review Application advised that a contractor had been engaged to complete the work required by the RSEO. The Tribunal, therefore, reviewed its Decision of 30 August 2022 and varied the RSEO to allow further time to comply.
8. The Landlord's Agents, thereafter, submitted sufficient reports and estimates relating to the external rendering and the roof covering together with a satisfactory summary of the materials applied during the redecoration to satisfy the Tribunal that the work required by the RSEO as varied had been carried out. In particular, repairs to the rendering comprised the removal of the existing roughcast on the front elevation and its complete renewal with a fresh covering. Evidence was submitted that the roughcast repair was completed by "DM Homeshield" at a cost of £2,750 excluding VAT. The reports on the roof noted that the roof tiles did not require to be replaced and advised that the "dampness/condensation" within the roof void could be addressed through removing several tiles, cutting holes in the roof and installing 4 "tile vents" duly fixed to the roof. Evidence was submitted that this repair was completed by "Roofguard" at a cost of £400.00, excluding VAT.

Further Re-inspection

9. A further Re-inspection of the Property took place on 10 January 2023 and was attended by Ms. Megan McDiarmid of the Landlord's Agents.
10. At that Re-Inspection, the Tribunal noted that the work detailed in paragraph 8 above had been carried out satisfactorily. Although the gable had not been re-roughcasted, the Tribunal accepted that this work was not required. Although, residual damp staining remains on the plasterboard sarking panels in the roof space, there is no sign of fresh water ingress or condensation following the fitting of the external roof ventilators.

Decision and Reasons for Decision

11. The Tribunal, having found that satisfactory repairs have been carried out, was satisfied in terms of Section 60(5)(b) that the RSEO had been complied with and so granted a Certificate of Completion.

Appeal

12. 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.

Signed

Karen Moore, Chairperson

17 January 2023