

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 60 of the Housing (Scotland) Act 2006 (“the Act”)

Chamber reference number: FTS/HPC/RP/21/2038

Title no: GLA131038

Re: Property at 7 Longstone Road, Cranhill, Glasgow, G33 3JT (“the House”)

The Parties:

Mrs Patricia Chawner (“the Tenant”)

Mrs Roseann Gear, 151 Abbeyhill Street, Carntyne, Glasgow, G32 6LJ (“the Landlord”)

Tribunal Members:

Mrs Nicola Weir, Legal Member and Mr 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 8 March 2022, varied in terms of Variation of the RESO dated 30 October 2022 and, having considered the outcome of the Tribunal’s subsequent further inquiries, the Tribunal decided, of its own accord, to issue a Certificate of Completion of Works in terms of Section 60(5) of the 2006 Act.

Background

1. By application received on 23 August 2021, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues

affecting the House, namely issues with the windows, the front door lock, kitchen drawers and cupboards, the shower and bath panel, radiators, hole in the living room wall where fireplace removed and fire doors not installed.

2. On 27 August 2021, a Convener of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal and Case Management Discussion (“CMD”) was issued to the parties on 10 September 2021, requesting that any written representations should be lodged with the Tribunal by 1 October 2021. Written representations were lodged timeously on behalf of both parties.
3. Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an Inspection of the House at the outset to assist in the determination by the Tribunal of the application. Unfortunately, this was not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a Case Management Discussion (CMD) was arranged in order to discuss further procedure in the case and to ascertain if an Inspection was required or if other evidence was available or could be agreed.
4. The CMD took place by telephone conference call on 18 October 2021 and was attended by Mr James Gear (the Landlord’s husband) on behalf of the Landlord and the parties’ respective legal representatives. At the CMD, it was accepted by the Landlord that certain repairs would be carried out, namely replacement windows and front door, repairs to radiators and re-fitting of the bath panel. The Landlord did not accept responsibility for the condition of the kitchen cupboard and drawers nor the hole at the fireplace, both of which it was maintained had been caused by the Tenant. Nor did the Landlord consider that internal fire doors were required in the House in terms of the Repairing Standard. There was discussion as to requirements for the Tenant being given proper notice of when contractors would be attending and also the necessary cooperation of the Tenant in allowing access to contractors. The outcome of the CMD was that the Tribunal decided that an Inspection of the House would be required to assist the Tribunal in determining some aspects of the application, but that this would not take place until at least November 2021 to allow time for the agreed repairs to be undertaken by the Landlord. A Direction was issued following the CMD requiring the Landlord to lodge safety certificate documentation which the Landlord had indicated was available and requiring both parties to lodge any further documentation, including photographs, that they wished to rely upon in relation to their respective positions by 19 November 2021.
5. The Tribunal Members carried out an Inspection of the House on 29 November 2021. The Tenant and the Landlord’s husband, Mr James

Gear, were in attendance. The Tribunal had been notified prior to the Inspection that some of the repairs issues had been attended to, namely replacement of the windows and front door and repair of the radiators. The Tribunal inspected each of the issues raised in the application and confirmed that the windows throughout and the front door had been replaced and that the Tenant confirmed that there were no remaining issues with these and that the radiator issues had also been resolved. The Tribunal noted that the Tenant now accepted the Landlord's position that internal fire doors were not required in the House. The Tribunal noted that the kitchen drawers and cupboards were in a state of disrepair; that the bath panel was still detached; and that there was an empty alcove in the living room fireplace, where a fire presumably used to sit. The Tribunal also noted that drawer parts from the kitchen and a fire surround from the living room were stored elsewhere in the House, that there were some missing internal door facings, that there was no shower screen in the bathroom, that the pull-cord power switch was located within the shower enclosure and that, although there was a heat sensor in the kitchen, a carbon monoxide monitor in respect of the boiler and interlinked smoke alarms which were operational, the smoke alarm on the living room ceiling appeared to have been partially dismantled. A Photographic Schedule was taken during the Inspection by the Ordinary Member.

6. The Photographic Schedule referred to was circulated to parties following the Inspection, together with a further Direction requiring the Landlord to lodge gas and electrical safety certificates and both parties to intimate details of any witnesses they intended to have at the Evidential Hearing. An Evidential Hearing was fixed for 31 January 2022 but subsequently postponed by the Tribunal in terms of Rule 28 of the Regulations, due to ill-health of the Tenant. A further Evidential Hearing was fixed for 25 February 2022. Prior to said Evidential Hearings, further documentation had been lodged by both parties, including an Inventory of Productions on behalf of the Tenant containing a copy of the tenancy agreement, email correspondence between the parties' solicitors, photographs and some screenshots; photographs, a recent EICR and Gas Safety Certificate on behalf of the Landlord; and a further screenshot concerning the bath panel and responses from Scottish Fire & Rescue in respect of a Freedom of Information Request on behalf of the Tenant. Parties had also submitted details of their intended witnesses.
7. The Evidential Hearing took place by telephone conference call on 25 February 2022 at 10am. It was attended by the Tenant, Mr James Gear (husband) on behalf of the Landlord, Ms Charis Brooks, Solicitor from Govan Law Centre on behalf of the Tenant and Ms Claudia Hoey, Solicitor of Jones Whyte LLP on behalf of the Landlord. Also in attendance was Ms Emily Campbell, Trainee Solicitor from Jones Whyte LLP as an observer only and for training purposes who took no part in the Hearing. After introductory comments from the Legal Member and it being ascertained that there were no preliminary matters that either party

wished to raise, the Tribunal heard evidence from the Tenant, Mr Barry Chawner (the Tenant's husband), Mr James Gear (the Landlord's husband) and Mr James Gear (the Landlord's son). At the Hearing, the Tribunal had before it the Application and other documentation referred to above. The Tribunal also had before it a copy of Land Certificate GLA131038 relative to the House which is registered in the name of the Landlord and confirmation that the House is included in the Landlord's Landlord Registration with Glasgow City Council.

8. Following the Evidential Hearing, the Tribunal proceeded to make an RSEO dated 8 March 2022 in respect of the House which required the Landlord:-

(1) To repair or as necessary replace the kitchen units, to include (without prejudice to the foregoing generality) cupboard doors, hinges, shelves, drawers, drawer runners, facias, work surfaces and kick-boards to ensure that all are in a reasonable state of repair and in proper working order and

(2) To re-fit or as necessary replace and fit the bath panel in the bathroom.

These works required to be completed by 31 May 2022.

9. A Re-inspection of the House by the Tribunal Members was originally arranged to take place on 6 June 2022 but required to be cancelled on the day due to an administrative error on the part of the Tribunal Administration. A further Re-inspection was arranged to take place on 22 August 2022 and this proceeded. The Tribunal Members and the Tenant were present. The Tribunal noted that some of the works required in terms of the RSEO had been carried out but some remained outstanding. In particular, some of the kitchen units and work surfaces had been replaced and it appeared that some further units/parts were sitting in boxes in the hall waiting to be fitted and that the Tenant understood that some additional parts had been ordered but were still awaited. Some of the original kitchen units remained in place and it was the Tenant's understanding that these were not going to be replaced by the Landlord. The Tribunal noted that a nail had been hammered into one of the bath panels but that the bath panels remained loose. A Photographic Schedule was prepared by the Ordinary Member of the Tribunal following the Re-inspection and a copy of said Schedule dated 29 August 2022 is attached to this Decision.

10. Copies of the Photographic Schedule were circulated to parties, following which some comments on same were submitted by the Tenant's representative. No comments were received on behalf of the Landlord. The Tribunal subsequently issued a Direction dated 27 September 2022 to parties, requiring updates on the repairs to be lodged by 5 October 2022. The Tenant's representative emailed the Tribunal on 4 October 2022 confirming that the repairs to the bath panels had now

been completed and that the Tenant had been advised by the Landlord that the contractor was being chased up about the missing kitchen drawer. The Landlord's representative similarly advised regarding the missing drawer and that the contractor was chasing up the supplier on a weekly basis but had been informed that the estimated timeframe for this being supplied was 7 weeks.

11. The Tribunal, having considered the position, determined that, with reference to the Repairing Standard Enforcement Order ("RSEO") dated 8 March 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 required (one kitchen drawer still to be replaced) until 30 November 2022. A Variation of the RSEO dated 30 October 2022 was made by the Tribunal in terms of Section 25 of the 2006 Act.
12. Following expiry of the further period allowed for completion of the work, a further Re-inspection was scheduled to take place on 27 February 2023 at 11am and the parties were notified of same. Emails were issued to parties' representatives on 20 February 2023, in advance of said Re-inspection requesting an update as to whether the outstanding work in respect of the kitchen drawer had been completed. No responses were received prior to the Re-inspection. The Tribunal accordingly attended at the House on 27 February 2023 at 11am for purposes of Re-inspection. However, no parties were present or answered the door to provide the Tribunal access to the House so the Re-inspection did not proceed.
13. Following this, the Tribunal issued a further Direction dated 5 March 2023 to the parties, requiring updates on the position regarding the outstanding work by 17 March 2023. The Tenant's representative emailed the Tribunal on 7 March 2023, advising that the Tenant had been unable to be at the Re-inspection as she was in hospital and that half of the kitchen remains unreplaced, that there are no kickboards or handles on the kitchen drawers and that the Tenant had not been informed by the Landlord if or when these works would be completed. No response was received to the Direction on behalf of the Landlord, despite a reminder email having been issued to the Landlord's representative on 22 March 2023.

Decision

The Tribunal decided to issue a Certificate of Completion of Works in terms of Section 60(5) of the 2006 Act.

Reasons for decision

1. The Tribunal considered the whole background to this case; the extent to which the RSEO had been complied with, both at the time of the Tribunal's Re-inspection of the House on 22 August 2022 and then subsequently when the Tribunal had varied the terms of the RSEO to allow a further period for compliance with the RSEO to 30 November 2022; that neither party had updated the Tribunal prior to the scheduled further Re-inspection of the House on 27 February 2023, nor facilitated that Re-inspection taking place; and that the response on behalf of the Tenant to the Tribunal's subsequent Direction, whilst alleging non-compliance with the terms of the RSEO, did not specifically advise regarding the only issue determined to be outstanding by the Tribunal when the RSEO was varied, namely the replacement of a single kitchen drawer.
2. The Tribunal was of the view, from the response on behalf of the Tenant and, in particular, that it mentioned missing drawer handles only, that it is likely that the outstanding kitchen drawer has now been replaced. The Tribunal was satisfied from its Re-inspection of the House on 22 August 2022 and the parties' representations subsequent to that that the RSEO had otherwise being complied with. The Tribunal is accordingly now satisfied that the requirements of the RSEO have been complied with, that there is no justification for the further involvement of the Tribunal in respect of this matter and that it is appropriate for the Tribunal, of its own accord, to grant a Certificate of Completion of Works in terms of Section 60(5) of the 2006 Act.
3. The decision of the Tribunal is unanimous.

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.

N Weir

Date: 5 May 2023