

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland Housing and Property Chamber made under Section 26 of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/13/0013

126 Vexhim Park, Edinburgh EH15 3SE (“the Property”)

The Parties:

Mohammed Razaq, sometime 126 Vexhim Park, Edinburgh, thereafter 248 Lasswade Road there and now c/o Cheynes Property Group, 191 Crewe Road North, Edinburgh EH5 2NT (“the Landlord”)

Amanda Ross, sometime 126 Vexhim Park, Edinburgh EH15 3SE (“the Tenant”)

Tribunal Members:

George Clark (Legal Member/Chairman), Andrew Murray (Ordinary/Surveyor Member) and Elaine Munroe (Ordinary/Housing Member)

Decision

The Tribunal decided that the Landlord has complied with the Repairing Standard Enforcement Order made by the Private Rented Housing Panel on 16 August 2013 and that a Certificate of Completion of Works should be issued.

Background

On 16 August 2013, following an inspection and Hearing, the Private Rented Housing Panel made a Repairing Standard Enforcement Order (“RSEO”) in

respect of the Property, under Section 24 of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Order required the Landlord:

1. To instruct a Gas Safe registered contractor to examine and carry out such works as are necessary to put in proper working order all the central heating radiators in the Property,
2. To instruct a suitably qualified contractor to carry out such repairs to the hob as are necessary to restore it to proper working order,
3. To instruct a joiner to enclose all the surface-mounted central heating piping in the Property,
4. To instruct a suitably qualified contractor to repair or replace all damaged power points in the Property and to securely fix the power point in the main bedroom and thereafter to exhibit to the Tribunal a current Periodic Inspection Report,
5. To instruct a suitably qualified contractor to carry out such repairs as are necessary to restore the oven to proper working order in accordance with current regulations,
6. to carry out such repairs as are necessary to make the front and rear external doors wind and water tight, and
7. To reglaze or replace the windows throughout the Property and the glazed panels in the external doors.

On 6 August 2020, the Landlord advised the Tribunal that the Tenant had left the Property, which had since been fully refurbished. He stated that the Property had been rented out again.

Under normal circumstances, the Tribunal would then have arranged for the Ordinary/surveyor Member to carry out a re-inspection, to assist in the decision by the Tribunal on compliance of the Landlord with the RSEO over the Property. 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 is available or can be agreed.

A Case Management Discussion was held by means of a telephone conference call on 20 January 2021. The Landlord did not participate and was not represented. The Tenant, having vacated the Property was no longer a Party to the case.

The Tribunal considered whether a decision regarding any of the Items in the RSEO could be made without a further inspection being required. The Tribunal concluded that a current satisfactory Gas Safety Certificate and Electrical Installation Condition Report would meet its requirements regarding Items 1, 2, 4 and 5 of the RSEO, that photographic evidence would be

acceptable in relation to Item 3, that photographic evidence might be acceptable in relation to Item 6 and that photographic evidence, together with copies of Invoices/receipts for work done might be sufficient in relation to Item 7. Accordingly, the Tribunal decided to issue a Direction to the Landlord regarding production of the photographic and documentary evidence set out in the immediately preceding paragraph and to allow the Landlord a period of 4 weeks within which to provide it. The Tribunal would thereafter hold a further Case Management Discussion to review any documentation and photographs received and to decide further procedure in the case.

The case was adjourned to a further Case Management Discussion to be held by telephone conference call on 25 February 2021 at 10am and the Tribunal issued a Direction requiring the Landlord to provide, by 18 February 2021:

1. a current Gas Safety Certificate issued by a registered Gas Safe contractor, in respect of the Property.
2. a current Electrical Installation Condition Report in respect of the Property. The Certificate must be issued by a contractor registered with SELECT, NAPIT or NICEIC as authorised to issue such Certificates, and must contain no C1 or C2 categorised items of disrepair.
3. Photographs of the lounge, front bedroom and bathroom of the Property showing that all central heating piping is suitably enclosed.
4. Photographs of the front and rear external doors of the Property, taken from both inside and outside and showing the doors in both the open and closed position.
5. Photographs (internal and external) of the windows in each room of the Property, together with a copy of an Invoice/receipt in respect of reglazing or replacement of the windows and the glazed panels in the external doors of the Property.

The Landlord subsequently provided the Tribunal with a copy of a Gas Safety Certificate dated 7 February 2021. The Certificate was issued by Dynamic Plumbing & Gas, 25 Alloway Loan, Edinburgh. He also provided various photographs.

A further Case Management Discussion was held by means of a telephone conference call on the morning of 25 February 2021. The Landlord did not participate and was not represented.

The Tribunal was satisfied with the Gas Safety Certificate but noted that the Landlord had not provided an Electrical Installation Condition Report (“EICR”) or an Invoice/receipt in respect of the glazing of the windows and external doors. The Tribunal, in its Direction, had been quite specific as to the photographs it required to see, but the photographs provided by the Landlord did not comply with the Direction. The Tribunal had twice advised the landlord that it still awaited the documentation.

The Tribunal decided that, as the Landlord had indicated in his email of 6 August 2020 that he had fully refurbished the Property, the case should be continued, and the Landlord should be given a further period of 21 days to provide the Tribunal with the EICR, photographs and Invoice/receipt as detailed in its Direction of 20 January 2021. If the Tribunal received the required items within the 21-day period and was satisfied with them, it would issue a Certificate of Completion of Works. If it did not receive them, or was not satisfied with them, a reinspection would be required, and the case would have to be continued until the Tribunal was permitted to inspect the Property. That would be dependent on decisions and guidance from the Scottish Government and the Scottish Courts and Tribunals Service, and the Tribunal stressed that it was, therefore, very much in the Landlord’s interest to comply with the Direction, as it is an offence under Section 28(5) of the Housing (Scotland) Act 2002 to re-let the Property whilst it remains subject to the Repairing Standard Enforcement Order.

The Landlord failed to provide the Tribunal with the EICR, photographs and Invoice/receipt as detailed in its Direction of 20 January 2021 and the Tribunal decided that the case must proceed to a reinspection.

The Reinspection

The Tribunal reinspected the Property on the morning of 29 July 2021. The Landlord was not present or represented. The Tribunal Members were admitted to the Property by a Mrs Hann, who confirmed that she had been the tenant of the Property for the last four years.

The Tribunal noted that the exposed central heating radiator piping in the living room and front bedroom are now encased, but the piping in the bathroom remains exposed. The front and rear entrance doors are still in a poor state of repair and neither has properly functioning locks. The present tenant advised the Tribunal members that she had fitted a Yale lock on the front door and a bolt on the back door, to provide some security. No repair work appears to have been carried out to the windows in the Property and the Tribunal has still not seen a satisfactory Electrical Installation Condition Report.

The Tribunal was extremely disappointed to note that, in the period of almost eight years since the RSEO was made and despite his statement in his email of 6 August 2020 that the Property had been fully refurbished, the Landlord appeared to have done virtually none of the work required by the RSEO. The Tribunal was minded to make a finding under Section 26 of the 2006 Act that he had failed to comply with the RSEO and to decide whether to make a Rent Relief Order in respect of the Property, under Section 27 of the 2006 Act. Accordingly, the Tribunal decided to fix a Hearing, at which the Landlord would have the opportunity to present reasons as to why the Tribunal should not make a Failure to Comply Decision and a Rent Relief Order.

The Tribunal noted that the Landlord, by his own admission in his email of 6 August 2020 and as established at the reinspection, has re-let the Property while it is subject to a Repairing Standard Enforcement Order. He may, therefore, have committed a criminal offence under Section 28(5) and the Tribunal decided to report the matter to Police Scotland for possible prosecution.

The Hearing

A Hearing was held by means of a telephone conference call on the morning of 7 October 2021. The Landlord was present.

The Landlord was asked for his comments on the Reinspection Report, with particular reference to the fact that the Tribunal had found that no work appeared to have been done to the windows or external doors and that he had still not provided the Tribunal with an Electrical Installation Condition Report (“EICR”). He told the Tribunal that the window glazing had been replaced in 2013 and the present condition of the windows was attributable to the frames requiring now to be repainted. He had dealt with the issues regarding the entrance doors that were identified in 2013, but the present tenant had caused the damage which the Tribunal had recorded at the Reinspection. The photographs which he had submitted to the Tribunal showed that he had completely refurbished the Property when the Applicant Tenant moved out. He also had an EICR, which he would look out and send to the Tribunal along with the invoice for the work done on the windows.

Reasons for Decision

The Tribunal was sympathetic to the possibility that documentation which the Landlord said he had might establish that the work required to the windows had been carried out and that an EICR which post-dated the RSEO might also be made available. Accordingly, the Tribunal decided to allow the Landlord a period of seven days within which to produce the relevant documentation. If the Landlord did not produce it, or if it was not satisfactory, the Tribunal would make a finding that the Landlord had not complied with the RSEO.

On 26 October 2021, the Landlord provided the Tribunal with a copy Invoice in respect of the supply and fitting of a double-glazed pane for each of the front and rear windows and removal, resealing and reinstatement of the glass pane in the rear door. He also provided an Electrical Installation Condition Report dated 18 December 2018, which gave the Property an overall assessment of “Satisfactory” and did not contain any items of disrepair.

The Tribunal noted that the documentation provided by the Landlord did not comply exactly with the requirements of its Direction of 20 January 2021 but did accept that the windows of the Property will have deteriorated through weathering in the period since the Tribunal made the RSEO and noted the Landlord’s contention that the presently visible damage to the entrance doors post-dated the RSEO. After careful consideration and on balance, the Tribunal decided that it was prepared to accept that the work required by the RSEO had been carried out to the extent that a Certificate of Completion of Works should be issued. It will be for the present tenant to decide whether to make an application to the Tribunal for a Repairing Standard Enforcement Order, on the basis of the present condition of the Property

The Decision of the Tribunal 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.

G.Clark

Signed

Date: 10 November 2021

George Clark (Legal Member/Chair)