

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: issued under Sections 26 and 60 of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act

Reference number: FTS/HPC/RP/20/2331

Re: Property at Hawthorn, Shannochie, Isle of Arran, KA27 8SJ (“the Property”)

The Parties: George Lammie, Torran, Montrose Terrace, Whiting Bay, Isle of Arran KA27 8QW (“the Respondent”) per his agent, Mr Sean Lynch of McCluskey Browne, solicitors, 7 Portland Road, Kilmarnock, KA1 2BT (“the Respondent’s Agent”)

Tribunal Members: Karen Moore (Chairperson) and Mike Links (Ordinary Surveyor Member)

Decision

The Tribunal, revoked parts iii) and iv) of the Repairing Standard Enforcement Order (RSEO) made by it on 5 October 2021, and having so revoked those parts of the RSEO, determined that the Landlord has complied with the RSEO and that for the reasons set out below.

This Decision should be read in conjunction with Decision and RSEO both dated 5 October 2021

Background

1. By application dated 24 October 2020 (“the Application”), Mr. Alister Meek of CHAP on behalf of the then tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Respondent had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Section 13 (1) (a) of the Act due to dampness throughout the Property. The Application was accepted by the Chamber. Following the then tenant vacating the Property, a tribunal member continued the Application in terms of Schedule 2 Paragraph 7(3) of the Act.
2. An Inspection of the Property took place on 12 August 2021 with a Hearing taking place on 20 August 2021. The Tribunal’s Inspection Report which noted two areas of dampness within the Property was issued to the

Respondent in advance of the Hearing. The Hearing was adjourned to 30 September 2021 to allow for further information to be submitted by or on behalf of the Respondent.

3. The adjourned Hearing took place on 30 September 2021, following which the Tribunal made a determination that at the date of the Inspection, the Respondent had failed to comply with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13 (1) (a) of the Act and made the following repairing standard enforcement order (“RSEO”): - *“the Landlord must on or before **12 November 2021** carry out all of the following:-*

- i) Instruct a damp proofing and timber specialist registered with the British Wood Preserving and Damp Proofing Association or similar trade organisation to carry out a full inspection of the Property with a view to identifying the extent and causes of the dampness in the Property and provide a fully documented report on their findings (“the Report”). The instruction to the specialist should include a copy of the said Home Report and the said Inspection Report;*
- ii) Submit the Report to the Tribunal;*
- iii) Instruct a contractor or contractors capable of providing a 10- year guarantee to carry out all works recommended by the Report and*
- iv) Make good all décor damaged as a result of these works.”*

Review

4. By email received on 19 October 2021, the Respondent’s Agent on behalf of the Respondent applied to the Tribunal in terms of Rule 39 of the 4. First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the Rules”) to review its decision that Respondent had failed to comply with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property does not meet the Repairing Standard. The Tribunal refused that application.

RSEO

5. By email dated 22 November 2021, the Respondent’s Agent, in compliance with Part i) of the RSEO, submitted a survey report dated 9 November 2021 by Michael Caldow, BSc CSRT CSSW, of Rowallan Specialist Surveys of 30 John Finnie Street Kilmarnock KA1 1DD following a survey of the Property carried out by Mr. Caldow on 9 November 2021 (“the Specialist Report”).
6. With regard to condensation dampness, the Specialist Report made the following observations: -

“Exposed stonework to the rear elevation wall in the Hallway will always retain and element of moisture.

Damp plaster was noted to the small return section of wall abutting exposed external stone wall adjacent to the Master Bedroom. We would consider this a generally cosmetic problem and could be rectified by renewing plaster with renovating plaster or plaster on membrane and replacing the cement skirting in timber ensuring base of new plaster does not contact solid floor.

Higher humidity readings were obtained within the Master Bedroom at the time of inspection and this would concur with this being the bedroom currently in use. Colder, hard plastered, external walls to rear and side elevation walls in Master Bedroom will be more susceptible to condensation than drylined walls. There was no evidence of mould growth, symptomatic of a condensation issue, to external walls at the time of inspection, however, slight mould staining was noted around the window of the Master Bedroom.” The Specialist Report gave general advice and information on condensation.

7. With regard to rising or penetrating damp, the Specialist Report made the following observation: - *“At the time of our survey, visual and instrumental inspection did not indicate the presence of rising or penetrating damp.”* The Specialist Report went on to state:- *“We, therefore, make no recommendations for specialist damp-proofing treatments at this time.”*

Issue for the Tribunal

8. The issue for the Tribunal was whether the terms of the Specialist Report enabled it to decide that the Respondent had complied with the RSEO and that in terms of Section 26 of the Act which states:- *“It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.”*
9. The Tribunal considered its powers in terms of the Rules and took the view that it was appropriate in all the circumstances to make a decision on the issue without a hearing and that in terms of Rule 18 of the Rules.

Decision and Reasons for Decision

10. The Tribunal had regard to the requirements of the RSEO and to the full terms of the Specialist Report and took the view that the content and author of the Specialist Report complied in full with Part i) of the RSEO. The Tribunal noted that the Specialist Report had been submitted outwith the time limit as stated in the RSEO but considered this to be of no significance in respect of compliance with Part ii) of the RSEO. As the Specialist Report made no recommendations in respect of works, Parts iii) and iv) of the RSEO did not require to be complied with and so the Tribunal revoked these parts in terms of Section 25(1)(b).
11. Accordingly, the Tribunal found that the RSEO had been complied with and proceeded to issue a Certificate of Completion in terms of Section 60(5)(b) of the Act.

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.

K Moore

Karen Moore, Chairperson

14 December 2021