

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision regarding a Failure to Comply with a Repairing Standard Enforcement Order ("RSEO"): Housing (Scotland) Act 2006 ("the Act"), Section 26

Chamber Ref: PRHP/RP/14/0134

Re: Property at 7 Merkland Road East, Aberdeen, AB24 5PS ("the Property")

The Parties:-

MISS SUMRAH AL-BAGHDADI (formerly "the Tenant")

MS ESA JAN, 44 Broomhouse Court, Edinburgh, EH11 3RN ("the Landlord")

Tribunal Members:

E K Miller (Legal Member)

A Anderson (Ordinary Member)

Decision

The First Tier Tribunal for Scotland (Housing and 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 whilst some works had been carried out to the Property, the Landlord had not yet fully complied with the RSEO and that it should remain in place.

Background

1. The Tribunal, under its previous guise of the Private Rented Housing Committee, had issued an RSEO against the Property dated 29 October 2014 which had determined that the then owner of the Property had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The RSEO required the following:-
 - (a) to carry out such works as are necessary to prevent water ingress and damp occurring in the Property;
 - (b) to repair any areas of damaged plasterwork arising as a result of the said water ingress/damp and to redecorate the flat as appropriate;

- (c) to obtain a clear electrical installation condition report by a suitably qualified electrician and to carry out any works necessary to allow the issue of the said report;
 - (d) to repair the broken flush mechanism on the toilet in the Property;
 - (e) to repair the external door entry/buzzer mechanism;
 - (f) to carry out such works as are necessary to ensure a proper supply of hot water to the Property for use by the Tenant; and
 - (g) to install a hardwired interlinked heat detector to the kitchen area in the sitting room to connect into the existing smoke detection system.
2. The Committee had ordered in the RSEO that the works specified were to be carried out and completed within a period of 2 months.
 3. During the period from March to July 2015 the Tribunal endeavoured to gain access to the Property from the then owner but was unsuccessful. The Property was then sold to the Landlord around September 2016. In late 2022, the Landlord contacted the Tribunal looking to have the RSEO removed on the basis the works had been done and that they wished to sell the Property.
 4. The Tribunal arranged for a re-inspection of the Property to be carried out on 10 January 2023. Mr Miller and Mr Anderson of the Tribunal were appointed to carry this out (having been the original members who first looked at the Property in 2014). A Mr Jan gave access to the Property.
 5. Following the re-inspection a report was circulated on 20 January 2023 setting out the Tribunal's preliminary view of matters and the Landlord was invited to comment and, in particular, whether they wished for a hearing to take place. The Landlord contacted the Tribunal on 30 January 2023 with some comments on the gable wall of the Property. The Tribunal, after waiting a short period for any further comments determined that it was appropriate for it to make a decision as the Landlord did not appear to be requesting a hearing and was content with their email comments
 6. The Tribunal then considered the information obtained during its re-inspection. The Tribunal was pleased to note that a working and compliant smoke/heat detection system had been installed. The door buzzer/entry system was in proper working order. There was a proper supply of hot water to the property and the flushing mechanism of the toilet was working properly. This items had all been dealt with satisfactorily.
 7. However, the Tribunal remained concerned about two matters covered in the RSEO. Firstly, the Tribunal had been presented with an Electrical Installation Condition Report from the Landlord. The EICR had been prepared by a Gary O'Rourke of AA Electrical Services. Although the

report described the installation as “Satisfactory”, there were multiple sections of the report that had not been completed or had N/A where there should be detail or confirmation of condition, e.g. the entirety of Sections 13, 14 and 15. The Section 17 entries did not make sense. There were no entries for circuit impedances at Section 16. The report did not confirm the operative or organisation were registered with a recognised trade body, such as Select or NICEIC. The membership number quoted at Section 6 did not identify any associated organisation and the Tribunal could not link it to any trade body on carrying out their own investigations. After having reviewed the terms of the EICR the Tribunal had concerns that it had not been completed with appropriate diligence or that the author had the necessary qualification or experience. Accordingly, the Tribunal determined that the EICR was not adequate and that a fresh EICR properly completed by a suitably qualified and experienced electrician would be required.

8. The second remaining area of concern was water penetration and damp to the east internal wall of the Property. The initial inspection had identified high levels of moisture throughout the eastern length of the Property. At the re-inspection the Tribunal took various damp meter readings along this internal elevation. Whilst the back bedroom/store was now not showing any damp there remained high readings and soft or uneven plaster in the front and middle rooms, indicative of ongoing water penetration or damp.

The Tribunal had noted on the day of the re-inspection that a new block of flats had been built on to the eastern gable of the Property and that this would provide additional protection against water penetration that had not existed previously. The Landlord had also highlighted this in his email of 30 January 2023. Whilst the Tribunal accepted that this would reduce the chances of water penetration in to the interior of the Property it was clear the dampness remained. If the dampness was caused solely by rainwater penetration, the adjacent block of flats would act as a barrier and the internal surfaces of the Property should have dried out by the point of the re-inspection. The Tribunal was satisfied that dampness was still present. This could be from a variety of sources such as leaking downpipes, rising damp or a build up of rubble between the lath and plaster wall and the external brickwork. The Landlord had not provided a damp specialist report and it was not possible for the Tribunal to identify the cause.. The moisture levels were high and therefore it was still appropriate for the Landlord to carry out investigatory works and take remedial action to stop any ongoing water penetration.

The Tribunal appreciated that the Landlord had indicated that they intended to sell the Property as they had bought it for their children to live in whilst studying in Aberdeen. They had now finished University and the Landlord no longer needed the Property. The Tribunal appreciated that a sale may occur and the Property may cease to be a rental property. However, the Tribunal have, in the past, had assurances from landlords that a property is to be sold and that hasn't subsequently transpired to be the case. In addition, the Property was located in an area with a very high

density of student accommodation and so there was a significant possibility that if sold it would be to another landlord who would return it to the rental market. Accordingly, whilst the Tribunal appreciated the position of the Landlord, it was appropriate that the RSEO remained in place and the required works were carried out.

Decision

9. The Tribunal accordingly determined that whilst the Landlord had carried out some of the works in the Property required by the RSEO, items (a) to (c) (being the prevention of water penetration and damp and any subsequent redecoration works along with an updated EICR) remained outstanding and would require to be addressed by the Landlord and that the RSEO would remain in place for the time being.
10. The decision of the Tribunal was unanimous.

Right of Appeal

11. **In terms of Section 46 of the Tribunal (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.**

Effect of Section 63

12. **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

E.Miller.

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Chairperson

02 February 2023.....
Date