



**Statement of Decision of the Housing and Property Chamber
of the First-tier Tribunal for Scotland under Section 26 (1) of
the Housing (Scotland) Act 2006**

Property: 31 Campbell Crescent, Falkirk FK2 9JE (“the Property”/ “the house”)

Chamber Reference: FTS/HPC/RT/19/3136

Parties:

Falkirk Council Private Sector Team, The Forum, Callendar Business Park, Falkirk FK1 1XR (“Third Party Applicant”)

Mr Alastair Scott and Mrs Lorraine Scott, 26 Charles Sneddon Avenue, Bo’ness EH51 9TJ (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Andrew Taylor (Ordinary Member/Surveyor)

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 has complied with the Repairing Standard Enforcement Order made by the Tribunal on 6 January 2020 under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Order should be varied to allow the Landlord a further period of one month from the date of intimation of the Variation within which to complete the works required by the Order.

Background

1. By application, received by the Tribunal on 4 October 2019, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human

habitation, that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. Following an Inspection and Hearing on 6 January 2020, the Tribunal made a Repairing Standard Enforcement Order, which required the Landlord to:

1. Carry out such works as are necessary to the mortar pointing at ridge and the cracked mortar pointing to the tifting at the roof verge to ensure that the roof is wind and watertight.
2. Engage a suitably qualified and Gas Safe registered heating engineer to repair the water leak at the gas fired central heating boiler, which is highlighted on the Gas Safety Certificate.
3. Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to rectify the C2 bonding fault highlighted on the current certificated electrical condition check (EICR). On completion of that work carry out a further EICR, which should include comments on the suitability/safety of the electrical circuitry, wiring and connections for the oven and hob. Provide copies of that Report to the Tenant, Third party and Tribunal.
4. Replace the blown double-glazing unit to the Front bedroom and the broken double-glazing unit in the Kitchen.
5. Repair or replace the handle/lock/latch to the front door so that it latches and locks effectively and is secure.
6. Repair or replace the mirror doors and tracks in the front bedroom so that the wardrobe functions effectively.
7. Remove mould from the walls and ceilings in the front and back bedroom, apply a mould inhibitor and redecorate the affected areas.
8. Reposition the Carbon Monoxide detector in the front bedroom to ensure compliance with legislation.
9. Carry out all making good and decoration associated with the completion of the foregoing works.

The Tribunal ordered that the works required by the Order must be carried out within the period of six weeks from the date of service of the Order.

4. The Ordinary Member/surveyor of the Tribunal re-inspected the Property on the morning of 16 March 2020 and was admitted by the Tenant. The Third Party Applicant was not present. The Landlord was not present or represented.
5. The Ordinary Member/surveyor of the Tribunal reported that the actions required in Items 3,4 (in part),6,7 and 9 set out in the Order had not been carried out, but that Items 1,2,5 and 8 had been satisfactorily dealt with. In respect of item 4, the double-glazed unit in the front bedroom had been replaced, but not the one in the kitchen.
6. A copy of the Reinspection report was sent to the Parties for comment and on 18 March 2020, the Landlord commented, attaching a copy of an EICR dated 9 March 2020, which rated the overall installation as “Satisfactory” and did not contain any category C1 or C2 items of disrepair, that he had provided to the Tribunal in March and which the Tribunal had copied to the Third Party Applicant at the time. The Landlord requested an Oral Hearing, but before any further action could be taken, the COVID-19 lockdown restrictions were put in place and the Tribunal did not recommence operations until 9 July 2020.
7. In the intervening period, the Landlord confirmed on 17 June 2020 that he would send a copy of the EICR to the Tenant, as required by the Order. Both Parties confirmed that the Tenant would be replacing the double-glazed unit in the kitchen. In his email of 17 June 2020, the Landlord also stated that he had repaired the mirrored door and tracks in the front bedroom but, as they had been damaged again, he was seeking permission to replace them with rail and curtain. He stated that he would be liaising with the Tenant as regards access for a painter to carry out the work required by the Order.
8. On 6 July 2020 the Third Party Applicant advised the Tribunal that they had no objection to the mirror door in the bedroom wardrobe being replaced with a rail and curtain, as the Tenant had now vacated the Property. On 17 July 2020, the Landlord provided evidence to the Tribunal that the Tenant had now vacated the Property (the Tenant also confirmed to the Tribunal that she had vacated the Property on 9 July) and asked the Tribunal to remove the Order as he was intending to sell the Property and had instructed a Home Report. On 22 July 2020, the Third Party Applicant advised the Tribunal that the Tenant had stated in an email to them that she had repaired the kitchen window and the mirror wardrobe.

Reasons for Decision

9. The Tribunal recognised that, whilst at the date of the reinspection, a number of items were outstanding, circumstances had altered during the

lockdown period. Normally, the Tribunal would have made a finding that the Landlord had failed to comply with the Order, and this would have been reported to the local authority and to Police Scotland for possible prosecution. The Tenant is no longer resident in the Property and the Landlord had indicated his intention to sell, but the Tribunal was not prepared to discharge the Order, as the treatment of the mould in the front and back bedrooms had not been done, or the subsequent redecoration carried out, and the existence of the mould represented a health hazard to future occupants of the Property. The Tribunal accepted the EICR and, the Tenant having vacated the Property, the Tribunal was prepared to accept the replacement of the mirror doors in the front bedroom with a rail and curtain.

10. Having considered all the circumstances, the Tribunal decided to Vary the RSEO to allow the Landlord a further period of time within which to complete Items 7 and 9 of the Order. The Tribunal considered that a period of one month would be sufficient time to allow for completion.

Decision

11. The Tribunal determined that the Order should be varied to allow the Landlord a further period of one month from the date of intimation of the Variation within which to complete the works required by the Order.

12. 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.

George Clark

Signed

... Legal Member/Chairperson

Date: 29 July 2020