



Note on Case management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to a Repairing Standard Enforcement Order.

Chamber Ref: FTS/HPC/RT/19/2149

Title no: BNF5872

1 Institution Street, Macduff, Aberdeenshire, AB44 1UT ('The Property')

The Parties:-

Graham Earle and Adele Earle residing at 3 Tannery Street, Banff, Aberdeenshire, AB45 1ER ('the Landlord').

Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, AB51 3WA ('Third Party')

Mark Lee and Ruth Lee residing at 1 Institution Street, Macduff, Aberdeenshire, AB44 1UT ('the former Tenants').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Angus Anderson (Ordinary Member).

1. Background

The Tribunal issued a Repairing Standard Enforcement Order dated 16th October 2019 ('RSEO'), in the following terms:

'The Tribunal requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.'

In particular the Tribunal requires the Landlord to:

- 1. Carry out such repairs as are necessary to render the electrical installation in a reasonable state of repair and exhibit a valid and compliant EICR Certificate.*
- 2. Install:*

- 2.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.*
- 2.2 One functioning smoke alarm in every circulation space, such as hallways and landings.*
- 2.3 One heat alarm in every kitchen and*
- 2.4 All alarms should be interlinked and the installation should comply with the regulations.*
- 3. Replace the carbon monoxide alarm in compliance with the regulations.*
- 4. Repair or replace the front door to render it in a reasonable state of repair and proper working order.*
- 5. Reinstall and repair or replace the hall carpet to render it in a reasonable state of repair.*
- 6. Resolve the source of damp penetration to the Property, (including the walls in the sitting room, gas meter cupboard, lower hall, upper bedrooms, bathroom and landing) and carry out such repairs as are necessary to prevent further damp ingress followed by remedial works to damp-damaged finishes and decorations.*
- 7. Repair or replace the gas meter cupboard door to render it in proper working order.*
- 8. Repair or replace the defective floor in the bedroom next to the sitting room to render it in a reasonable state of repair.*
- 9. Repair the tiles around the bath.*
- 10. Repair or replace the back door to render it in a reasonable state of repair and proper working order.*
- 11. Repair or replace the cupboard door in the first floor bedroom right to render it in a reasonable state of repair and proper working order.*
- 12. Repair or replace the door of the landing cupboard to render it in a reasonable state of repair and proper working order.*
- 13. Repair or replace the door of the external store to render it in a reasonable state of repair and proper working order.*
- The Tribunal ordered that these works must be carried out and completed by 15th January 2020.'*

2. The Ordinary Member of the Tribunal carried out inspections of the Property on 17th September 2019 and 28th January 2020. The reinspection report dated 28th January 2020 confirmed that items 2, 5 and 11 of the RSEO had been completed. The other items had not been completed.

3. The Tenants had vacated the Property in March 2020.

4. The Landlord sent email representations to the Tribunal that the works had not been completed as the Tenants had not allowed access. The Tribunal were poised to arrange a hearing but this was not possible due to the Covid restrictions. The RSEO was subsequently varied such that the date of completion of the outstanding works was extended to 28th May 2020. No Further inspection was possible due to the Covid Restrictions.

5. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00am on 11th January 2021.

One of the Landlords, Mr Earle, attended.

The Third Party was represented by Emma Bain, Housing Officer, Aberdeenshire Council.

Mrs Taylor read through each item of the RSEO. The parties' representations are as follows:

1. Carry out such repairs as are necessary to render the electrical installation in a reasonable state of repair and exhibit a valid and compliant EICR Certificate.

Mr Earle advised that he had an EICR and would send it to the Tribunal.

2. Install:

2.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.

2.2 One functioning smoke alarm in every circulation space, such as hallways and landings.

2.3 One heat alarm in every kitchen and

2.4 All alarms should be interlinked and the installation should comply with the regulations.

Mr Earle confirmed that the alarms had been installed. Mr Anderson confirmed that the reinspection report dated 28th January 2020 confirmed that the required alarms had been installed.

3. Replace the carbon monoxide alarm in compliance with the regulations.

Mr Earle explained that he was not sure if the carbon monoxide alarm had been correctly fixed in terms of the regulations. Mr Anderson explained that at his reinspection the alarm was simply lying on top of the boiler.

4. Repair or replace the front door to render it in a reasonable state of repair and proper working order.

Mr Earle advised that the front door had been repaired in March / April 2020 after the Tenant had vacated the Property.

6. Reinstate and repair or replace the hall carpet to render it in a reasonable state of repair.

Mr Earle advised that the hall carpet had been replaced. Mr Anderson confirmed that the reinspection report dated 28th January 2020 confirmed that the hall carpet had been replaced.

7. Resolve the source of damp penetration to the Property, (including the walls in the sitting room, gas meter cupboard, lower hall, upper bedrooms, bathroom and landing) and carry out such repairs are necessary to prevent further damp ingress followed by remedial works to damp-damaged finishes and decorations.

Mr Earle advised that his roofer had replaced the flashings at the front and back of the Property. There had been a problem with dampness in the past and Richardson and Starling had carried out repair works approximately four years ago. However the Damp Proof Course had subsequently failed and this was not covered by Richardson and Starling's guarantee. Mr Earle had arranged for his contractor R C Martin to carry out remedial works to treat the dampness in the Property. He has paid him approximately £2300 for this work. Emma Bain explained that she felt it was important that a reinspection was carried out to verify that the dampness had been repaired.

8. Repair or replace the gas meter cupboard door to render it in proper working order.

Mr Earle confirmed that Mr Martin had repaired the gas meter cupboard door.

8. Repair or replace the defective floor in the bedroom next to the sitting room to render it in a reasonable state of repair.

Mr Earle confirmed that Mr Martin had repaired the defective floor in the bedroom next to the sitting room.

9. Repair the tiles around the bath.

Mr Earle confirmed that Mr Martin had repaired the tiles around the bath.

10. Repair or replace the back door to render it in a reasonable state of repair and proper working order.

Mr Earle confirmed that Mr Martin had repaired the back door. The broken glass pane had been replaced and the lock had been changed.

11. Repair or replace the cupboard door in the first floor bedroom right to render it in a reasonable state of repair and proper working order.

Mr Earle advised that the cupboard door had been repaired. Mr Anderson confirmed that the reinspection report dated 28th January 2020 confirmed that the cupboard door had been repaired.

12. Repair or replace the door of the landing cupboard to render it in a reasonable state of repair and proper working order.

Mr Earle confirmed that Mr Martin had repaired the door of the landing cupboard.

13. Repair or replace the door of the external store to render it in a reasonable state of repair and proper working order.

Mr Earle explained that he was not certain if the door of the external store had been repaired.

Mrs Taylor and Mr Anderson explained to Mr Earle that the Tribunal need to be satisfied that the outstanding works have been satisfactorily completed. Usually, the Tribunal would carry out an inspection of the Property to satisfy themselves that the works have been completed however this is not possible at present due to the Covid restrictions. They explained that if he is able to provide the Tribunal with sufficient evidence that the works have been satisfactorily completed they would consider the evidence he provides and then determine if the evidence was sufficient to enable them to determine that the works have been satisfactorily completed or whether an inspection was necessary. Examples of the evidence required are as follows:

1. Carry out such repairs as are necessary to render the electrical installation in a reasonable state of repair and exhibit a valid and compliant EICR Certificate.

The EICR certificate must be exhibited to the Tribunal. The Tribunal had received a copy of the Fire Alarm Certificate by email from Mr Earle during the CMD but they have not received the EICR.

3. Replace the carbon monoxide alarm in compliance with the regulations.

Evidence that the carbon monoxide alarm showing it has been correctly installed in compliance with the regulations. (The specifications are set out in the government web site (www.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/)).

4. Repair or replace the front door to render it in a reasonable state of repair and proper working order.

Photographic evidence and documentary evidence of the front door clearly showing that it has been repaired.

6. Resolve the source of damp penetration to the Property, (including the walls in the sitting room, gas meter cupboard, lower hall, upper bedrooms, bathroom and landing) and carry out such repairs as are necessary to prevent further damp ingress followed by remedial works to damp-damaged finishes and decorations.

Receipts and accompanying contractors reports detailing the remedial works carried out; photographs of damp meter readings at the locations specified; a report from a suitably qualified surveyor or damp specialist detailing the extent or limits of the inspection confirming the method and equipment used in measuring levels of moisture and confirming that all areas of the Property identified as being affected by high levels of moisture in the RSEO have been tested.

7. Repair or replace the gas meter cupboard door to render it in proper working order.

Photographic evidence and documentary evidence of the gas meter cupboard door clearly showing that it has been repaired.

8. Repair or replace the defective floor in the bedroom next to the sitting room to render it in a reasonable state of repair.

Receipts and accompanying contractors reports detailing the remedial works carried out; photographic evidence of the bedroom floor clearly showing that it has been repaired.

9. Repair the tiles around the bath.

Receipts and accompanying contractors reports detailing the remedial works carried out; photographic evidence of the tiles around the bath clearly showing that they have been repaired.

10. Repair or replace the back door to render it in a reasonable state of repair and proper working order.

Photographic evidence and documentary evidence of the back door clearly showing that it has been repaired.

12. Repair or replace the door of the landing cupboard to render it in a reasonable state of repair and proper working order.

Photographic evidence and documentary evidence of the door of the landing cupboard clearly showing that it has been repaired.

13. Repair or replace the door of the external store to render it in a reasonable state of repair and proper working order.

Photographic evidence and documentary evidence of the door of the external store clearly showing that it has been repaired.

6.Direction.

The Tribunal issued a Direction requiring the evidence to be submitted to the Tribunal by 11th February 2021.

7.Variation of the RSEO.

Mrs Taylor and Mr Anderson determined that items 2, 5 and 11 of the RSEO have been satisfactorily completed and varied the RSEO as follows:

7.1 The following items are deleted:

2. Install:

2.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.

2.2 One functioning smoke alarm in every circulation space, such as hallways and landings.

2.3 One heat alarm in every kitchen and

2.4 All alarms should be interlinked and the installation should comply with the regulations.

5.Reinstate and repair or replace the hall carpet to render it in a reasonable state of repair.

11. Repair or replace the cupboard door in the first floor bedroom right to render it in a reasonable state of repair and proper working order.

7.2 The date for completion of the outstanding works is amended to 24th February 2021.

8.Adjournment of the Case Management Discussion.

The Tribunal determined that the case would proceed to an Adjourned Case Management Discussion.

Details of the Adjourned Case Management Discussion will be provided separately by the Tribunal Administration.

9. 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.

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.

J Taylor

Legal Member

11th January 2021