

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Sections 25 and 27 of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act

Chamber Reference number: - PRHP/RP/15/0262

Parties:

1. Mrs Mary Craig, residing at 33 Bon Accord Crescent, Shotts, ML7 4EA (“the Tenant”) per her nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), her daughter, Ms Lisa Craig (“the Tenants’ Representative”) and
2. Mr. Andrew Alexander Sneddon residing at 9, Stanmore Gardens, Lanark, ML11 7RZ (“the Landlord”), together referred to as “the Parties”.

Property: – 33 Bon Accord Crescent, Shotts, ML7 registered in the Land Register of Scotland under title sheet number LAN140092 (“the Property”)

Tribunal Members

Karen Moore (Chairperson)

Andrew Taylor (Surveyor Ordinary Member)

Decision

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 28 January 2016

Decision and Variation of RSEO affecting the Property both dated 7 July 2016;

Decision and Variation of RSEO affecting the Property both dated 23 November 2016;

Decision and Variation of RSEO affecting the Property both dated 20 March 2017 and

Decision of Failure to Comply and Rent Relief Order (RRO) affecting the Property both dated 21 August 2017

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO and the RSEO as varied, determined that

the Landlord has not complied and so determines not to vary further or revoke the RSEO and determines not to revoke the RRO and that for the reasons set out below.

Background

1. By application dated 25 September 2015 (“the Application”), the Tenant’s Representative applied to the then Private Rented Housing Panel (“PRHP”) now the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord 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 Sections 13 (1) (a), 13 (1) (b), 13(1) (c), 13(1) (d) and 13(1) (f) of the Act. An Inspection and Hearing were held on 13 January 2016 following which a Committee of the PRHP now the Tribunal determined that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Act and imposed the RSEO.
2. The RSEO required the Landlord to carry out the following:
 1. *Refurbish or replace all windows in the property (including rear porch) to ensure that they are wind and watertight, capable of opening, secure and in proper working order. Include all ancillary works, pointing, making good and decoration.*
 2. *Carry out such works as are necessary to ensure that the rear kitchen porch is wind and watertight; include refurbishing or renewing external door and all making good and decoration*
 3. *Service and adjust internal pass doors and cupboard doors throughout, replace damaged or missing doors, providing new ironmongery as required, to ensure that they are in proper working order and capable of latching shut. Include all making good and decoration.*
 4. *Provide new external door between kitchen and porch including all ironmongery and making good and decoration.*
 5. *Refurbish or renew all kitchen units and worktops to ensure that they are in proper working order and fit for purpose; include all making good.*
 6. *Repair or replace kitchen sink waste pipe internally and externally and properly connect to external drainage; include all necessary making good.*
 7. *Repair or replace existing WC cistern and leave in proper working order.*
 8. *Make good water damaged ceilings in dining room and kitchen including all making good and decoration.*

9. *Replace missing ceramic tiles around bath/shower and form effective seal at bath.*
10. *Carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property, internally and externally (including garage), by a suitably qualified and registered SELECT or NICEIC electrical contractor.*
11. *Carry out works as recommended by that check to ensure that the electrical installation is safe, functional and in proper working order. These works should include the repairing or replacing the kitchen hob and bathroom instantaneous shower.*
12. *Provide a Domestic Electrical Installation Certificate for the works carried out.*
13. *Provide and install heat, carbon monoxide and smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 - Fire, Sub-section 2.11 Communication and the 2015 Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing.*
14. *Engage a suitably qualified, and Gas Safe registered, heating engineer to repair or replace the gas fire and back boiler installation; repair and/or replacing radiators as necessary to ensure that the fire/back boiler and remainder of the heating installation is safe, functional and in proper working order.*
15. *Carry out a gas safety check and provide a gas safety certificate.*
16. *Refurbish or replace existing cast iron gutters to the property and leave in proper working order.*
17. *Carry out such works as are necessary to ensure that the external timber garage is wind watertight and fit for use, including replacing roof covering and timbers as necessary and refurbishing access doors.*

Further Inspections and Hearings

3. Further Inspections of the Property took place on 26 June 2016 and 9 November 2016 following which the RSEO was varied twice to allow the Landlord further time to comply. A fourth Inspection of the Property took place on 7 February 2017 following which the RSEO was varied further to take account of works carried out by the Landlord and, again, to allow the Landlord further time to comply. A fifth Inspection took place on 1 June 2017 and a further Hearing took place on 2 August 2017

following which the Tribunal made a finding of failure to comply with the RSEO and imposed the RRO reducing the rent by 75%.

4. The Landlord was referred for prosecution in respect of the finding of failure to comply with the RSEO and pled guilty in that regard at Hamilton Sheriff Court.
5. On 27 October 2021, the Tribunal received an email from the Landlord which stated *"We can confirm that all works advised have been carried out. Can we request a final inspection"*. Accordingly, an Inspection was fixed for 30 November 2021 and a Hearing was fixed for 9 December 2021.
6. The Inspection took place on 30 November 2021 at the Property. Both Parties and the Tenant's Representative attended the Inspection. However, due to COVID 19 restrictions the Inspection was carried out by the Tribunal separate from the Parties. The Tribunal took photographs at the Inspection and the Tribunal's Inspection Report with the photographs was issued to the Parties ahead of the Hearing.
7. The Inspection Report noted the following:-
"Works in RSEO Previously Carried Out
 1. *It appears that some repair/servicing work has been carried out to existing windows, however, a number of windows do not open/close efficiently and are not wind and watertight.*
 2. *Works have been carried out to the rear kitchen porch to make it wind and watertight; including refurbishment of external door and kitchen/porch door.*
 3. *Internal pass doors and cupboard doors throughout have been replaced or repaired and are in proper working order.*
 4. *Kitchen units and worktops have been refurbished to ensure that they are in proper working order. and fit for purpose; include all making good.*
 5. *Kitchen sink waste pipe has been made good internally and externally.*
 6. *Existing WC cistern has been repaired and is in proper working order.*
 7. *Water damaged ceilings in dining room and kitchen have been made good and decorated.*
 8. *Missing ceramic tiles around bath/shower have been replaced and there is an effective seal at bath.*
 9. *A suitable Electrical Installation Condition Report has been provided. The kitchen hob is functional. The instantaneous shower, previously repaired, is no longer working.*

10. Heat, carbon monoxide and smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 -Fire, Sub-section 2.11 Communication and the 2015 Scottish Government Statutory Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing has been provided.

11. A new gas boiler has been provided and the central heating installation is operational. A CP12 gas safety certificate has been provided.

12. Some works have been carried out to the garage including replacing roof covering.

13. The fireplace where the gas fire/back boiler were removed have been replaced at the tenant's expense."

8. The Inspection Report also noted that the cast iron guttering to the side elevation at eaves level has been replaced.

9. The Inspection Report stated that works in the RSEO which remain outstanding are:-
"1. Refurbish or replace all windows in the property to ensure that they are wind and watertight, capable of opening, secure and in proper working order. Include all ancillary works, pointing, making good and decoration.

2. Carry out works as necessary to ensure that the instantaneous shower operates correctly.

3. Refurbish or replace gutters to the rear porch and leave in proper working order.

4. Carry out such works as are necessary to ensure that the external timber garage is wind watertight and fit for use, including replacing timbers as necessary.

5. Make good and decorate around all recent repairs and refurbishments."

10. Neither Party made comment on the Inspection Report.

11. The Hearing took place on 9 December 2021 at 10.00 by telephone conference call. Neither Party attended the Hearing. The Tenant was represented by the Tenant's Representative who confirmed that there had been no change to the Property since the Inspection on 30 November 2021.

Summary of the Issues

12. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part, if it should vary or revoke the RSEO, if it

should make a finding of compliance with the RSEO and if it should vary or revoke the RRO.

Findings in Fact

13. From the further Inspection and Hearing on 30 November 2021 and the Hearing on 9 December 2021, the Tribunal found that the RSEO had not been complied with and that the Property does not meet the Repairing Standard.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

9. The Tribunal's decision is based on all of the information before including the Application, the various inspections and hearings and all of the written submissions and correspondence, whether referred to specifically or not. In particular, the Tribunal had regard to the Landlord's email of 27 October 2021 stating that "all works have been carried out" and its findings at the Inspection on 30 November 2021 which demonstrate that the Landlord's email of 27 October 2021 is wholly inaccurate.
10. The Tribunal had regard to Section 25 (1) of the Act which states:-*"(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it."*
11. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the terms of the RSEO which deal with health and safety. The Tribunal held the view that safeguarding the occupants of the Property is of paramount importance and that as a substantial and significant part of the RSEO remains outstanding, it the Tribunal was not of a mind to revoke the RSEO.
12. With regard to Section 25(1)(a), and whether it should vary the RSEO further, the Tribunal gave consideration to the submissions of the Tenant's Representative at the Hearing on 9 December 2021 and to the facts that not only has there had been no indication from the Landlord with regard to when the works would be completed, his email of 27 October 2021 gave a false representation to the Tribunal as the landlord is well aware that the works have not been completed. Accordingly, the Tribunal was not of a mind to vary the RSEO.
13. The Tribunal then had regard to Section 27 of the Act which states: *"The First-tier Tribunal may decide to revoke a rent relief order at any time; and the First-tier Tribunal must decide to do so if (a)the repairing standard enforcement order to which*

the rent relief order relates is revoked, or (b) a certificate is granted under section 60 in relation to the work required by that repairing standard enforcement order.” The Tribunal not having revoked the RSEO and not having granted a certificate under Section of the Act, is not bound to revoke the RRO. The Tribunal, having regard to its findings, determined not to revoke the RRO of its own accord.

14. The decision is unanimous.

Direction

The Tribunal, on its own initiative, gives the following Direction as to the conduct of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 **Directs** the Tribunal Chamber Administration to intimate a copy of this Decision to North Lanarkshire Council, Private Housing, Landlord Registration, Civic Centre, Motherwell, ML1 1AB and PHHSupport@northlan.gov.uk in respect of the their interest as the relevant local authority for private sector landlord matters.

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.

Effect of Section 63

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

Date 9 December 2021