

Housing and Property Chamber

First-tier Tribunal for Scotland



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

RENT RELIEF ORDER under Section 27 of the Housing (Scotland) Act 2006 as amended ("the Act")

Chamber Ref FTS/HPC/RT/18/2226

Title no: STG 57404

63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("The Property")

The Parties: -

Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG ("the Third Party")

Shirley Kane, 63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("the Tenant")

Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG ("the Landlord")

NOTICE TO STEWART HORSBURGH ("the Landlord")

Whereas in terms of its decision dated 25 March 2019 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Tribunal.

The Tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 50% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act. To ascertain the last date on which the decision can be appealed, please refer to the information note on appeals and reviews, a copy of which is attached.

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.

In terms of Section 63 of the Act, 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.

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

J Bonnar

Signed ..

Josephine Bonnar, Legal Member and Chair

25 March 2019

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RT/18/2226

Title Number: STG 57404

63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("The Property")

The Parties: -

Stirling Council, Allan Water House, Room 10, Kerse Road, Stirling, FK7 7SG ("the Third Party")

Shirley Kane, 63 Balfour Street, Bannockburn, Stirling, FK7 0NG ("the Tenant")

Mr Stewart Horsburgh, 19 Meadowlands, Portstewart, County Londonderry, Northern Ireland BT55 7FG ("the Landlord")

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 ("RSEO") dated 6 December 2018 determined that the Landlord has failed to comply with the RSEO.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Ms Carol Jones, Ordinary Member

Background

1. By application dated 31 August 2018 the Third Party applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) 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 states that the Third Party considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. The Third Party states that the Landlord has failed to ensure that (i) 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, (ii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (iii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (iv) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Third Party complains of;- (1) Living room – windows do not open and close properly, handles loose, (2) Bathroom – hot tap is loose, (3) Bedrooms –glass window panel above bedroom door requires to be replaced, (4) Kitchen – windows are insecure and do not close and lock properly, (5) External – gutters leaking, possible water ingress into bedroom from gutter, potential leak from gas boiler, (5) Front door – outer window panel damaged, door does not open and close properly, no key to the front mortice lock, (6) No carbon monoxide detector, inadequate smoke/heat detectors. The application also states that no EICR, gas safety certificate or energy performance certificate has been provided to the Tenant. The application further states that the Tenant does not wish to be treated as a party to the application.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties on 3 October 2018. The parties were notified that an inspection would take place on 5 November 2018 at 3pm and that a hearing would take place on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling.
4. The Tribunal inspected the property on the afternoon of 5 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant was present. The Landlord did not attend. Thereafter

the Tribunal held a hearing on 16 November 2018 at 10am at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. Five other applications involving the Third party and the Landlord were also dealt with at the hearing under Chamber references FTS/HPC/RT/18/2235, 2232, 2229, 2230 and 2227. Mr Paterson attended on behalf of the Third Party. The Tenant also attended. Also present were Mandy Rushforth, Blair McKie and Emma Jane McLaughlan, tenants in two of the other applications before the Tribunal. The Landlord did not attend and was not represented. Written representations were submitted by the Landlord but not received until after the hearing. In terms of same the Landlord states that he does not wish to attend the hearing. He also states that he is in the process of "sorting this all out" and has engaged a new letting agent, O'Malley Property, who is in the process of doing all the repairs required to bring the properties up to an acceptable standard. He further states that they have had some difficulty in accessing some of the properties. At the hearing Mr Paterson asked the Tribunal to allow the application to be amended to add the Tenant as a party to the application. The Tribunal allowed the application to be amended.

5. Following the hearing the Tribunal proceeded to issue an RSEO in relation to the property. In terms of the RSEO the Landlord is required (1) To instruct a suitably qualified window contractor to inspect the windows in the kitchen and living room and carry out any necessary repairs to ensure that the windows are in proper working order; or to replace the windows. (2) To repair or replace the defective hot tap on the bath in the bathroom. (3) To re-instate the missing glazed panel to the rear bedroom door. (4) To instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property and ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods. (5) To replace the defective front door with a new front door. (6) To instruct a suitably qualified contractor to investigate the cause of water staining on the wall of the front bedroom and carry out all recommended remedial work to rectify the defect and repair the damage. (7) To install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance. (8) To instruct a suitably qualified Gas Safe engineer to (a) service the boiler, and carry out any necessary repairs to ensure it is in proper working order (b) carry out an inspection of the gas appliances at the property, and (c) check the location and condition of the CO detector; and provide the Tribunal with a satisfactory gas safety record. (9) To instruct a suitably qualified contractor to repair the damaged roughcast to the front elevation, and (10) To instruct a suitably qualified SELECT, NAPIT or NICEIC registered

electrician to carry out a certified electrical inspection and testing of the entire electrical installation of the property after the installation of the new smoke and heat detectors and exhibit a satisfactory EICR to the Tribunal.. The work was to be completed within 6 weeks of the RSEO being issued to the Landlord.

6. The Ordinary Member of the Tribunal re-inspected the property on 14 February 2019. Mr Paterson attended on behalf of the Third Party and access was provided by the Tenant. The Landlord did not attend. The Ordinary Member noted that since the last inspection new ceiling mounted hard wired interlinked smoke and heat detectors have been installed at the property which comply with current regulations and guidance and appeared to be in working order when tested. No other work in terms of the RSEO has been carried out. The Tenant advised that a contractor attended at the property in January 2019 and took measurements for replacement windows and a replacement glazed panel in the door of the second bedroom, but no work has been undertaken since that visit. She further advised that the electrician who installed the smoke and heat detectors and sockets may also carried out an inspection but no EICR has been provided. The boiler was inspected by an engineer in December 2018, but no gas safety report has been provided. Furthermore, the overflow pipe continues to leak when the boiler is on and a radiator in the property has started to leak. The Ordinary member noted that the Landlord has not submitted an EICR or gas safety report to the Tribunal.
7. Following the re-inspection, a report was issued to parties regarding same. No response was received from the Landlord or Tenant. The Third Party responded confirming that it agreed with the terms of the re-inspection report and indicating that the Tribunal should make a rent relief order reducing the rent payable by 90%.

Reason for decision

8. The Tribunal considered the condition of the property at re-inspection and the written representations received from the third party.

9. The Tribunal notes the Landlord has arranged for hard wired interlinked smoke and heat detectors to be installed. No further work has been carried out in terms of the RSEO. The Tribunal is satisfied that that the Landlord has failed to comply with the RSEO.
10. The Tribunal notes that the failure to comply with the repairing standard affects several rooms in the house and that some of the defects are particularly serious, affecting windows and doors and the boiler. The Landlord has failed to comply with most of the RSEO. The Third Party seeks a rent relief order reducing the rent payable by 90%. The Tribunal is satisfied that as some parts of the house are in a reasonable condition that a reduction of 50% of the rent payable would be appropriate. The Tribunal proceeded to make a rent relief order reducing the rent payable by 50%.

Decision

11. The Tribunal determined that the Landlord had failed to comply with the RSEO issued by the Tribunal.
12. The Tribunal proceeded to make a Rent Relief Order in terms of Section 27 of the Act.
13. The decision of the Tribunal is unanimous.

Right of 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.

In terms of Section 63 of the Act, 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 Bonnar

Signed..

.....

25 March 2019

Josephine Bonnar, Legal Member