

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Reasons: Housing (Scotland) Act 2006 section 25

Chamber Ref: KA19/109/11

The Property

Property Description: The property at S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX erected on ALL and Whole that plot or area of ground extending to 11 poles and 17square yards or thereby, bounded: on the north-west by a pathway from Culzean Home Farm to Culzean Castle and to the south-west by the hall and four houses known as New Stables, forming part of the Culzean Policy Grounds, part of the lands and Barony of Culzean, in the Parish of Kirkoswald and County of Ayr, all as more particularly described in the Feu Charter by the National Trust for Scotland for Places of Historic Interest or Natural Beauty in favour of the Scottish Garden City Housing Society Limited dated Twenty ninth January and recorded in the general Register of Sasines for the County of Ayr on Sixteenth February, both months in the year Nineteen hundred and fifty three; Together with the dwellinghouse and whole other buildings and erections thereon, the heritable fittings and fixtures therein and thereon, free ish and entry therefrom and thereto, and the parts, privileges and pertinents effeiring thereto.

The Parties:-

Mr. Krisham Moodley, S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX, per Mr John Mulholland, Ayr Housing Aid Centre, 1st Floor, 7 York Street, Ayr KA8 8AN ("the Tenant")

and

The Scottish Veterans' Garden City Association (Inc), having their registered office at New Haig House, Logie Green Road, Edinburgh, EH7 4HQ per their Chief Executive, Mr Peter Minshall ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') (formerly the Private Rented Housing Committee ('the PRHC')):
Mr David M Preston, Chairman; and Mr Robert Buchan, Surveyor Member.

Decision:

The tribunal refused: (One) the application from the landlord to issue a Certificate of Completion of the works required under the Repairing Standard Enforcement Order (RSEO) issued by the PRHC dated 23 August 2011 as varied by Notices of Variation dated 24 January, 27 March and 29 August all 2013; and (Two) to revoke the Rent Relief Order issued by it and dated 29 April 2014.

Background:

1. In terms of the varied RSEO the landlord was required to undertake the following repairs:
 - a. Engage suitably qualified tradesmen to investigate and identify the source of the condensation, dampness and mould in both bedrooms in the Property and carry out such work as is necessary to eliminate the condensation, dampness and mould, which work will include the replacement of the mould affected plaster and redecoration.
 - b. Replace the existing shingle roof covering.
 - c. Remove, or install a switch to enable the Tenant to operate the positive ventilation system.
 - d. Install a 'closed' solid fuel fire in the living room.
 - e. Install an adequate automatic extraction system in the kitchen to address the condensation issue in the kitchen.
 - f. Arrange for the completion of the installation of the replacement garage roof including rainwater goods.
 - g. Repair or replace the fencing to the side and rear of the property.
 - h. Replace the cracked chimney pot on the southern elevation and renew the chimney cowl.

For the avoidance of doubt, the Landlord was required to temporarily re-house the Tenant if that was necessary to allow the work to proceed and was required to reinstate any damage caused to the property by the works.

The Committee further ordered that the works specified in this Notice required to be carried out and completed before the expiry of the Completion Date of six months from the date of service of the Notice of Variation.

2. By email dated 20 November 2014 Mr Mulholland advised that the tenants considered the property to be ready for re-inspection although he felt that the fan did not comply with the order.
3. By email dated 28 November 2014 the landlord lodged a letter from Graham & Sibbald as Project Managers for the work carried out to the property to confirm that the work had been completed.
4. Notwithstanding the foregoing information, ongoing correspondence between the parties precluded the arrangement of a further re-inspection in view of the apparent continuing difficulties with regards to the ventilation system. It was then advised that a meeting had been arranged for 21 October 2015 between the parties and an engineer to discuss and assess the ventilation system. It was discovered that the ventilation system had broken down and was not working.

5. In or around November 2015, due to the prolonged period with little or no progress the PRHC nonetheless determined to arrange a further inspection of the property on 14 January 2016 to assess the progress of the works.
6. By email dated 15 December 2015 the landlord advised that a replacement ventilation system (MHRV) was to be installed on 11 January 2016. Consequently the PRHC decided to adjourn the re-inspection until MHRV had been installed and commissioned.
7. It is understood that the scheduled installation on 11 January 2016 did not proceed and, after further difficulties in obtaining access to the property, the landlords applied to the PRHP to secure a right of access for the purpose of the installation. The PRHC has no knowledge of the progress of that application as it was handled by another committee.
8. In October 2016 the PRHC was advised that the work had been completed and accordingly a re-inspection was arranged for 25 January 2017.
9. By email dated 27 October 2016, Mr Mulholland advised that the MHRV had been fitted on 17 May 2016 but the tenant complained that a number of snagging items remained outstanding. The tenant complained that there were ongoing problems with the back door which was not wind and watertight and as a result damage had been caused to the linoleum in the rear vestibule. It was claimed that this had been intimated to the landlord but had not been rectified. The tenant complained of ongoing dampness and condensation problems in the front bedroom and that the extractor fan had not been removed from the kitchen following the installation of the MHRV. Similarly the original Drimaster had not been removed. There was also a complaint regarding damage to the top surface plate of the stove in the living room as well as damaged plasterwork surrounding the fireplace. Electrical sockets which had been removed and/or replaced during the works had not worked since the tenants have moved back in.

Inspection:

10. On 25 January 2017 the tribunal attended at the property. In attendance at the inspection were: Mr and Mrs Moodley; Mr Peter Minshall; Mr Daniel Little and Mr Fraser Lang, both of Graham & Sibbald, Surveyors.
11. The inspection revealed that the following works specified in the varied RSEO had been undertaken:
 - a. A 'closed' solid fuel fire had been installed in the living room. It was noted that this also heated the water. The tenant pointed out damage to the top plate which he said had been reported to the landlord. The tribunal did not consider that the damage to the top plate was significant and would not have any effect on the repairing standard.
 - b. The shingle roof covering had been removed and replaced with a tiled roof.
 - c. The garage roof and rainwater goods had been replaced.
 - d. The fencing to the side and rear of the property had been renewed and replaced.

- e. The cracked chimney pot on the southern elevation and the chimney cowl had been replaced and were operating at the time of the inspection.
12. The original "Drimaster" ventilation system had been replaced with a Mechanical Heat Recovery Ventilation system (MHRV). Mr Moodley reported that the installing engineer had explained the operation of the control panel to him. He reported that the unit remained in operation permanently but he was able to turn up the speed of the fan manually. He also said that when levels of humidity increase in the kitchen and bathroom the fan speed automatically increases.
13. It was noted that the original Drimaster vent was still in place in the hall. It was also noted that the extractor fan above the window in the kitchen which had been referred to in the Minute of Variation dated 29 August 2013 at item "e" was still in place, although it was reported not to be operational.
14. The tenant pointed out gaps and cracks in the plaster work surrounding the fireplace.
15. The tribunal noted signs of efflorescence in the plasterwork above the skirting boards on the wall beneath the front bedroom window. This was the same location in which the signs of dampness/condensation had been observed on previous inspections. Damp meter readings did not indicate any dampness within the walls in that area. The tenant complained of dampness in the covered recess but no dampness was detected by the damp meter.
16. Mildew was noted on the contents of a wardrobe in the rear bedroom,
17. Condensation mould was noted above the window in the bathroom.
18. Condensation mould was noted on the rear walls in some of the kitchen cupboards.
19. The tribunal observed the gap around the back door which the tenant advised had been a problem following it having been removed and replaced whilst the work was ongoing. Attempts had been made to repair it but it was no longer wind and watertight as a result of which the linoleum in the rear vestibule had been damaged.
20. The tenant reported that a number of electric sockets and lights were not operating following completion of the work and one of the electric storage heaters in the lounge/living room had not been properly re-affixed to the wall.
21. Photographs were taken and are attached as a schedule hereto.
- Hearing:**
22. Following the inspection hearing took place at the Catholic Centre, Maybole. All of those who had been present at the inspection attended the hearing.
23. At the outset, the convener reminded those present that the purpose of the inspection and hearing was to determine whether a Certificate of Completion to the effect of revoking the RSEO and discharging the Rent Relief Order (RRO) could be granted.

24. The convener said that it was apparent from the inspection that there were a number of outstanding matters and snagging works yet to be completed. In particular, the tribunal had noted that the RSEO required that such work as was necessary to eliminate condensation, dampness and mould" was required and that "any damage caused to the property by the works carried out required to be reinstated". It was apparent from the inspection that further work required to be carried out to comply with the RSEO. Nonetheless the convener invited representations from the parties.
25. The convener noted that a number of issues relating to the electrical systems had been raised during the inspection. Whilst these had not specifically been included within the application, the convener noted that the problems had arisen following completion of works. Accordingly the tribunal considered these to be included within the obligation to reinstate any damage caused to the property by the works. In any event the convener reminded the landlords of the requirements in respect of the provision of Electrical Installation Condition Reports since December 2016 in terms of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property, details of which are available on the Housing & Property Chamber website.
26. On behalf of the tenant Mr Mulholland submitted that further work was required and that the RSEO should not be discharged at this time.
27. On behalf of the landlord, Mr Minshall referred to the problems of dampness which had brought the matter to this stage. He submitted that the directives which had been issued by the PRHC had been complied with. He submitted that what had been seen at the inspection was a dry house and that the ongoing problems had been as a consequence of condensation and amounted to residual staining on the wall about which Mr Lang would elucidate. He pointed out the amount of the tenant's goods and possessions contained within the rooms of the property which he submitted were likely to contribute to the condition of the property.
28. Mr Minshall submitted that events had transpired to extent that a new ventilation system had been found to be necessary. He said that the installation engineer had reported that the new system was sufficient to eradicate dampness in the property. He said that the original extractor fan had been left in the kitchen as an additional extractor if necessary to supplement the MHRV. He said that if the tenant wanted it to be removed the landlord would comply.
29. Mr Lang submitted that there was no requirement for anything other than the MHRV system. There was a discussion regarding the need for filters to be changed as the tenant understood that this was to be done six monthly. The convener intervened and suggested that this was a matter which should be resolved between the parties and was not matter in respect of which the tribunal was able to take any action.
30. Mr Lang agreed that there was staining in the corner of the bedroom but submitted that there were no high damp readings and that the problem was not dampness but efflorescence of the plasterwork. He considered that the remedy was re-decoration and that other problems amounted to snagging works following on completion of the major works to the property.

31. The convener pointed out that the tribunal had observed that many of the problems which had arisen in this case were as a result of the level and tone of communication between the parties. He underlined the fact that the function of the tribunal was to determine and ensure that the landlord complied with the duty to maintain the property to the repairing standard and was not in a position to enter into any correspondence regarding the arrangements for these purposes.
32. The convener asked the landlord to ensure that when reports are made by the tenants of any faults or issues in the property that these reports should be acted upon promptly. Similarly he asked the tenant that where work was required which involved the landlord obtaining access to the property for it to be carried out, arrangements should be made as readily as possible for this to happen.

Reasons for Decision:

33. The tribunal was satisfied from its observations during the inspection that snagging works required to be completed and that old equipment required to be removed from the property and any damage made good.
34. The submissions from the parties contained nothing to alter the tribunal's view of the situation as observed during the inspection.

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.

D Preston

Chairman

1 February 2017