

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/18/2232

Title Number: STG 3010

2 Firs Crescent, Bannockburn, Stirling, FK7 0AQ ("The Property")

The Parties: -

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

Tracy Laird, 2 Firs Crescent, Bannockburn, Stirling, FK7 0AQ ("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) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, (iii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (iv) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and (vi) 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 – bulging ceiling, damaged door, carpet needs to be replaced, (2) Front door/Hallway – Front door is insecure and does not lock from inside, multiple areas of damaged plaster, (3) Bathroom – expelair fan is broken, light fitting damaged, possible rising damp and/or condensation, (4) Heating – boiler has not worked for 4 years, no gas safety certificate (5) Bedrooms – all affected by dampness and/or condensation, door handles missing, front bedroom window does not open, (6) Kitchen – cooker does not work, expelair fan is broken (6) External – Waste pipe at front of property leaking and plugged by tape, render above front door bossed, (7) 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 wishes 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 the 5 November 2018 at 1.30pm 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, 2226, 2229, 2230 and 2227. Mr Paterson attended on behalf of the Third Party. The Tenant did not attend, having notified Mr Paterson that she was unable to do so. Also present were Shirley Kane, 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.
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 contractor to investigate the cause of the collapsed ceiling in the living room, repair the damage, re-plaster and re-decorate the ceiling. (2) To replace the defective light fittings in the living room and bathroom. (3) To replace the defective and damaged doors in the living room and front bedroom. (4) To replace the living room carpet. (5) To replace the lock and handle on the front door. (6) To re-plaster all damaged plasterwork in the hall and re-decorate. (7) To replace the defective extractor fans in the bathroom and kitchen. (8) To instruct a suitably qualified damp proofing specialist to investigate the cause of dampness and condensation in the bathroom and bedrooms, provide a report to the Tribunal and carry out all recommendations in the report and necessary works to eradicate the dampness and condensation. (9) To repair or replace the defective window in the front bedroom. (10) To replace the gas cooker with a new cooker. (11) To instruct a suitably qualified contractor to repair the damaged downpipe to the front of the property. (12) To instruct a suitably qualified contractor to repair the crack to the render above the front

door. (13) To install hard wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance. (14) To instruct a suitably qualified Gas Safe engineer to inspect the entire heating system, service and repair the boiler or if recommended replace the boiler and central heating system and thereafter carry out an inspection of the gas appliances and CO detector at the property and provide the Tribunal with a satisfactory gas safety record, and (15) 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 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 7 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. In addition, the ceiling mounted light fittings in the living room and bathroom have been replaced. 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 doors, but no work has been undertaken since that visit. She further advised that the electrician who installed the smoke and heat detectors and sockets, also carried out an inspection. No EICR has been provided. Both the cooker and boiler have been inspected by an engineer. Both appliances were condemned by the engineer although no warning notices have been affixed and no gas safety record has been provided to the tenant. The Ordinary member noted that the Landlord has not submitted an EICR or gas safety record to the Tribunal. It was also noted that the property remains badly affected by damp and condensation, that there is no heating or access to hot water other than the shower and no working cooking facilities.
7. Following the re-inspection, a report was issued to the 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 and there are new light fittings in the living room and bathroom. 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 almost every room in the house and that some of the defects are particularly serious, such as the lack of heating and hot water, no cooking facilities, the collapsed ceiling in the living room, defective front door lock and the extensive dampness and condensation throughout the property. Furthermore, from the information provided by the tenant regarding an engineer's visit to the property it appears that the gas installations at the property may be in a dangerous condition. There is also a lack of evidence that the electrical installation in the property is in a safe and satisfactory condition. The Tribunal is of the view that parts of the property are effectively uninhabitable. Most of the work required by the RSEO has not been carried out. The Third Party seeks a rent relief order reducing the rent payable by 90%. The Tribunal is satisfied that the maximum reduction is warranted given the condition of the property and concludes that a Rent Relief Order should be granted reducing the rent payable by 90%.

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

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/18/2232

Title no: STG 3010

2 Firs Crescent, Bannockburn, Stirling, FK7 0AQ ("The Property")

The Parties: -

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

Tracy Laird, 2 Firs Crescent, Bannockburn, FK7 0AQ ("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 90% 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

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Josephine Bonnar, Legal Member and Chair

25 March 2019