

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/18/2235

Title no: STG 30207

111 Milton Gardens, Whins of Milton, Stirling, FK7 0JN ("The Property")

The Parties: -

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

Blair McKie and Emma Jane McLaughlin, 111 Milton Gardens, Stirling, FK7 0JN ("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 60% 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 26

Chamber Ref: FTS/HPC/RT/18/2235

Title Number: STG 30207

111 Milton Gardens, Whins of Milton, Stirling, FK7 0JN ("The Property")

The Parties: -

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

Blair McKie and Emma Jane McLaughlin, 111 Milton Gardens, Stirling, FK7 0JN ("the Tenants")

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 house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) 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, (iii) 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, (iv) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (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) Exposed carpet grippers between living room and kitchen, (2) Hallway – unidentified live wire in cupboard, electrical board tripping, (3) Upstairs hallway – staircase window does not open, (4) Bathroom – expelair fan cover loose, window does not operate properly, bath panel and pipework require to be boxed in following leak, (5) Bedroom 1 – unidentified live wire protruding from wall, faulty radiator, (6) Bedroom 2 – wardrobe doors and bedroom door do not open or close properly, light fitting broken, (7) Bedroom 3 – hole in hole where socket is, filled with wood, (8) Kitchen – back door window panel missing, possible water leak or penetration underneath sink/black mould, no CO detector although gas cooker (9) Gutters leaking and broken, (10) No carbon monoxide detector at boiler, 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 Tenants do 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 12 November 2018 at 11.30am 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 morning of 12 November 2018. Mr Andrew Paterson attended on behalf of the Third Party. The Tenant Emma Jane McLaughlin 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/18/2230, 2226, 2229, 2232 and 2227. Mr Paterson attended on behalf of the Third Party. Both Tenants attended. Also present were Shirley Kane and Mandy Rushforth, 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 to (a) repair or replace the defective threshold bar between the kitchen and living room to ensure it is safe and in a reasonable state of repair, (b) instruct a suitably qualified window contractor to inspect the windows in the bathroom and at the landing on the stairs and carry out any necessary repairs to ensure that the windows are in proper working order; or replace the windows, (c) repair or replace the defective fan in the bathroom, (d) install a new bath panel and box in exposed pipework in the bathroom, (e) replace the sliding doors of the fitted wardrobe in the front bedroom with properly fitting doors and ensure they are in proper working order, (f) repair or replace the entrance door of the front bedroom so that the door opens and closes properly, (g) replace the damaged ceiling mounted pendant light fitting in the front bedroom, (h) replace the external back door in the kitchen with a new door, (i) instruct a report from a suitably qualified damp proofing and condensation specialist to investigate the cause of dampness and/or condensation on the external wall behind the kitchen sink, exhibit a copy of the report from the specialist to the Tribunal, carry out any recommendations identified in the report and repair all damage, (j) instruct a Gas Safe

registered engineer to carry out an inspection of the gas appliances at the property and provide the Tribunal with a Gas Safety Record (k) instruct a suitably qualified roofing contractor to repair and clean out all rainwater goods at the property, to ensure that they do not leak and are in a reasonable state of repair; or to replace the rainwater goods, (l) install new hard-wired interlinked smoke and heat detectors in the property to comply with current regulations and guidance, and (m) instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property after the installation of new smoke and heat detectors, carry out any necessary repairs or alterations, and exhibit a satisfactory EICR to the Tribunal. The work was to be completed within 6 weeks of the order being issued.

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 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 window contractor attended at the property in January 2019 and took measurements for replacement windows, but no work has been undertaken since that visit. She further advised that the electrician who installed the smoke and heat detectors may have also carried out an inspection but that she has not been provided with an EICR or with a gas safety report since a gas engineer attended at the property at some point after 12 November 2019. Mr Paterson confirmed, and the Ordinary Member noted, that neither the Third Party nor the Tribunal has been provided with a copy EICR or gas safety record for the property. The Tribunal has also not been provided with a report from a damp proofing and condensation specialist.
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 almost every room in the house and that some of the defects are particularly serious, affecting windows and doors within the property, while others present a possible risk of injury or harm to the occupants of the property, such as the defective threshold bar between the living room and kitchen, exposed wires and lack of evidence that the gas and electrical installations are in satisfactory condition. The bathroom is also in poor condition. 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 notes that some rooms in the property are in a reasonable condition and is therefore satisfied that a Rent Relief Order should be granted reducing the rent payable by 60%.

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.

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J Bonnar

Signed.

..... 25 March 2019

Josephine Bonnar, Legal Member