

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision: Section 43(2)(b) of the Tribunals (Scotland) Act 2014.

Chamber Ref: RP/16/0351

The Property:

ALL and WHOLE that area of ground upon which the cottage known as Barr Bheag, Taynuilt, Argyll PA35 1HY is erected; which area of ground forms part and portion of ALL and WHOLE that plot or area of ground at Am Barr, Barguilean, by Taynuilt, Argyll, extending to one hectare and seven hundredth parts of a hectare or thereby (2.65 acres) and being the area of ground outlined in red on the plan annexed and signed as relative to Disposition by Anthony Robin Marshall in favour of David Arthur Marshall, Mrs Anne Taylor and Kilbride Trustees Limited as Trustees therein mentioned dated Third December Two Thousand and Two and recorded in the division of the General Register of Sasines applicable to the County of Argyll on 10 January Two Thousand and Three

The Parties:-

Mr Nicholas Charlton, residing at Barr Bheag, by Taynuilt, Argyll PA35 1HY
("the tenant")

and

The Josephine Marshall Trust, Barguilean, Taynuilt, Argyll PA35 1HY
("the landlords")

The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC) (the tribunal):

David M Preston (Legal Member) and Andrew Taylor, Surveyor (Ordinary Member)

Decision:

- 1. The landlords have failed to comply with the RSEO dated 14 March 2017 within the time limit provided therein as extended.**
- 2. A Notice of Failure will be served on Argyll & Bute Council.**
- 3. To make a Rent Relief Order to reduce the rent payable by 85%**

Background:

1. Following the expiry of the time limited provided for in the RSEO as varied, the surveyor member of the tribunal carried out a re-inspection of the property on 9 May 2018. Thereafter he prepared the Re-inspection Report dated 11 May 2018 which was copied to the parties to allow them to make representations thereon.
2. In his response dated 28 May 2018 the tenant said that the work required by the RSEO had not been completed.
3. In their response dated 29 May 2018 the landlords applied to the tribunal
 - 1) to revoke the RSEO on the basis: (a) it had been complied with: (i) in whole, or (ii) at least so far as practicable, and (b) the tenancy will be terminated and the building repossessed and demolished or, in any event, permanently removed from the private rented housing stock in implement of an undertaking to do so; failing which
 - 2) to (a) revoke the RSEO in part and, in particular, in respect of such items as the tribunal is satisfied are completed, (b) direct, in terms of rule 12 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, that this application and the possession application are to be heard together, in respect they are interdependent as submitted above, and (c) find that sufficient progress has been made carrying out any remaining work required and vary the time for compliance with any remaining items to a date following determination of the possession appeal; failing which
 - 3) to (a) revoke the RSEO in part and, in particular, in respect of such items as the tribunal is satisfied are completed, (b) find that sufficient progress has been made carrying out any remaining work required and vary the time for compliance with any remaining items to a date following determination of the possession appeal.
4. The tribunal considered the re-inspection report in the light of the landlords' representations. The issue to be decided was whether the landlords had complied with the RSEO to the extent that the property met the repairing standard as at the date of the re-inspection in respect of the defects outlined in the RSEO.
5. The tribunal requires to consider the position in relation to the existence of the tenancy to which the Act applies. Until the tenancy has been lawfully terminated the landlords' duty is to ensure that the property meets the repairing standard at all times during the tenancy. For these purposes the intentions of the landlord, which are, in turn, contingent upon them recovering possession of the property, are immaterial to that duty. Even if the landlords are successful in recovering possession of the property the RSEO will remain in force for so long as the property exists. The tribunal notes the undertaking given by the landlords but such an undertaking is unenforceable at the instance of the tribunal in the event that the landlords change their minds, or they sell the property to a third party.
6. The landlords referred the tribunal to paragraph 8 of the decision in case PRHP/RT/16/0326. The tribunal considered that case in comparison to the present one.

In that case, the tenancy had been lawfully terminated and the property was unoccupied and the decision was made "in the particular circumstances of that case" which are not applicable to the present case.

7. By letter dated 5 July 2018 the landlords made representations to the tribunal in relation to the extent to which it might restrict the rent in the event of a determination that they have failed to comply with the terms of the RSEO. They submitted that there should be no abatement of rent, or that it should be small. They argued that they had made honest efforts to comply with the RSEO but that their efforts had been hampered by the actions of the tenant. They said that most of the matters noted in the re-inspection report as outstanding were minor or did not significantly affect the habitability of the property or the tenant's enjoyment of it. They maintain that there is a genuine dispute about what is required by way of compliance with item 1 of the RSEO.

Findings and Reasons:

8. Items 1 and 2:

- 1) The tribunal further considered whether the Architect's Report dated 15 August 2017 ("the architect's report") addresses the issues required by item 1 of the RSEO met the requirements of item 1 of the RSEO in light of the landlords' representations. It confirmed the view of the ordinary member (surveyor) that the report did not include any proposals to deal with wind and water tightness, dampness nor the roof/gutter issues. The report was based upon what the architect himself described as a very limited inspection as a result of which he had to make assumptions and concluded with a suggestion that a new dwelling house should be constructed.
- 2) The tribunal was required to consider the report by Morham & Brotchie dated 19 December 2017 because it has been placed before us, however the tribunal notes that this report is a Valuation Report and it does not specifically address the issues either, although it does contain proposals which might be interpreted as dealing with the problems.

9. Item 3:

- 1) The landlords submitted that they had replaced the downpipe and asserted that a new requirement had been added as the holes had been unrelated to the downpipe and were not created or exposed as part of the replacement work.
- 2) The tribunal rejects the assertion that the making good of the holes in the cladding where brackets had been removed amounts to a new requirement. The holes resulted from brackets related to the downpipe which was to be replaced. The hole shown in photo 4 attached to the Statement of Decision for the RSEO is directly related to where a bracket holding the defective downpipe had been. That in itself is a defect in the downpipe. The term 'downpipe' includes all fittings related thereto, and where any such fittings had previously been missing, their replacement or making good would be necessary. The replacement of that downpipe would necessarily include the making good of holes related to the brackets holding that pipe, whenever the brackets had been removed.

10. Item 5:

- 1) The landlords state that there were no issues with loose boarding or lack of seal at the time the works were done.
- 2) The tribunal is concerned with the property as at the date of re-inspection and did not inspect at the time the works were done. The re-inspection report confirms that although the porch has been replaced, at the time of the re-inspection there was loose boarding at the haffits and a lack of seal where it meets the existing structure. The porch therefore continues to fail to meet the repairing standard.

11. Item 6:

- 1) The landlords assert that the re-inspection report adds a new requirement, not related to the back step, but to the door and frames.
- 2) At the re-inspection there was seen to be clear daylight between the re-cast doorstep and the weatherboard on the foot of the door. There should be no such daylight visible and therefore despite the work carried out, the back doorstep continues to fail to meet the repairing standard. The re-concreting of the step should have ensured that there was no such gap.

12. Item 7:

- 1) The landlords state that they replaced a floorboard at the back door but that since that time a hole had developed in an adjoining board which was not there when the replacement was done.
- 2) The RSEO required the replacement of the floorboards affected by rot adjacent to the threshold at the back door. The tribunal accepts that one floorboard has been replaced however it is clear from the landlords' representations that such replacement did not include the area which has now given way resulting in the hole. The floorboard in which the hole has appeared must have been affected by rot at the time of the RSEO for it to have resulted in the hole since the original inspection. The RSEO did not specify particular boards to be replaced beyond those affected by rot. The board in which the hole appeared was therefore one of those boards.

13. Item 8:

- 1) The landlords assert that an additional requirement has been added in relation to badly fitting joints and junctions with eaves boarding which relates to the eaves, where the back and front of the house meet the gable and that it is not legitimate to record them as a failure to have carried out the replacement of the roof trim.
- 2) The tribunal rejects that assertion. When replacing the external roof trim it is necessary to attend to the whole detail including ensuring that the positions of

the trim and the eaves and gable are wind and water tight. It is evident from the re-inspection that this has not been done.

14. The RSEO has to be considered by the tribunal as a whole and cannot be found to be partially complied with. The work required was all to be completed within the time limits as subsequently varied. Where any work required by the RSEO has not resulted in the property meeting the repairing standard, the RSEO cannot be said to have been complied with. It does not follow that if work has been carried out that the RSEO has been complied with. The result of the work being carried out must be to ensure that the property meets the repairing standard. In respect of the items outlined above the tribunal is satisfied that the property continues to fail to meet the repairing standard notwithstanding the work that has been carried out.

Decision:

15. Accordingly the tribunal refuses the applications made by the landlords and determines to issue a Notice of Failure to comply with the RSEO.
16. Having determined that the landlords have failed to comply with the RSEO, the tribunal is required to decide whether to make a rent relief order. In considering the amount by which the rent payable will be reduced the tribunal took account of the landlord's representations in their letter of 5th July 2018.
17. The tribunal noted that the RSEO was made on 14 March 2017 with a time limit therein of 3 months from the date issue thereof which was effected on 23 March 2017. Thereafter the time limit was varied on 1 August 2017 by a further 6 months and again on 26 February 2018 it was extended by a further 4 weeks from the date of issue of that decision which was effected on 9 March 2018. The expiry of the extended time limit was therefore on 4 April 2018, some 13 months after the date of the RSEO and the extent to which the landlords have carried out the works required, or the effectiveness of the works to ensure that the property meets the repairing standard is unsatisfactory despite that time. The delays occasioned by the tenant imposing conditions on access to the property were taken into account by the tribunal in considering the extensions of the time limit.
18. The requirement set out in item 1 of the RSEO is for the landlords to:

"Obtain a specialist report from a suitably qualified surveyor, engineer or architect to address the requirements for a property of this form of construction to make the property wind and watertight and to address the issues of dampness within the property where evident throughout The report should also address the issue of the roof of the property where it meets the gutters to prevent overspill of rainwater."

The tribunal determines that the architect's report does not do that for the reasons stated above. That report is fundamental to the RSEO. Further the tribunal does not accept that the other matters identified in the re-inspection report can be regarded as minor. Whether they affect the habitability of the property is irrelevant. The tribunal has determined that these items fail to meet the repairing standard in terms of the Act and as such all require to be rectified by the landlords, which they have hitherto failed to do.

19. Accordingly the tribunal; determines that the rent payable should be restricted by 85%.

A landlord or tenant 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

D Preston

..... Chairman

9 July 2018