

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 25

Chamber Ref: PRHP/RP/15/0112

Title No: LAN47029

**10 Strathspey Crescent, Airdrie, ML6 6JE
("the property")**

The Parties:-

**Miss Eva Cupples, formerly residing at the property
("the Tenant")**

**Ms. Cate McDonald, also known as Ms. Catherine MacDonald, 31 Jenny Burton
Way, Hucknall, Nottingham, NG15 7QS
("the Landlord")**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") comprised:-

Patricia Anne Pryce	-	Chairing and Legal Member
Carol Jones	-	Ordinary Member (Surveyor)
Mary Lyden	-	Ordinary Member (Housing)

Decision

The tribunal refuses to revoke the Repairing Standard Enforcement Order ("RSEO") relative to the property dated 17 August 2015.

Background

1. On 17 August 2015, the Private Rented Housing Committee ("the Committee") issued a determination which stated that the Landlord had failed to comply

with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). On the same date, the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property. The RSEO made by the Committee required the Landlord:-

- (a) To produce an up to date electrical installation condition report that the said installation meets BS 7671 and an in service inspection and test report on all electrical appliances and equipment from a competent suitably qualified and registered electrician.
- (b) To produce an up to date gas safety record and report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of the central heating system, including the central heating boiler and flue, and hot water supply in the property.
- (c) To repair the loose socket located on the wall beside the cooker in the kitchen
- (d) To repair or replace the shower screen and adjoining sealant to prevent water from escaping from the bath onto the floor below.
- (e) To install a smoke alarm in the living room and in the ground floor hallway and a heat alarm in the kitchen and to ensure that all of these alarms are hardwired alarms and interlinked with one another.
- (f) To clean the gutter at the rear of the property to ensure that it is in proper working order.
- (g) To repair or replace the boundary fence located at the rear of the property between the property and Number 9 Strathspey Crescent, Airdrie.
- (h) To carry out such repairs as are required to ensure that the garage is wind and watertight.

The Committee ordered that the works specified in the RSEO were to be carried out and completed within 28 days from 20 August 2015.

2. The Surveyor Member attempted to re-inspect the property on 30 September and 30 November, both 2015, but failed to obtain access to the property on either occasion. However, the Surveyor Member carried out an external inspection of the property on both occasions and noted that various external repairs required by the RSEO had not been completed. In light of this, the Committee issued a decision under Section 26 (1) of the Housing (Scotland) Act 2006 dated 22 January 2016 unanimously deciding that the Landlord had failed to comply with the RSEO and directed that a notice of failure be served on the Local Authority in which the property is situated.

The jurisdiction of the PRHP was assumed by the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") on 1 December 2016.

3. A further inspection of the property was undertaken by the Ordinary Member (Surveyor) of the tribunal on 17 February 2017. A copy of her inspection report dated 23 February 2017 is attached. The Ordinary Member found that some of the works required by the RSEO had been completed, namely, the double socket located beside the cooker was no longer loose, the shower screen in the bathroom had been replaced with a new shower curtain and the edge of the bath and bath panel had been re-sealed, there was a new ceiling

mounted hardwired smoke alarm in the living room and a new ceiling mounted heat alarm in the kitchen, a new rear garden boundary fence had been erected between the property and the adjoining property at Number 9 Strathspey Crescent and the fascia and soffit boards to the front and left side of the garage had been renewed. However, at the time of inspection matters in terms of the RSEO remained outstanding as noted in the Ordinary Member's attached report.

4. The Landlord subsequently provided to the tribunal a Gas Safe Certificate and an EICR. However, the tribunal noted that no report in relation to the state of repair and working order of the central heating system, including the central heating boiler and flue and hot water supply, was produced or an in service inspection and test report on all electrical appliances and equipment.
5. The Landlord was sent a copy of the re-inspection report dated 23 February 2017 and replied advising that she wished a further hearing to be arranged. In her response to the tribunal received on 8 March 2017, the Landlord asked that certain matters be taken into consideration including that she had found new purchasers for the property who would pay £7,500 less than the asking price of the property to allow the new owners to re-structure the property, the rotten wood on the rear of the garage had felt behind it to protect it from water penetration and was not in a bad enough state to require immediate replacement, the garage door is stiff and bent and will be replaced by the new owners and the downstairs hallway is just a vestibule so the electrician had placed a smoke alarm as the "most effective point". In short, she accepted that there were repairs outstanding in terms of the RSEO but that she wished to obtain the understanding of the tribunal in relation to her circumstances and sought to have the RSEO revoked.
6. A further hearing was arranged for 10 am on 20 April 2017 within Wellington House, Wellington Street, Glasgow.

The Hearing

7. The Landlord attended at the hearing along with her partner, Mr. Richard Darrington who resides with her and who confirmed that he was also there to give evidence. There was an observer present at the hearing.
8. The Landlord confirmed the terms of her response received 8 March 2017 to the re-inspection report dated 23 February 2017. Mr. Darrington submitted that they had relied on their electrician for advice and knowledge of the relevant building regulations regarding the smoke alarms within the property and this is why one was not installed in the downstairs hallway. He helpfully conceded that the installation of this alarm was required by the RSEO and that, as matters stood at the time of the hearing, this smoke alarm had still not been installed and therefore did not comply with the RSEO. Mr. Darrington also confirmed that there are no longer any portable electrical appliances or equipment in the property.

In relation to the garage, the Landlord submitted that the former Tenant had reversed into the garage door and caused damage to the door.

The tribunal noted that, despite various written representations made by and on behalf of the Landlord since 2015, this was the first time the Landlord had alleged that the Tenant had caused the damage to the door.

The Landlord confirmed that she had not lived in the property for twelve years as she had been living in England with Mr. Darrington. She had rented out the property until the Tenant had vacated it in 2015.

Mr. Darrington submitted that they had obtained an estimate to replace the garage door and it would cost £750. He submitted that they had been advised that it was beyond repair and would require to be replaced.

The Landlord confirmed that she was suffering financially as a result of the RSEO and that she had no more money to spend on the property. She submitted that her elderly mother had given her £5,000 towards the mortgage over the property as it could not be rented out at the moment due to the RSEO. She submitted that she had been trying to sell the property since the last Tenant had left but that the two buyers she had found had walked away as the banks would not lend on a property with an RSEO over it.

The Landlord confirmed that she did not have a purchaser for the property at the time of the hearing.

Mr. Darrington confirmed that he had carried out some further minor repairs to the garage the day before the hearing but that it was "in a horrid state". He submitted that although there was no evidence of water ingress, there was evidence of dry rot within the garage. In his view, the garage would be better being demolished and rebuilt. He also showed the tribunal a photograph of the electric socket in the kitchen taken following his adjustment and realignment of this socket. This photograph showed there is no longer a gap at the right side as was evident at the re-inspection on 17 February 2017.

The Landlord submitted that she could not believe that matters had come to this. She submitted that she was a Health Care Assistant and a law abiding citizen. However, she submitted that she had not initially taken the present application process seriously. She accepted that she had not realised that matters before the tribunal were so serious. In short, she accepted that she had not attended at any of the inspections of the property nor at a hearing before today, some 20 months after the date of the RSEO being granted.

The Landlord clarified that she wished the RSEO to be revoked as, although she accepted that there were matters still outstanding in terms of the RSEO, she wished to sell the property, the RSEO was preventing her from doing this and she had no intentions of ever renting out the property again.

Both the Landlord and Mr. Darrington accepted that, in terms of the RSEO, no report had been produced to the tribunal in respect of the state of repair of the

central heating system, that the smoke alarm had not been installed in the downstairs hallway and the garage was in a poor state of repair. However, they submitted that they wished to sell the property and asked for the tribunal's understanding in relation to this.

The Landlord confirmed that she had bought this property for herself and her son who was now 18 years old. She submitted that there was equity in the property and she wished her son to benefit from this. However, she advised that she could not afford the mortgage payments and that the property may eventually require to be re-possessed.

Mr. Darrington submitted that, as he saw it, there were only two options open to them and that was to either allow the re-possession of the property or to rent it out again.

The tribunal pointed out to Mr. Darrington that if the Landlord were to re-let the property while still subject to an RSEO, this may constitute an offence.

The tribunal reminded the Landlord that she had not availed herself of the opportunity to attend a previous hearing or any of the inspections. The Landlord confirmed that she had been busy with work and that she simply had not realised how serious the present process was.

Decision

9. The tribunal notes that many of the works required by parts the RSEO have been completed. All other issues remain outstanding in terms of the RSEO.
10. The tribunal takes the view that the Landlord has had ample time to carry out the remaining works. The tribunal noted that the Landlord has had over twenty months to carry out the works required by the RSEO. The tribunal also notes that the Landlord, by her own admission, failed to take the present process seriously until she appreciated the consequences of her failure to comply with the RSEO, including having been reported to the Police for not only failing to comply with the RSEO but also failing to comply with the earlier and prior Direction of the then Committee. The tribunal further notes that the Landlord has asked the tribunal to take account of her financial situation. While the tribunal has some sympathy for the Landlord's situation, the tribunal notes that there is equity in the property and that the Landlord, by her own admission, received £5,000 from her mother to pay the mortgage over the property. The tribunal notes with some surprise that the Landlord is willing to accept a drop in the purchase price of the property of £7,500 yet it appears to the tribunal from the evidence submitted at the hearing that the cost of carrying out the outstanding works in terms of the RSEO would amount to a far smaller sum than £7,500. Furthermore, the tribunal notes that the lack of smoke alarm within the downstairs hallway and the present state of the garage are issues which raise potential safety concerns to any future occupant of the property. Finally, the tribunal notes that access to the property to carry out the repairs has not been an issue for the Landlord as the Tenant vacated the

property more than twenty months ago and the Landlord has been able to access the property to effect the repairs throughout this period of time.

11. Accordingly, the tribunal takes the view that it is not prepared, in all of the circumstances, to revoke the RSEO and considers that the work required by the RSEO remains necessary.

12. The decision of the tribunal is unanimous.

P Pryce

Signed

Date 20 April 2017

Patricia Anne Pryce, Legal and Chairing Member



Re-inspection report



Date of inspection: Friday 17 February 2017.

Reference Number: PRHP/RP/15/0112

Property: 10 Strathspey Crescent, Airdrie ML6 6JE

Surveyor: Carol L Jones MA MRICS

Previous Inspections: The subject property was inspected by a full committee of the Private Rented Housing Panel on 28 July 2015 and as a result a Repairing Standard Enforcement Order dated 17 August 2015 was served. Attempts were made to re-inspect the property on 30 September 2015 and again on 30 November 2015. On both occasions nobody attended to provide internal access and only an external inspection was possible.

Access: Mark McGuire from the Scottish Property Centre, the current selling agent provided access.

Weather: Dry, cold and overcast.

In attendance: Mark McGuire attended the inspection.

Repairing Standard Enforcement Order (RSEO) dated 17th August 2015.

Works required by the RSEO:

The Private Rented Housing Committee requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Private Rented Housing Committee requires the Landlord:-

- (a) To produce an up to date electrical installation condition report that the said installation meets BS 7671 and an in service inspection and test report on all electrical appliances and equipment from a competent suitably qualified and registered electrician.
- (b) To produce an up to date gas safety record and report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of the central heating system, including the central heating boiler and flue, and hot water supply in the property.
- (c) To repair the loose socket located on the wall beside the cooker in the kitchen
- (d) To repair or replace the shower screen and adjoining sealant to prevent water from escaping from the bath onto the floor below.
- (e) To install a smoke alarm in the living room and in the ground floor hallway and a heat alarm in the kitchen and to ensure that all of these alarms are hardwired alarms and interlinked with one another.
- (f) To clean the gutter at the rear of the property to ensure that it is in proper working order.
- (g) To repair or replace the boundary fence located at the rear of the property between the property and Number 9 Strathspey Crescent, Airdrie.
- (h) To carry out such repairs as are required to ensure that the garage is wind and watertight.

Works in the RSEO undertaken/outstanding - see attached photograph schedule below:

- (a) At the time of my re-inspection the landlord had not provided an electrical installation condition report or in service inspection and test report on the electrical appliances and equipment supplied.
- (b) At the time of my re-inspection the landlord had not provided a satisfactory Gas Safety Record or report on the state of repair and working order of the central heating system, including the central heating boiler and flue and hot water supply in the property.
- (c) The landlord has carried out works to secure the double socket on the wall beside the cooker, it is not flush with the tiled wall and there is a slight gap to the right hand side but it is no longer loose.
- (d) The landlord has replaced the shower screen in the bathroom with a new shower curtain and rail and re-sealed along the edge of the bath and bath panel.
- (e) The landlord has installed a new ceiling mounted hardwired smoke alarm in the Living Room and a new ceiling mounted heat alarm in the Kitchen. There is no smoke alarm in the ground floor hallway.
- (f) The gutter to the rear of the property has been cleaned and appears to be clear of debris and vegetation.
- (g) The landlord has erected a new boundary fence to the rear garden between the subject property and the adjoining property at Number 9 Strathspey Crescent.
- (h) The landlord has renewed the fascia and soffit boards to the front and left side of the garage. The boards to the rear elevation have not been replaced, the timber is still split and rotten and the gutter is not level. It was also noted that the opening mechanisms for the metal up and over style garage door remain defective and the door does not close properly leaving large gaps at both sides.

All photographs were taken at the re-inspection on 17 February 2017 (see schedule below).

Comments: This report will be submitted to a full committee of the First-tier Tribunal for Scotland (Housing and Property Chamber) for their decision.

Carol L Jones MA MRICS

Ordinary Member (Surveyor)

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

23 February 2017

Schedule of photographs taken during the re- inspection of 10 Strathspey Crescent, Airdrie ML6 6JE by the ordinary member (surveyor) of the First-tier Tribunal for Scotland (Housing and Property Chamber) on the 17 February 2017.

Reference Number : PRHP/RP/15/0112



Kitchen - double socket



Kitchen - double socket



Bathroom - New shower curtain



Bathroom - bath re-sealed



Bathroom - bath re-sealed



Living Room - new ceiling mounted smoke alarm



Kitchen - new ceiling mounted heat alarm



Rear Elevation - gutter clear of debris/vegetation



New boundary fence



Garage



Garage - new soffit and fascia boards to left side



Garage - existing fascia and soffit to rear showing gaps and rot



Garage - existing fascia and soffit to rear showing gaps and rot



Garage - new fascia and soffit boards to side and front



Garage - defective metal up and over door



Garage - defective metal up and over door