

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 26 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Chamber Ref: FTS/HPC/RP/23/3382

Re: Property at 120, Millcroft Road, Cumbernauld, Glasgow, G67 2QH registered in the Registers of Scotland under Title Number DMB27834 (“the Property”)

The Parties:

Mr. Gurminder Singh residing at 65, Peasehill Gait, Rosyth, Dunfermline, Fife, KY11 2BD (“the Landlord”)

Tribunal Members:

Karen Moore (Chairperson) and Carol Jones (Ordinary and Surveyor Member)

Decision

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 13 November 2023 affecting the Property

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that it cannot be satisfied and so determines that the Landlord has failed to comply for the reasons set out below.

Background

1. By application received on 29 September 2023 (“the Application”), the then tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(h) of the Act. The Application comprised a copy of the tenancy agreement between the tenant and the Landlord, copy screen shots and email correspondence between the tenant and the Landlord regarding repairs to the Property and copy photographs of the

condition of the Property and the common close. The Application noted that the Property does not meet the Tolerable Standard, that there is mould throughout the Property, that the Property is wet with leaks from the roof and that there is a hole in the kitchen floor.

2. The Application was referred to the Tribunal. An Inspection of the Property and thereafter a Hearing took place on 6 November 2023. The outcome was that the Tribunal imposed the following RSEO:

“The Landlord must on or before 22 January 2024 carry out all of the following:-

1. *Take such steps and actions with co-owners and the local authority which are necessary to bring the structure and exterior of the larger building of which the Property forms part (including drains, gutters and external pipes) into a reasonable state of repair and in proper working order and so ensure that the Property is dampness free, wind and watertight and in all other aspects reasonably fit for human habitation. The Landlord is to report to the Tribunal and the Tenant on the steps and actions taken and the responses received from the co-owners and is to provide the Tribunal and the Tenant with copies of all reports and correspondence received.*
2. *Carry out all works as necessary internally to eliminate the dampness and condensation in the Property to render the Property wind and watertight and in all other aspects reasonably fit for human habitation and provide evidence of these works to the Tribunal and the Tenant;*
3. *Redecorate all areas affected by water damage and mould within the Property including any necessary treatment of mould and provide evidence of this to the Tribunal and the Tenant;*
4. *Engage a suitably qualified window contractor to repair or replace all windows in the Property to ensure that the windows are wind and watertight, are in proper working order and are capable of opening and closing securely and safely, to include all necessary cill replacement, pointing, new ironmongery and draught proofing and to ensure that the Property is capable of being properly ventilated to minimise condensation.*
5. *Engage a suitably qualified contractor to overhaul and repair or replace the heating system in the Property to ensure that the heating system is in proper working order and to ensure that the Property is capable of being properly heated to minimise condensation.*
6. *Engage a suitably qualified pest control contractor to eradicate any vermin infestation at the Property and provide the Tribunal and the Tenant with evidence of all works undertaken.*
7. *Investigate the draughts entering the Property from behind the electric storage heater in the living room and the kitchen and repair same to ensure that the Property is in a reasonable state of repair, free from draughts and free from vermin infestation.*
8. *Install electrical mains supplied, inter-connected hard wired or wireless long life battery, smoke and heat detectors within the property in accordance with current Scottish Government regulations for residential properties.*

9. *Produce to the Tribunal and the Tenant a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category and, where applicable, the outcome in respect of the individual areas should be appropriately marked with a "tick" if in an acceptable condition.*
10. *Engage a suitably qualified flooring contractor to adjust and secure the new vinyl floor covering in the kitchen to ensure it is in a reasonable state of repair and proper working order.*
11. *Carry out all incidental and decorative works occasioned by the works necessary to comply with this order to leave the Property in the condition required by the Repairing Standard."*
3. By email dated 26 January 2024, the Tenant advised the Tribunal that he had vacated the Property.
4. No communication was received from or on behalf of the Landlord.

Re- Inspection and Hearing

5. A Re-Inspection of the matters specified in the RSEO was fixed for 23 May 2024 at 10.00 am. The Re-Inspection did not take place as the Tribunal could not gain access to the Property.
6. The Hearing fixed for 23 May 2024 at 11.45 am at Glasgow Tribunal Centre took place. The Landlord was not present and was not represented.

Decision of the Tribunal

7. The Tribunal's decision is based on all of the information before it. The Tribunal had regard to the Landlord's failure to provide or submit any of the photographic or documentary evidence required by the RSEO.
8. The Tribunal had regard to Section 25 (1) of the Act which states: *-(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it."*
9. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The terms of the RSEO deal with a number of health and safety issues. The Tribunal held the view that safeguarding any occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.
10. With regard to Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply. The Tribunal, being satisfied that the Landlord had had notification of the RSEO, took the view that the Landlord was

ignoring it to the extent that he had no intention of complying with the RSEO and so determined that there was no reason to vary the RSEO and allow further time for the Landlord to comply.

11. The Tribunal then had regard to Section 26 of the Act which states:-*"It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal."* The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO without reasonable excuse. The Tribunal, having taken the view that the Landlord was ignoring the RSEO to the extent that he had no intention of complying with it, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.
12. As the tenant has vacated in the Property, the Tribunal did not require to consider a Rent Relief Order in terms of Section 27 of the Act.
13. The decision of the Tribunal is unanimous.

Appeal

14. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

K Moore

Signed

K Moore, Chairperson

24 May 2024