

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Reasons: Housing (Scotland) Act 2006 section 25

Chamber Ref: KA19/109/11

The Property

Property Description: The property at S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX erected on ALL and Whole that plot or area of ground extending to 11 poles and 17 square yards or thereby, bounded: on the north-west by a pathway from Culzean Home Farm to Culzean Castle and to the south-west by the hall and four houses known as New Stables, forming part of the Culzean Policy Grounds, part of the lands and Barony of Culzean, in the Parish of Kirkoswald and County of Ayr, all as more particularly described in the Feu Charter by the National Trust for Scotland for Places of Historic Interest or Natural Beauty in favour of the Scottish Garden City Housing Society Limited dated Twenty ninth January and recorded in the general Register of Sasines for the County of Ayr on Sixteenth February, both months in the year Nineteen hundred and fifty three; Together with the dwellinghouse and whole other buildings and erections thereon, the heritable fittings and fixtures therein and thereon, free ish and entry therefrom and thereto, and the parts, privileges and pertinents effeiring thereto.

The Parties:-

Mr. Krisham Moodley, S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX, per Mr John Mulholland, Ayr Housing Aid Centre, 1st Floor, 7 York Street, Ayr KA8 8AN (“the tenant”)

and

The Scottish Veterans’ Garden City Association (Inc), having their registered office at New Haig House, Logie Green Road, Edinburgh, EH7 4HQ (“the landlords”)

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

Mr David M Preston, Chairman; and Mr Robert Buchan, Surveyor Member.

Decision:

The tribunal: (One) refuses the application from the landlord to issue a Certificate of Completion of the works required under the Repairing Standard Enforcement Order (RSEO) issued by the PRHC dated 23 August 2011 as varied

by Notices of Variation dated 24 January, 27 March and 29 August all 2013; and (Two) revokes the Rent Relief Order (RRO) dated 29 April 2014.

Background:

1. Following the Decision of the tribunal dated 1 February 2017 and after sundry email exchanges between the parties, the landlords by letter dated 18 August 2019 advised that the works had been completed and requested that a further re-inspection be arranged. The tenant responded to the landlords' request by email dated 27 September 2019. Further email correspondence ensued, and a further re-inspection was arranged for 9 January 2020 which was carried out by the Ordinary Member of the tribunal.
2. Following the re-inspection, the Ordinary Member prepared a Report dated 10 January 2020 which was copied to the parties for comment on 13 January 2019. The Report is attached hereto as Schedule 1 and referred to for its terms. On 15 January 2020 the Tenant returned the Response Form indicating that he did not agree that the works had been completed and indicated that he wished to attend a further hearing.
3. On 27 January 2020 the landlords responded to the Report per their agent, Ms Swanson, Solicitor, Gillespie MacAndrew, with detailed submissions and a request that the tribunal should revoke the RRO. Additional submissions in response were lodged by the tenant's representative on 12 March 2020
4. A hearing was scheduled to take place in Russell House, King Street, Ayr on 1 April 2020. However, in accordance with the provisions made under the government guidance relative to the prevention of spread of the Covid-19 virus the hearing was cancelled and due to be re-scheduled in accordance with those guidelines.
5. On 6 April 2020 Ms Swanson emailed the tribunal and largely re-stated the representations already submitted but, in addition asked the tribunal to proceed to a decision on the questions of discharge of the RSEO and revocation of the RRO. She submitted that the tribunal had sufficient information before it in terms of the written submissions from both parties, together with the re-inspection report prepared by the Ordinary Member following his physical inspection of the property to enable such a decision to be made. The tenant continued to seek a further hearing.
6. On 29 April 2020 following consideration of the submissions in regard to the need for a hearing the tribunal issued a Direction to require the tenant to provide reasons and perceived benefits to be gained from an oral hearing. In response to the Direction the tenant's representative advised that the tenant had no objection to the applications being dealt with without an oral hearing and sought to rely upon the tenant's submissions dated 12 March, 22 and 28 April 2020.
7. The tribunal therefore resumed consideration of the landlord's request for the RSEO to be discharged and the RRO to be revoked or varied in relation to the level of rent restriction.

Tribunal's Deliberations

8. The tribunal had regard to:
 - (a) the inspection carried out by the Ordinary member and his Report dated 10 January 2020 following thereon;
 - (b) the tenant's response dated 15 January and further submissions dated 12 March, 22 and 28 April all 2020; and
 - (c) the landlords' representations and submissions dated 27 January, 23 March, 6 and 24 April all 2020.

9. The tribunal was required to make a determination as to whether the landlords had complied with the RSEO, the purpose of which was to render the property compliant with the Repairing Standard as defined in the Act. The tribunal had issued and varied the RSEO to specify works which, in its opinion, would achieve that purpose ("the purpose"). The landlords had, in large measure, carried out the works specified, although in seeking to achieve the purpose, some departure from the specific detail is permissible: they installed a replacement ventilation system as opposed to installing a switch to allow the tenant to operate it; the replacement ventilation system has a vent in the kitchen as opposed to an automated extraction system.

10. The Re-inspection Report of 10 January 2020 identifies the work which has been carried out and which generally achieves the purpose, including the major works of replacing the roof and installing a closed fire in the lounge, for which purpose the tenant required to remove from the property. On completion of these major works and the tenant's return, a number of issues had arisen which are regarded as 'snagging' or 'damage caused by the carrying out of any of the work', which is required by sections 14(2) and 24(3)(b) to be made good.

11. As outlined in the Re-inspection Report, during the re-inspection the tenant raised a number of issues, some of which might be regarded as falling into that description. In particular, the tenant complained that:
 - (a) there was dampness, condensation and mould in the shower room;
 - (b) condensation and mould in the kitchen had simply been covered over rather than resolved;
 - (c) the linoleum which had been damaged had been replaced by linoleum which does not match the rest and it was laid on top of the old linoleum;
 - (d) the damaged back door was not suitably draught proofed;
 - (e) damaged wallpaper had not been made good to match the remainder in the hall; and
 - (f) the latch on the gate between the house and the garage was loose and likely to fail before long.

12. The tribunal noted that there had been no previous complaint about dampness, condensation or mould in the shower room as part of either of the conjoined applications. The second application from the tenant in 2013 referred to an issue with the shower drain which had been resolved by the time of the inspection. The Statement of Reasons dated 29 April 2014 specifically states at paragraph 27: "the living room and shower room were not affected". The tribunal was satisfied that the issue of condensation and mould in the property had been successfully addressed by the removal of the unusually heavy mould and condensation previously found

in the bedrooms. The shower-room has heating, ventilation and double glazing. Unlike the problems encountered in the bedrooms, the extent of the condensation and mould noted in the shower-room is of a nature commonly found in residential property and should be remedied by normal means. The tribunal does not consider that any issue of dampness or mould in this area can be considered by it in relation to this application.

13. The Re-inspection Report states that the new ventilation system has a vent in the kitchen. The Ordinary Member did not detect the presence of dampness or mould in the kitchen. The tribunal finds that the kitchen is not adversely affected by dampness or mould and is in a satisfactory condition in relation to the repairing standard.
14. The issue of the linoleum in the rear porch was raised by the tenant with the tribunal at the re-inspection on 25 January 2017. The linoleum had been damaged by water ingress due to the back door not being wind and watertight. The question of whether the old linoleum was lifted or not is a matter of judgement by those involved in the replacement and is not a matter for the tribunal so long as the result is in a reasonable condition and fit for its purpose. In relation to the matching of the linoleum kitchen and in the back porch, the Ordinary Member did not observe any significant difference and did not consider that any minor colour discrepancy was such as to cause it to fail to meet the repairing standard. The photograph of this area attached to the re-inspection Report does not show any significant discrepancy. The tribunal finds that the replacement linoleum in the back porch is in a reasonable state of repair and is capable of being used safely for the purpose for which it is designed.
15. The complaint that the tenant had difficulty in closing the back door was raised by the tenant in the application dated 13 May 2013 and was referred to at paragraphs 10(h) and 16(g) in the Statement of Reasons for the Variation dated 29 August 2013. It is stated there that the back door was fully operational and was fitted with a rubber seal which was slightly damaged at the lower end. There was no action required in terms of the ensuing varied RSEO. However, the photograph appended to the Re-inspection Report shows a gap between the draughtproofing strip and the back door. There is clearly an ongoing issue with the back door which will require to be resolved. The landlords contend in their representations of 23 March 2020 that their contractors have made adjustments to the back door to ensure it is wind and watertight. The tenant continues to complain in his email of 22 April 2020 that the door is still not wind and watertight. He must specify to the landlords or their contractors exactly what he sees as the issue which results in it not being so.
16. Although in their representations of 27 January 2020 the landlords stated that they did not accept that the wallpaper in the hall was damaged by their contractors, they agreed to redecorate the area. Having undertaken to do so, the tribunal considers that the work must be done satisfactorily. The photograph appended to the Re-inspection Report shows a clear difference in shade and colour of wall covering and the Ordinary member noticed the difference during the re-inspection. Being in such an obvious location as the main hallway, the tribunal does not consider that it is has been carried out satisfactorily.

17. The latch on the gate between the house and the garage is not an issue previously raised in connection with this application and does not fall under the works required under sections 14 and 24. The tribunal accordingly makes no finding in this regard.
18. Neither the issues regarding the inner rear door nor the height of the internal door handles were raised with the Ordinary member during the re-inspection and have not been mentioned in the submissions made in response to the Re-inspection Report. He had specifically asked the parties present throughout the re-inspection whether they had any further issues before moving on. Some time was spent in the area of the rear porch, dealing with the back door and the linoleum, but nothing was raised regarding the inner door. In any event, the Ordinary member did not observe any particular issue which would not meet the repairing standard with either the inner door or the height of door handles.
19. The tribunal finds that the landlords have not carried out all the requirements of the RSEO with regard to the making good of wall covering in the hall, or in ensuring that the back door is wind and watertight, and accordingly finds that it cannot discharge the RSEO. It is not for the tribunal to expressly list the necessary work to be carried out. It is the duty of the landlord to ensure that the property meets the repairing standard and to carry out any work required to achieve that, including making good any damage caused in carrying out such work. The tribunal has outlined above the issues which it considers still fail to meet that standard.

Rent Relief Order (RRO)

20. The tribunal has also been asked to consider the revocation or limitation of the RRO which was made on 29 April 2014 as a consequence of the Notice of Failure of that date. The reasons for the RRO are as outlined in the Statement of Reasons, also of 29 April 2014.
21. In considering the RRO at this point, the tribunal considers that the extent of the outstanding work required as outlined herein is disproportionate to a restriction of rent. The majority of work required by the RSEO has been carried out and there remains, in the tribunal's determination a very minor extent of work required under sections 14 and 24 and accordingly the tribunal has determined to revoke the RRO.

D Preston

26 May 2020

. Chairman

26 May 2020

This is Schedule 1 referred to in the foregoing
Decision of today's date.

D Preston

..... Chairman

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) Housing (Scotland) Act 2006 Property Re-inspection Report



Property address: S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX

Chamber Reference Number: HPC/KA19/109/11 and PRHP/RP/13/0009

Date of re-inspection: 9th January 2020

Surveyor: R Buchan, FRICS

Circumstances of inspection: The weather was dry and clear. The tenancy continues and full inspection was provided.

In attendance: The tenant and occupiers, Mr and Mrs Moodley, and on behalf of the landlord, Mr Kevin Gray and Mr Fraser Lang.

Repairing Standard Enforcement Order (RSEO)

An RSEO dated 23rd August 2011 and varied by notices of variation dated 24th January, 27th March and 28th August, all 2013, required the landlord to carry out the following work under the terms of the varied RSEO:

- a. Engage suitably qualified tradesmen to investigate and identify the source of the condensation, dampness and mould in both bedrooms in the Property and carry out such work as is necessary to eliminate the condensation, dampness and mould, which work will include the replacement of the mould affected plaster and redecoration.
- b. Replace the existing shingle roof covering.
- c. Remove, or install a switch to enable the Tenant to operate the positive ventilation system.
- d. Install a 'closed' solid fuel fire in the living room.
- e. Install an adequate automatic extraction system in the kitchen to address the condensation issue in the kitchen.
- f. Arrange for the completion of the installation of the replacement garage roof including rainwater goods.
- g. Repair or replace the fencing to the side and rear of the property.
- h. Replace the cracked chimney pot on the southern elevation and renew the chimney cowl.

The Tribunal carried out a further inspection of the property on the 25th January 2017 following an application from the landlord to issue a notice of completion of the works required by the RSEO. A hearing was held following the inspection during which the tenant complained of a number of snagging issues and damage caused by tradesmen carrying out works to the property. The application to issue a notice of completion was refused.

This re-inspection was carried out as a result of a further application from the landlord to issue a notice of completion of the works required by the RSEO following additional works undertaken to the property.

Works carried out

The Landlord has undertaken the following work to the property:

1. The dampness, mould and condensation issues in the bedrooms have been resolved.
2. The roof covering has been replaced.

3. The old positive pressure ventilation system has been replaced by a new system which has a vent in each room.
4. A closed solid fuel fire has been installed in the living-room.
5. The new ventilation system has a vent in the kitchen and further re-lining of some of the kitchen walls including the back of some of the kitchen units has been carried out.
6. The garage roof has been replaced.
7. The fencing has been repaired.
8. The cracked chimney pot has been replaced and the cowl renewed.

Additional note

The tenant complained that although the issue of dampness, condensation and mould in the bedrooms has been resolved, there is now significant condensation, dampness and mould in the shower-room. Further that the condensation and mould in the kitchen has simply been covered over rather than resolved. In addition, the linoleum which has been damaged has been replaced by linoleum which does not match the rest, that it was laid on top of the old linoleum, that the damaged back door is not suitably draught-proofed and that damaged wall paper has not been made good to match the remainder in the hall. The tenant further complained that the latch on the gate between the house and the garage was loose and likely to fail before long.

Most of these issues are contested by the landlord.

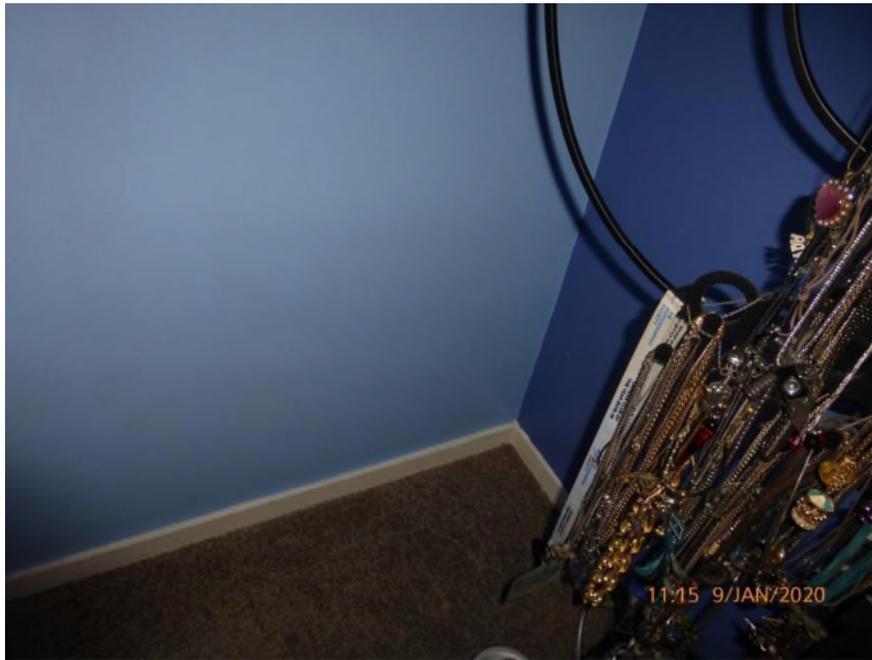
Photographs were taken and are attached to this report.

This report will be submitted to the relevant parties for their consideration and comment. Once their submissions, if any, have been received, the Tribunal will determine whether the Repairing Standard Enforcement Order has been complied with and what further action is appropriate.

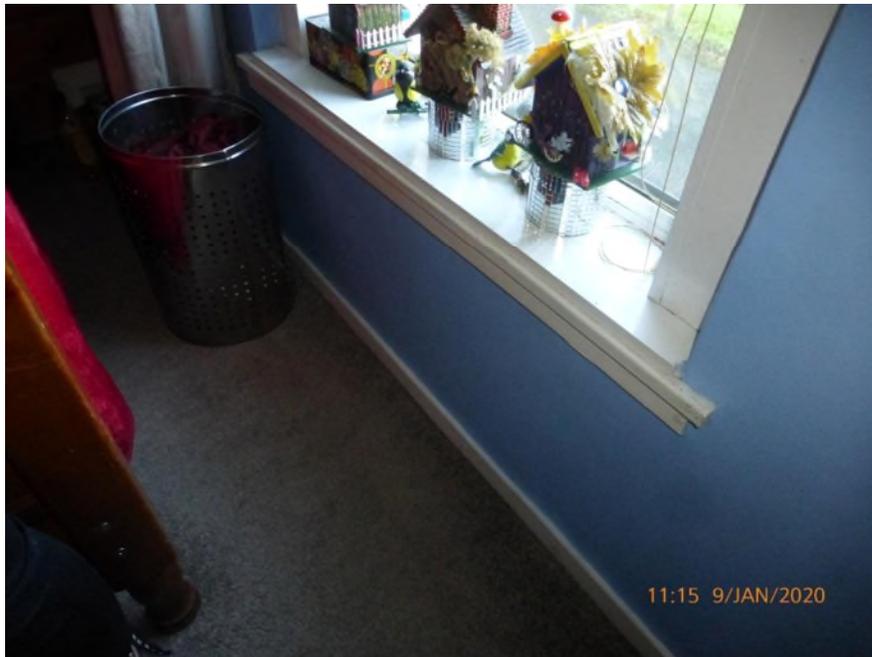
R Buchan

R Buchan, FRICS
10th January 2020

Photographs taken during the re-inspection of
S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, KA19 8JX



Bedroom wall



Front bedroom wall

Photographs taken during the re-inspection of
S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, KA19 8JX



Back of a kitchen unit



New vent in the kitchen

Photographs taken during the re-inspection of
S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, KA19 8JX



Damp meter reading



Stove in the living-room

Photographs taken during the re-inspection of
S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, KA19 8JX



Replaced roof covering and chimney pot.



Repaired fence

Photographs taken during the re-inspection of
S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, KA19 8JX



Mould in the shower-room



Wallpaper in the hall

Photographs taken during the re-inspection of
S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, KA19 8JX



Replaced floor covering inside back door.



Gap between draughtproofing strip and the back door

Photographs taken during the re-inspection of
S.V.G.C.A. Cottage, Culzean Castle Country Park, Maybole, KA19 8JX



Gate between the house and the garage