

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 60 of the Housing (Scotland) Act 2006 (“the 2006 Act”) – Certificate of Completion

Housing (Scotland) Act 2006 (“the 2006 Act”)

Chamber reference number: FTS/HPC/RP/22/3088

109 Flures Drive, Erskine, PA8 7DG (“the House”)

The Parties:-

Miss Katarzyna Zawalidroga, 109 Flures Drive, Erskine, PA8 7DG (“the Tenant”)

Mrs Anne Shaw, care of Let-It, 26 Causeyside Street, Paisley, PA1 1UN (“the Landlord”)

Tribunal Members: Mrs N Weir, Legal Member and Ms S Hesp, Ordinary Member

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), with reference to the Repairing Standard Enforcement Order (“RSEO”) dated 16 February 2023 and, having considered the application by the Landlord for a Certificate of Completion of Works and the outcome of the Tribunal’s subsequent further enquiries in this regard, the Tribunal determined that a Certificate of Completion of Works should be issued in terms of Section 60(4) of the 2006 Act.

Background

1. By application received on 29 August 2022, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House. The Tenant claimed that the garden shed needed removed and replaced; that the kitchen units and front door needed repaired or replaced and that the kitchen wall needs painted. Supporting documentation was lodged including a copy of the tenancy agreement and some email correspondence between the Tenant and Landlord's letting agent and between the Landlord and letting agent.
2. On 28 October 2022, a Convener of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 19 December 2022, requesting that any written representations should be lodged with the Tribunal by 9 January 2023.
3. Written representations were lodged by the Landlord by email on 6 January 2023. The Landlord's position was stated that she is not resident in the UK, that the Tenant has been living in the House at a reduced rental, with little or no increase over the years, that it is fully furnished, that the Landlord has in this time replaced the washing machine twice, the cooker, the electrics and has had the central heating repaired and serviced regularly, that a walk-through assessment of the House was done by the letting agent on 7 December 2022 and it was found that only the kitchen needs work, that the Tenant had been given the go-ahead to remove the shed and that she had no knowledge of any work having been done by the Tenant.
4. The Tribunal Members inspected the House on the morning of 30 January 2023. The Tenant was present as was a Polish Interpreter, Ms Magdalena Moore, who had been requested by the Tenant whose first language is Polish and whose attendance had been arranged by the Tribunal Administration. The Landlord was not present as she is resident abroad but was represented at the Inspection by Mr Derek Torrens of the Landlord's letting agents, Let-it. Mr Andrew Taylor, Ordinary Member (Observer) was also in attendance but took no part in the proceedings.
5. Following the Inspection of the House, the Tribunal held a Hearing by telephone conference call at 2pm on 30 January 2023. The same persons were present as had been present at the Inspection, other than Ms Sandra Rooney of the Landlord's letting agents, Let-it, who attended, rather than Mr Torrens.
6. Following the Hearing, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act to ensure that the House meets the Repairing Standard and

proceeded to make an RSEO as required by Section 24(1) of the 2006 Act. The RSEO was dated 16 February 2023 and required the Landlord by 31 March 2023:-

“(1) To repair or as necessary replace the kitchen units, to include (without prejudice to the foregoing generality) cupboard doors, hinges, drawers, fascias and the apparent leak from the sink waste under the kitchen sink situated within the cupboard unit below the sink, to ensure that all kitchen units are in a reasonable state of repair and in proper working order;

(2) To replace the front door to ensure that the door, door surround and locking mechanism are in a reasonable state of repair, in proper working order, can be properly secured and is wind and watertight;

(3) To repair or as necessary replace the carbon monoxide detector in the kitchen to ensure that the House has satisfactory provision for giving warning if carbon monoxide is present; and

(4) To install a heat alarm in the kitchen, interlinked with the existing smoke detection system to ensure that the house has satisfactory provision for detecting fires.”

7. Following the issue of the RSEO, further representations were received on behalf of the Landlord, to the effect that the works required by the RSEO had been completed and requesting that the RSEO be lifted. However, the Tenant indicated that she was not satisfied regarding the replacement front door which had been fitted. Accordingly, the Tribunal decided that a re-inspection of the House was required.
8. The Re-inspection by the Tribunal took place on 12 June 2023 and was attended by the same parties as at the original Inspection on 30 January 2023, other than the Polish Interpreter in attendance to assist the Tenant on this occasion was a Ms Maciejewska and a neighbour of the Tenant, Ms McGhee of 107 Flures Drive was also in attendance in a supportive capacity. A copy of the Ordinary Member's Re-inspection Report dated 16 June 2023 was issued to parties following the Re-inspection, requesting their further comments.
9. The Tenant submitted written representations dated 26 June 2023 stating that she remained unhappy with the replacement front door, particularly its visual appearance which she stated looks like a “garden shed”. She indicated that she and her children are embarrassed about the door, her children do not want to have their friends to the house because of it and neighbours have complained that the door is unpleasant looking and lowers the area's image. The Tenant also stated that the smoke/heat detector had been repaired by herself rather than the Landlord. She indicated that she would attend a further Hearing, if required, and requested that the Tribunal consider making a Rent Reduction Order (“RRO”) of 50%. Her justification for seeking an RRO

of that amount was the amount she had already paid out for improvements and repairs over the course of her lengthy tenancy, the fact that she has experienced difficulties communicating with the Landlord due to her being resident abroad and that a rent reduction would allow her to spend more money on further renovations to the House which she considers are required. Written representations were also received on behalf of the Landlord dated 28 June 2023. The Landlord's position was that all works required have been completed and that, although the front door has not been painted due to the Landlord's financial issues, this is a cosmetic issue only and does not affect the functionality or security of the door. The Landlord did not request a Hearing and disagreed that any RRO should be made. The Tribunal was asked to disregard the Tenant's comments in requesting an RRO which the Landlord considers irrelevant in terms of this RSEO. The Tenant further responded to disagree with the Landlord's comments by email dated 29 June 2023. As regards the front door, she added that, apart from the look of the replacement door, she does not consider it safe, due to it being a solid door without a "viewfinder" and having no safety chain.

10. Having considered their findings on Re-Inspection, together with the further representations from parties, the Tribunal was of the view that a further Hearing was not required on these matters and proceeded to make their decision.
11. The Tribunal considered whether all the works stipulated in the RSEO have been completed and all requirements of the RSEO met.
12. The Tribunal was satisfied that the works stipulated in parts (1), (3) and (4) of the RSEO had been carried out and that the Repairing Standard was now met in these respects. Although the front door had been replaced by the Landlord and the Tribunal was satisfied that the door was in good working order and adequately secure, the Tribunal was of the view that the front door had not been properly finished and, as such, accepted the Tenant's representations that it was visually unappealing, when viewed from both the interior and exterior of the House, having an unfinished wood appearance, and was out of keeping with the house and other houses in the locality. Reference was made to photographs numbered 1 showing the front elevation of the House and 6 showing the internal face of the front door contained in the Reinspection Report referred to above. The Tribunal considered that, similar to the duty of a Landlord in complying with the Repairing Standard to "make good" any damage caused by the works (Section 14(2) of the 2006 Act), the Landlord here required to apply a proper finish to the door, such as painting it an appropriate colour, in order to fully comply with part (2) of the RSEO. The Tribunal did not consider it necessary for the Landlord to fit a viewfinder or 'spyhole' to the door, nor a safety chain, to comply with the RSEO, although understands the Tenant's wish for same, given that the replacement door is completely solid and that the Tenant would be unable to ascertain who was outside, other than by opening the door.

13. The Tribunal accordingly determined that the RSEO had not been fully complied with and should remain in place. The Tribunal then considered whether to impose an RRO in view of the Landlord's non-compliance, as requested by the Tenant. The Tribunal agreed with the representations of the Landlord in this respect, in that some of the Tenant's comments were related to the general background circumstances and her wish to carry out further works to the House, as opposed to being directly related to this RSEO and her remaining issues with the front door. The Tribunal also considered that the remaining work required to be carried out to the front door was minimal in nature and did not justify an RRO being made at this time.
14. The Tribunal not being satisfied that all requirements of the RSEO had been met determined that there was non-compliance by the Landlord in terms of Section 26(1) of the 2006 Act and that a Certificate of Completion should not accordingly be issued in terms of Section 60 of the 2006 Act. The Tribunal therefore issued a Refusal to Grant a Certificate of Completion, together with a Statement of Reasons Decision in respect of the refusal, both dated 28 August 2023.
15. On 29 August 2023, the Landlord's letting agent emailed the Tribunal to advise that they were instructing the further works requested by the Tribunal; on 13 September 2023, the letting agent emailed the Tribunal a copy of the invoice from the contractor dated 13 September 2023 which confirmed that they had attended, prepared and re-stained the new front door to match the existing surround; and on 21 September 2023, the letting agent emailed again, attaching photographs of the inside and outside of the front door, including one showing the front elevation of the House. The Tribunal noted the position but decided to wait and see if any further response was submitted by the Tenant when she received sight of the letting agent's recent communications. On 20 October 2023, the letting agent requested an update on the position. It was noted by the Tribunal that there had been no further communication received from the Tenant, so proceeded to make their decision.

Decision

The Tribunal decided to issue a Certificate of Completion of Works in terms of Section 60(4) of the 2006 Act.

Reasons for decision

1. The Tribunal considered the whole background to this case and the evidence produced on behalf of the Landlord recently, as detailed in paragraph 15 above. The Tribunal considered the terms of the contractor's invoice submitted in connection with the re-staining of the front door, together with the photographs of the interior and exterior. The Tribunal was satisfied that the issues with the front

door which had led to them refusing to grant a Certificate of Completion on 28 August 2023 had now been resolved and, therefore, that part (2) of the RSEO had now been complied with. Accordingly, the Tribunal determined that all the works required to the House in terms of the RSEO had now been completed to their satisfaction and that the Repairing Standard was met.

2. The Tribunal is accordingly of the view that it is now appropriate to grant a Certificate of Completion of Works in terms of Section 60(4) of the 2006 Act.
3. 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.

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.

Signed..... Date: 30 October 2023
N Weir, Legal Member of the Tribunal