

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF DECISION: in respect of an application Section 22(1) of the Housing (Scotland) Act 2006 ("the Act") and in terms of Rule 26 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Parties : Ms Helen Williams residing at 21 Rosebank Drive, Viewpark, Uddingston, G71 5DX ("the Tenant") and

Mr. James Wilson residing at 132, Swinton Road, Baillieston, Glasgow, G69 6OW ("the Landlord")

Property: registered in the Land Register for Scotland under Title Number LAN15751 ("the Property")

Chamber reference: FTS/HPC/RP/17/0228

Tribunal Members

Karen Moore (Legal Member and Chairperson)

Lorraine Charles (Ordinary Member)

This Decision should be read in conjunction with Decision and Repairing Standard Enforcement Order both dated 29 December 2017 in relation to the Property.

Background

1. By application form received by the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Chamber") on 15 June 2017 and subsequent correspondence ("the Application"), the Tenant applied to the Chamber for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(f) and 13(1)(g) of the Act.
2. Following an Inspection and Hearing on 30 November 2017, the tribunal found that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act and made a Repairing Standard Enforcement Order ("RSEO") in terms of Section 24(1) of the Act as follows:-

*"The Landlord must on or before **15 February 2018**:-*

1. *Repair or renew the broken living room window to ensure that the window is fully functioning and complies with current regulations;*
2. *Repair or replace the showerhead to ensure a watertight seal;*
3. *Replace the sealant at the bath and the bathroom window to eradicate mould;*

4. *Repair or replace the toilet bowl to ensure that there is no water leakage and, thereafter, repair or replace the wooden panel underneath the bathroom wash hand basin and at the base of the toilet bowl,*
5. *Provide and install sufficient hard wired and interlinked smoke, heat and fire detectors to comply with current regulations as defined in the current statutory guidance detailed in Domestic Technical Handbook prepared by the Scottish Government and available on the Scottish Government's website at: <https://beta.gov.scot/publications/building-standards-technical-handbook-2017-domestic/>*
6. *Provide and install sufficient carbon monoxide detectors to comply with current Scottish Government guidance and available on the Scottish Government's website at <https://beta.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/> and*
7. *Make good any décor damaged as a result of these works."*

Re-Inspection of the Property

3. The Ordinary Member of the tribunal re-inspected the Property on 20 March 2018 at which re-inspection the Landlord was present. The landlord advised the Ordinary Member that the Tenant and her family had vacated the Property on 27 February 2018. It was evident to the Ordinary Member that the Property was unoccupied and that the RSEO had not been complied with. It was also evident that Landlord was in the process of carrying out extensive refurbishment works to the Property as can be seen from the Ordinary Member's Report, a copy of which is annexed hereto.

Decision of the tribunal and reasons.

4. The Tribunal, firstly, had regard to Section 26 (1) of the Act which states that it is for the first-tier tribunal to decide whether a landlord has complied with a repairing standard enforcement order and, secondly, had regard to the terms of Section 26(2) of the Act which states that failure to comply with a repairing standard enforcement order must be notified to the local authority. The Tribunal also had regard to the fact that a failure to comply with a repairing standard enforcement order is a criminal offence. The Tribunal weighed up the consequences for the Landlord of a finding of failure to comply with the facts that the Landlord is in the process of carrying out works some of which are those required by the RSEO and took the view that, at this stage in the process, a finding of failure to comply was not appropriate.
5. The Tribunal then 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."
6. With regard to Section 25(1)(b), the Tribunal gave careful consideration to whether it should revoke the RSEO. The Tribunal took account of the fact the Property appeared not to be subject to a current tenancy. The Tribunal, from its own professional

knowledge, is aware that there are many privately rented properties of a similar type to the Property in the locality in which the Property is situated and so there is a private rental market for properties of this type. Accordingly, the Tribunal could not discount the fact the Property might be returned to the rental market. Accordingly, the Tribunal was not of a mind to revoke the RSEO.

7. With regard to Section 25(1)(a), the Tribunal again gave consideration to the facts of the case and, in particular, gave weight to the fact that extensive works are being carried out. Accordingly, the Tribunal took the view it was appropriate to vary the RSEO to extend further the time allowed for the works required by the RSEO to be carried out. The Tribunal considered that a further 3 months is an appropriate extension of time.
8. The decision of the Tribunal is unanimous.

Appeal of tribunal's decision

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.

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

Karen Moore
Chairperson
13 May 2018

13 May 2018

This is the Report referred to in the
foregoing decision for RP/17/0228

Housing and Property Chamber First-tier Tribunal for Scotland



Date of Inspection – 20th March 2018 at 2pm

Property Reference – RP170228

Property Address – 21 Rosebank Drive Uddingston, G71 5DY

Surveyor – Lori Charles

Previous Inspection – 30th November 2017

Access – Mr James Wilson - Landlord

Weather – Dry/bright

In attendance – Mr James Wilson

Repairing Standards Enforcement Order (RSEO) dated 29th December 2017

Works in the Repairing Standard Enforcement Order (RSEO) - In particular the tribunal requires the Landlord:-

1. Repair or renew the broken living room window to ensure that the window is fully functioning and complies with current regulations;
2. Repair or replace the showerhead to ensure a watertight seal;
3. Replace the sealant at the bath and bathroom window to eradicate mould;
4. Repair or replace the toilet bowl to ensure that there is no water leakage and, thereafter, repair or replace the wooden panel underneath the bathroom wash hand basin and at the base of the toilet bowl;
5. Provide and install sufficient hard wired and interlinked smoke, heat and fire detectors to comply with the current regulations as defined in the current statutory guidance detailed in the Domestic Technical Handbook prepared by the Scottish Government and available on the Scottish Government's website at:
<https://beta.gov.scot/publications/building-standards-technical-handbook-2017-domestic/>
6. Provide and install sufficient carbon monoxide detectors to comply with the current Scottish Government guidance and available on the Scottish Government's website at: <https://beta.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/>
7. Make good any décor damaged as a result of these works.

**All photographs were taken at the re-inspection on the 23th March 2018
(see schedule below)**

The property has been vacated by the tenant Ms Helen Williams and her family on the 27th February 2018.

On the day of the re-inspection the property was an active building site. The landlord had instructed a contractor to start the following works to the property - stripping out the bathroom & kitchen, lifting all flooring and removing all wall coverings. The contractor has started replastering the walls and ceilings and the landlord Mr Wilson has advised that he will be upgrading the central heating system, electrics and replacing the double glazing .



Living room window repaired
Hole under window repaired



Bathroom tiles off and wc,bath and sink to be removed and renewed



Hall walls and ceiling replastered. No smoke detectors fitted.



Kitchen as at re-inspection no heat detector fitted



Bedrooms walls all replastered



CO detector still to be fitted

The landlord Mr Wilson has advised that the works to the property will be completed in approximately 12 weeks.

I have advised Mr Wilson that all points on the RSEO must be included and completed as part of the ongoing works.

Comments: This report will be submitted to the First Tier Tribunal for Scotland (Housing Property Chamber) for their decision.

Lori Charles BSc Hons MRICS

Ordinary Member (Surveyor)

Date 22nd March 2018

Schedule of photographs taken during the re-inspection of 21 Rosebank Drive Uddingston, G71 5DY by the Ordinary Member of the First Tier Tribunal for Scotland (Housing and Property Chamber) on the 20th March 2018.

Reference Number FTS-HPC-RP-17-0228