

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RP/17/0299

Title no/Sasines Description: LAN 62767

53 Douglas Street, Airdrie, ML6 9JS (“the House”)

The Parties:-

Mr Alan Marshall and Mrs Leanne O’Donnell Marshall, formerly residing at the House (“the Tenant”)

Mr Perwaiz Akhtar, residing at 10 Avonhead Road, Cumbernauld, G67 4RA and Mr Abdul Haleem, residing at 2 Broomstone Avenue, Newton Mearns, Glasgow, G77 5LA (“the Landlord”)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order (RSEO) relative to the house dated 17 November 2017 determined that the Landlord has complied with the RSEO and that a Certificate of Completion to that effect should be issued.

The Tribunal comprised:-

Nicola Weir, Legal Member

Kingsley Bruce, Ordinary Member

Background

1. By Application received on 28 July 2017, Mr Alan Marshall, one of the tenants, applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:- the house is wind and

watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. Specifically, the Tenant complained as follows:-

- (1) Suspect asbestos sheeting was put under floor boards when fire place removed.
- (2) Fireplace ripped out and not decorated.
- (3) House was not decorated or cleaned before moving in.
- (4) Artex walls have been disturbed.
- (5) New flooring put down but damaged within 24 hours due to poor installation. Also flooring to be put in the bedroom.
- (6) Double glazing not installed and windows are rotting. Poor noise restriction leaving kids unable to sleep.
- (7) Guttering in sun lounge has fallen.
- (8) Milky colour on hot water is constant since we moved in.
- (9) Blinds are not attached to the walls therefore a safety hazard to kids.
- (10) Seal on cooker has been broke since we moved in.
- (11) Fire alarm has been installed in the kitchen but is too close to cooker and therefore goes off any time anything is cooked.(sic)

Apart from the application form, the Tenant also submitted some copy tenancy documentation, namely Short Assured Tenancy, Ground 2 Notice and Form AT5; copy email correspondence between the tenant, Alan Marshall and David Grainge of DRG Properties Services (Scotland) Ltd trading as McGoogan ("the Landlord's agent") dated between 7 April 2017 and 26 July 2017; a copy email dated 22 June 2017 from the tenant, Mr Marshall to North Lanarkshire Council; and photographs dated 26 July 2017. The copy email correspondence submitted with the Application did not mention all the repairs issues listed on the Application. The Tenant was asked to submit evidence that the Landlord had been notified of all works requiring to be done. On 14 August 2017, the tenant, Mr Alan Marshall subsequently submitted an email to the Tribunal, requesting that his wife be added to his Application and further copy email correspondence between the Tenant and the Landlord's agent dated 26 July and 11 August 2017, containing details of the repairs issues. Said email correspondence contained details of some additional repairs issues which were not part of the Application.

2. On 22 August 2017, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal.

3. Notice of Referral in terms of Schedule 2, Paragraph 1 of the Act was served upon the Landlord, the Landlord's agent and the Tenant by letters dated 30 August 2017.
4. Following service of the Notice of Referral, Mr Perwaiz Akhtar, one of the landlords indicated by email dated 12 September 2017 that he and his agent would be attending the inspection and hearing and intended to make representations. The Tenant submitted an email dated 6 September 2017 containing an updated list of repairs issues; an email dated 20 September 2017, intimating details of the Tenant's representative, Mr Jim Melvin, Senior Housing Advice Network Officer of Coatbridge CAB; and an email dated 21 September 2017 enclosing a copy Fibre Identification Certificate from Clyde Environmental Consultants Ltd dated 18 September 2017. Copies of these responses were circulated to the parties.
5. The Tribunal inspected the House on the morning of 9 October 2017. Both tenants, the landlord Mr Perwais Akhtar and the Landlord's agent were present during the inspection.
6. Following the inspection of the House, the Tribunal held a Hearing at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. Both tenants were present, with Mrs Leanne O'Donnell Marshall primarily giving evidence on their behalf, and were represented by the said Mr Jim Melvin ("the Tenant's representative"). The landlord, Mr Perwais Akhtar was present, as was the Landlord's agent and Mr Pawel Bartyska, the Landlord's contractor. Mr Akhtar represented himself and primarily gave evidence on behalf of the Landlord.
7. Following the Hearing, the Tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) in respect of the house dated 17 November 2017. In terms of the RSEO, the Landlord was required (1) To arrange for inspection/investigation, safe removal and thereafter safe disposal by a suitably licensed and qualified contractor of any materials containing asbestos, in particular, asbestos boards placed beneath the floor in the living room of the House and any traces of asbestos fibres or other remains of same from the section of the kitchen wall from where the asbestos boards were originally removed, to ensure that the House is reasonably fit for human habitation and (2) To replace the door seal on the electric oven door to ensure that the oven is in a reasonable state of repair and in proper working order. The Tribunal ordered that the works specified in the RSEO was to be carried out and completed within the period of 6 weeks from the date of service of the RSEO.
8. On 21 December 2017, the Tenant emailed the Tribunal to advise that the Tenant had moved out of the House. Accordingly, the Tenant was no longer a party in terms of these proceedings.

9. On 29 January 2018, the Ordinary Member of the Tribunal attempted to carry out a Re-inspection. However, the Ordinary Member was not able to gain access to the House. The Landlord was not present or represented. A copy of the Ordinary Member's Re-inspection Report dated 30 January 2018 is attached to this Decision.
10. On 2 March 2018, the Landlord's agent emailed the Tribunal to advise that he was no longer acting as an agent for the Landlord.
11. On 5 April 2018, the Landlord emailed to the Tribunal a copy Invoice/Statement from Curtis Insulation Ltd dated 23 March 2018, together with copy Pre-Notification Form to SEPA dated 22 March 2018 and copy Invoice from Good Connections dated 4 April 2018. The Tribunal noted that Curtis Insulation Ltd state on their letter-head that they are Asbestos Removal Contractors and that the Invoice and SEPA form appear to relate to removal of bags of asbestos material from the House and disposal of same to a licensed landfill site. The Tribunal noted that Good Connections are electrical contractors and that their invoice relates to the fitting of a new oven at the House.
12. On 16 April 2018, the Ordinary Member of the Tribunal carried out a Re-inspection of the House. The Landlord, his new agent and the new tenants in the House were in attendance. The Ordinary Member noted that the electric oven in the kitchen had been replaced and also that, although sub-floor access in the living room was not available, that it did appear that the living room flooring had been lifted and replaced. A copy of the Ordinary Member's Re-inspection Report, with photographs attached, dated 22 April 2016 is attached to this Decision.
13. In response to the circulation of the Re-inspection Report, the Landlord submitted a letter to the Tribunal dated 18 May 2018 confirming that he would wish to attend a Hearing. He also made written representations explaining that he had thought the original Tenant was (at the Landlord's expense) instructing the same asbestos contractors that the Tenant had instructed previously, in order to inspect the kitchen wall area, that the Landlord did not know if this had ever been done as the Tenant had subsequently left the House and that the Landlord had accordingly instructed another contractor to attend to this and would submit their report to the Tribunal as soon as possible.
14. On 30 May 2018, the Landlord emailed the Tribunal a copy of a Management Asbestos Survey Report from Doran Environmental Services dated 24 May 2018 relating to the House. The Tribunal noted that the contractors appear to be suitably qualified contractors. It was further noted that they had inspected the kitchen recess area where the shelving used to exist and analysed samples taken from that area and that no remaining traces of asbestos had been detected.
15. The Tribunal considered the terms of the Re-inspection Report dated 22 April 2018 and all the written representations and other documentation

referred to above submitted to the Tribunal following the issue of the RSEO. In terms of Rule 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017, as amended, the Tribunal, having regard to the facts not disputed by the parties was of the view that it was able to make sufficient findings to determine the case without having a further Hearing. The Tribunal considered that to do so would not be contrary to the interests of the parties. The Tribunal accordingly proceeded to make their decision.

Reasons for decision

16. The Tribunal was satisfied from the findings on Re-inspection and from careful consideration of the documentation submitted by the Landlord, all as referred to above, that all works required in terms of the RSEO had been completed and that the RSEO had accordingly been complied with by the Landlord. Accordingly, the Tribunal was of the view that a Certificate of Completion to that effect should now be issued.

Decision

The Tribunal determined that the Landlord had complied with the RSEO and that a Certificate of Completion to that effect should be issued.

The decision of the Tribunal was 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.

Nicola Weir

Signed.. Date: 20 June 2018
Nicola Weir, Legal Member of the Tribunal

Glasgow, 20 June 2018

This is the Re-inspection Report dated 30 January 2018 referred to in the Statement of Decision of even date herewith.

Nicola

Weir LEGAL MEMBER OF TRIBUNAL

Housing and Property Chamber
First-tier Tribunal for Scotland



HPC Re-inspection Report

Property: 53 Douglas Street, Gartlea Airdrie, ML3 9JS
Ref No: FTS/HPC/RP/17/0299

Surveyor: Kingsley K Bruce, MRICS

Access:

I attended for the purposes of undertaking a re-inspection the property at 14:00 on Monday 29 January 2018.

Access was not gained to the property.

In Attendance:

On attempting to gain access, it was discovered that the property was occupied, the individual who was in the property advised that his name was Raymond Phee and that he was the tenant, having taken entry on 17 December 2017. The Landlord was neither present or represented. The tenant Mr Phee stated that he was not aware of any Re-inspection, nor the existence of the Repairing Standard Enforcement Order.

Weather:

Conditions were generally dry and bright at the time of my re-inspection.

Requirements of the Repairing Standard Enforcement Order (RSEO):

The RSEO of October 2017, required the Landlord as follows:

- (1) *To arrange for inspection/investigation, safe removal and thereafter safe disposal by a suitably licensed and qualified contractor of any materials containing asbestos, in particular, asbestos boards placed beneath the floor in the living room of the House and any traces of asbestos fibres or other remains of same from the section of the kitchen wall from where asbestos boards were originally removed, to ensure that the House is reasonably fit for human habitation.*
- (2) *To replace the door seal on the electric oven to ensure that the oven is in a reasonable state of repair and in proper working order.*

The Tribunal ordered that the works specified in the Order must be carried out and completed within six weeks of the date of the order.

Works required by the RSEO which have been undertaken:

It could not be determined whether any of the requirements of the RSEO had been met, at the time of the re-inspection.

Kingsley K Bruce, MRICS

Member

The First Tier Tribunal for Scotland (Housing and Property Chamber)

30 January 2018

Glasgow, 20 June 2018

This is the re-inspection report dated 22 April 2018 referred to in the Statement of Decision of over date herewith.

Nicola

Weir, LEGAL MEMBER OF TRIBUNAL

Housing and Property Chamber
First-tier Tribunal for Scotland



HPC Re-inspection Report

Property: 53 Douglas Street, Gartlea Airdrie, ML3 9JS

Ref No: FTS/HPC/RP/17/0299

Surveyor: Kingsley K Bruce, MRICS

Access:

I attended for the purposes of undertaking a re-inspection the property at 09:00 on Monday 16 April 2018.

In Attendance:

The property was occupied, the Landlord Mr P. Akhtar was present, as were the current tenant, Mr R Phee and his wife, Mrs Phee. The landlord's current agent also attended, albeit arriving later. Neither the previous tenant who submitted the application or the Landlord's original agent were present.

Weather:

Conditions were generally dry and bright at the time of my re-inspection.

Requirements of the Repairing Standard Enforcement Order (RSEO):

The RSEO of October 2017, required the Landlord as follows:

- (1) To arrange for inspection/investigation, safe removal and thereafter safe disposal by a suitably licensed and qualified contractor of any materials containing asbestos, in particular, asbestos boards placed beneath the floor in the living room of the House and any traces of asbestos fibres or other remains of same from the section of the kitchen wall from where asbestos boards were originally removed, to ensure that the House is reasonably fit for human habitation.*
- (2) To replace the door seal on the electric oven to ensure that the oven is in a reasonable state of repair and in proper working order.*

The Tribunal ordered that the works specified in the Order must be carried out and completed within six weeks of the date of the order.

Works required by the RSEO which have been undertaken:

- It was evident that the electric oven in the kitchen had been replaced.
- Prior to the Reinspection, the Landlord had provided documentation relating to removal of materials containing asbestos, which had been understood to have been concealed under the livingroom floor prior to the original inspection. From reinspection it should be noted that no subfloor access was available, however it did appear that flooring had been lifted and replaced, evidenced by edging trim having been re-secured using nails.

Kingsley K Bruce, MRICS

Member

The First Tier Tribunal for Scotland (Housing and Property Chamber)

22 APRIL 2018

Photographs taken during re-inspection 16 April 2018



