

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006

Chamber Ref: PRHP/IV16/208/11

Property at Flat 1 Forbes Buildings, Great North Road, Muir of Ord (“the Property”)

The Parties:-

MR ALAN FORBES, formerly residing at Flat 1, Forbes Buildings, Great North Road, Muir of Ord (“the Tenant”)

MR MARTIN FORBES, residing at 49 Drumsittal Road, North Kessock, Ross-shire, IV1 3JU (“the former Landlord”)

MR ANGUS MACLEAN, residing at Bareven, Muir of Ord, (“the Current 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 Current Landlord has complied with the Repairing Standard Enforcement Order (“RSEO”) in relation to the Property concerned and taking account of the recent reinspections of the Property, determined that the Current Landlord had now complied with the terms of the RSEO and resolved to issue a Certificate of Completion in respect of the works required by the RSEO. The Tribunal also resolved to issue a revocation of the Rent Relief Order (“RRO”) in place over the Property.

Background

- 1. This matter was originally heard before a Committee of The Private Rented Housing Panel (“the Committee”) in 2012. On 1 December 2016 the power and functions of The Private Rented Housing Panel were transferred to The First Tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”). Accordingly the Tribunal has the necessary jurisdiction to continue with and determine this matter.**
- 2. By way of a Decision dated 28 March 2012, the Committee had issued a determination that the Former Landlord had failed to comply with the**

duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").

3. The Committee had placed an RSEO on the Property, also dated 12 March 2012, the RSEO required the Former Landlord:-

- (a) to carry out such works of repair or replacement as are necessary to allow all the windows within the Property to be capable of being opened and closed properly and also properly wind and watertight.
- (b) To carry out an overhaul of the downpipes, rones and gutters within the larger building of which the Property formed part to ensure that these are in proper working order.
- (c) To properly affix the lounge storage heater to the wall.
- (d) To provide a clear Periodic Inspection Certificate by a suitably qualified electrician confirming that the electrical system within the Property is safe.
- (e) To carry out such works of repair or replacement to the door between the lounge and kitchen as are necessary to allow the said door to open and close properly
- (f) To install a mains wired interlinked smoke alarm detection system within the Property to the appropriate current regulations.

The RSEO had required the Landlord to carry out the works within a period of ten weeks from the date of service of the original RSEO.

In due course a further inspection of the Property was carried out on 29 June 2012 by Mr A Anderson, the Surveyor Member of the Committee. The Tenant was present. The Former Landlord was neither present nor represented. It was readily apparent that no works at all had been carried out since the original inspection and issuing of the RSEO to the Former Landlord. The Tenant had advised the Surveyor Member at that point that there had been no contact with the Former Landlord since the serving of the RSEO.

The Committee had then, in light of the terms of Section 26 (1) of the Act, determined that an RRO should be imposed on the Property. The Committee also reported the matter to the Police for consideration for prosecution as a result of the failure of the Former Landlord in terms of Section 28 (1) of the Act.

Thereafter the Committee's powers had been exhausted and matters simply fell into abeyance. As part of a routine check of properties with outstanding RSEOs the Tribunal noted that the Current Landlord had acquired the Property. Contact was made with the Current Landlord who stated that he had been unaware of the RSEO in place over the Property

but that he had carried out improvement works in any event. Accordingly, the Tribunal arranged for a reinspection to take place. Mr Angus Anderson again attended at the Property on 6 April 2018. He reported that there had been significant improvements to the Property in the interim. The flat had been refurbished with new kitchen and bathroom fittings, new internal joinery, floor coverings and decoration.

In relation to the specific works required by the RSEO it was noted that all windows of the flat had been replaced with new UPVC framed double glazed windows. Where tested, all were capable of being opened and closed and were found to be wind and watertight.

The rainwater goods were found to be clear of vegetation and largely complete. However, the rear, north downpipe was disconnected from the gutter and water leakage was evident. At the front elevation, the discharge shoe at the central downpipe facing towards the building, the clip was broken and the ground level gully choked, with rainwater flowing across the pavement.

New electric heaters had been fitted throughout the flat. All were found to be properly affixed.

From a visual inspection it could be seen that the electrical installation had been upgraded or renewed. There were modern consumer units in the hallway of the flat and the various fittings appeared to be new.

The layout of the flat had been modified to the extent that the lounge and kitchen were now open plan, the wall and door between these two areas having been removed. There was a heat detector in the lounge/kitchen and two smoke alarms in the hallway of the flat.

On 26 April 2018 a further reinspection of the Property was carried out again by Mr Angus Anderson (there had been another flat in the block where an RSEO was also in place and a reinspection was required for that other property). Since the date of the previous inspection the Landlord had exhibited an Electrical Installation Condition Report prepared by LVH Electrical Services Limited dated 16 April 2018 which indicated that the Electrical Installation at the Property was satisfactory with no C1 or C2 defects. The defects to the rainwater goods noted at the previous reinspection in March 2018 had since been rectified.

The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr A Anderson, Ordinary Member) considered matters. It was clear that the Property had been significantly refurbished by the Current Landlord and brought back to an appropriate standard. The Tribunal were pleased to see this given the poor state of the Property previously. On that basis the Tribunal determined that the RSEO should be lifted and a Certificate of Completion discharging the RSEO under Section 60 of the Act would be granted. The Tribunal also resolved to revoke the RRO that had been in place on the Property.

The decision of the Tribunal was therefore to lift the RSEO and grant a Certificate of Completion discharging the RSEO and also to revoke the RRO.

4. The decision of the tribunal was unanimous.

Right of Appeal

5. 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.

Effect of section 63

6. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

E Miller

Signed

Date

..... 3/8/18

Chairperson