

Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION OF THE HOUSING AND PROPERTY
CHAMBER OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND UNDER
SECTION 60(5) OF THE HOUSING (SCOTLAND) ACT 2006**

Chamber Ref: FTS/HPC/RT/21/2348

Title no: ELN9452

**18 Caesar Way, Tranent, East Lothian EH33 2JA
("the Property")**

The Parties:-

**East Lothian Council, Protective Services, John Muir House,
Haddington, East Lothian EH41 3HA
("the Third Party Applicant")**

**Mr Thomas Aitken, residing at The Stables, Gladsmuir, Tranent, East
Lothian EH33 1ED
("the Landlord")**

**Ms Ailsa Rutherford, residing at 18 Caesar Way, Tranent, East Lothian
EH33 2JA ("the Tenant") [non participating]**

The Tribunal

**Richard Mill (Legal Member)
Angus Anderson (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Landlord has complied with the Repairing Standard Enforcement Order in respect of the Property made on 9 February 2022 and that a Certificate of Completion should be issued in terms of Section 60(5) of the Housing (Scotland) Act 2006.

Background

1. The Tribunal made a Repairing Standard Enforcement Order (RSEO) dated 9 February 2022 which required the Landlord:-

1. To provide a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
 2. To provide a copy of the current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection.
 3. To replace the front door of the property.
 4. To instruct a suitably qualified tradesman to survey the windows in the property and to repair or replace same to ensure all windows are operational and in proper working order.
 5. The condemned gas fire in the living room requires to be removed the wall made good and redecorated.
 6. The extractor fan in the bathroom requires to be repaired or replaced.
 7. The vent at floor level in the living room requires to be removed and blocked / sealed.
2. The following documents have been produced by the landlord:-
- a. An Electrical Installation Condition Report (EICR) prepared by Anderson Electrical Services, SELECT Membership No 42014, dated 20/05/2022. The overall assessment of the installation is stated to be satisfactory with no category C1 or C2 items of disrepair. A fire alarm systems certificate, produced by the same contractor, has also been produced.
 - b. A Gas Safety Certificate prepared by One Plumbing and Heating, Gas Safe number 665215, dated 25/11/2021 was exhibited during the re-inspection. The certificate confirms the central heating boiler is safe to use. The certificate confirms the presence of carbon monoxide alarm that was in date and tested. The presence of a CO alarm is noted.
3. The Tribunal reinspected the property on 9 June 2022. Reference is made to the reinspection photo schedule which was issued to parties thereafter. The following was found:
- a. A visual inspection confirmed the presence of smoke alarms in the lounge and hallway of the flat, together with a heat detector

in the kitchen.

- c. The front door of the property had been replaced.
 - d. All of the windows to the property had been replaced with new PVC framed, double glazed units. A sample was tested and found to be in proper working order.
 - e. The condemned gas fire in the living room remained in situ, unchanged since the initial inspection.
 - f. The extractor fan in the bathroom had been replaced with a new unit. It was tested and found to be operational.
 - g. The vent at floor level in the living room had been sealed with expanding foam. Internally, the wall finish had been recently plastered. Externally, the rendering was yet to be made good.
4. Representations were received on behalf of the landlord on the Tribunal's reinspection report. It was confirmed that the external rendered wall had been made good with the installation of a fitted vent cap covering the blocked and sealed vent. It was also submitted that the tenant was in agreement that the condemned gas fire should remain in situ as a focal item of furniture.
 5. The Tribunal thereafter arranged a hearing on the compliance of the Landlord to complete the works required in terms of the RSEO. The hearing took place by teleconference on 10 November 2022 at 10.00 am.
 6. None of the parties joined the teleconference. The Tribunal was satisfied that the parties (the third party applicant and the Landlord) had received intimation of the hearing. The tenant has not been treated as a formal party to the application, having not wished to initially be so. She has expressed interest in the application however and on 23 September 2022 she was specifically asked in an email sent to her by the Tribunal as to whether or not she wished to be a participating party. She did not reply to that correspondence. The Tribunal applied Rule 2 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017. It was not in the interests of justice to delay final determination of the proceedings further.
 7. The Tribunal determined to vary the RSEO made by the Tribunal on 9 February 2022, and that by the deletion of item 5 which required the condemned gas fire in the living room to be removed with the wall being made good and then decorated. The Tribunal was satisfied on the basis of all the evidence before it that this was not necessary to ensure that the property meets the repairing standard. The Tribunal

was also satisfied, on the evidence before it, that the tenant has more recently indicated a wish to have the condemned fire to be left in situ.

8. The Tribunal was otherwise satisfied on the basis of the evidence of the condition of the property at the time of the re-inspection on 9 June 2022 that there were no outstanding issues arising from the RSEO as now formally varied. The property meets the repairing standard. The Tribunal accordingly determined that the Landlord has complied with the Repairing Standard Enforcement Order made on 9 June 2022 and that a Certificate of Completion should in these circumstances be issued.

Right of Appeal

9. 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.
10. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, legal member of the Tribunal at Edinburgh on 11 November 2022 before this witness:-

CATNY McNAUGHT Name