

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Decision in terms of Section 26(1) of the Housing (Scotland) Act 2006 (“the 2006 Act”)**

**Chamber Ref: FTS/HPC/RT/22/4226**

**The Property: Flat 1/2, 5 Myrtle Place, Glasgow, G42 8UL (“The Property”)**

**Land Register of Scotland Title Number: GLA115030**

**The Parties:**

**Glasgow City Council, Private Sector Housing, Exchange House, 231 George Street, Glasgow (“the Third-Party Applicant”); and**

**Ms Kathleen McFarlane, Flat 1/2, 5 Myrtle Place, Glasgow, G42 8UL (“the Tenant”); and**

**Mr Manindar Jassal and Mrs Shona Jassal, formerly residing at 14 Netherhill Avenue, Glasgow, G44 3EG and now residing at 3 Clevedon Gardens, Harlington Hayes, Middlesex UB3 1RD (“the Landlords”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**M Links - Ordinary Member**

**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 Landlords have complied with the Repairing Standard Enforcement order (“RSEO”), dated 21<sup>st</sup> March 2023, determined that the Landlords have failed to comply with the RSEO.

## Background

1. The Third-Party Applicant lodged an Application in terms of Section 22 of the 2006 Act claiming that the Landlords had failed to meet the Repairing Standard in relation to the Property. The Application stated that:
  - 1) The lights throughout the Property need to be repaired/replaced;
  - 2) The flooring throughout the Property is not fit for purpose and needs to be replaced;
  - 3) There are cracks on the walls and ceilings which require investigation;
  - 4) There is a damp issue in one of the bedrooms which requires investigation;
  - 5) There is an issue with the opening and closing of a bedroom window;
  - 6) Curtain rails have fallen off a wall;
  - 7) There are exposed pipes in the bathroom;
  - 8) The cooker is faulty – only two rings work on the hob and the oven is not functioning;
  - 9) There is no CO monitor in the Property;
  - 10) A tap in the kitchen needs to be repaired/replaced
2. The Third-Party Applicant also submitted an email to the Landlords' letting agents, dated 25<sup>th</sup> October 2022, with the Application. In that email the Third-Party Applicant sought that the Landlords produce an Electrical Condition Installation Report ("EICR") and Gas Safety Certificate both in satisfactory terms.
3. The Tribunal inspected the Property on 14<sup>th</sup> March 2023 at 10am. The Tenant Ms McFarlane provided access. The Third-Party Applicant and the Landlords were not present or represented. Thereafter a Hearing took place by telephone conference call at 2pm on 14<sup>th</sup> March 2023. The Third-Party Applicant's Ms T. Coyle attended. The Landlord Mrs Shona Jassal and Tenant also attended.
4. Following the Hearing, the Tribunal determined that the Property did not meet the Repairing Standard. A Decision with Statement of Reasons was issued together with an RSEO, also dated 21<sup>st</sup> March 2023, in the following terms:-
  - a) **The Landlords are to carry out such works, and to provide appropriate documentation, to ensure that the Property complies with the Repairing Standard. Specifically the Landlords have to:-**
    - i) **Repair or renew interlinked smoke and heat detectors in the Property to comply with all current regulations and guidance.**
    - ii) **Install a CO detector in the Property to comply with current regulations and guidance.**
    - iii) **Repair or renew properly working light fittings and lights in the living room, kitchen, hall and bathroom in the Property.**

- iv) Repair the cracks in the walls in Property, in particular in the hall above the entrance to the bedroom to the front of the Property and under the windowsill in the bedroom to the rear of the Property and in the hall above the door to the bathroom;**
  - v) Repair or renew the window in the bedroom to the rear of the Property to ensure that it opens fully by tilt and swivel;**
  - vi) Replace the floor coverings in the kitchen, bathroom and living room.**
  - vii) Repair or replace the curtain rails above the windows in the living room and bedroom to the front of the Property;**
  - viii) Repair the window frame around the window in the bedroom to the front of the Property;**
  - ix) Replace the wall tiles to the left of the toilet bowl in the bathroom to ensure that there are no exposed pipes in that room;**
  - x) Repair or replace the cooker in the kitchen in the Property to ensure that the electric oven and all gas rings are in a reasonable state of repair and proper working order;**
  - xi) Repair or replace the cold tap in the kitchen in the Property to ensure that it is in a reasonable state of repair and proper working order;**
  - xii) Add suitable wall coverings or paint to the walls in the living room, kitchen, hall and bedroom to the front of the Property;**
  - xiii) Instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the entire electrical installation of the Property and exhibit a satisfactory EICR and PAT to the Tribunal; and**
  - xiv) Instruct a suitably qualified Gas Safe engineer to inspect the gas boiler, carry out a service and any necessary repairs to the boiler and thereafter inspect all the gas appliances in the Property and provide the Tribunal with a satisfactory, complete Gas Safety Certificate and written evidence of the service and any repairs carried out to the boiler and cooker gas hob.**
5. The RSEO stipulated that it was to be complied with by 31<sup>st</sup> May 2023.
6. The Landlord Mrs Jassal sent an email to the Tribunal's office on 15<sup>th</sup> June 2023 reiterating what she had stated at the Hearing, namely that she and her husband do not have the financial means to have repair works carried out at the Property. In the email Mrs Jassal said that the Landlords had not received any rent since October 2022.

7. The Tenant sent an email to the Tribunal's office on 1<sup>st</sup> August 2023 stating that she had been withholding rent payments because repair works were necessary. She said that as repair works had not been carried out she did not intend to make any rent payments and had left the Property at that date, 1<sup>st</sup> August 2023.

### **Findings in Fact and Law**

8.
  - i) The parties had a tenancy agreement which ended when the Tenant left the Property on 1<sup>st</sup> August 2023.
  - ii) An RSEO was issued on 21<sup>st</sup> March 2023 which required the Landlords to carry out repair works and produce property safety compliance papers.
  - iii) The Landlords have not carried out the said repair works and have not produced the relevant papers.
  - iv) The Landlords have, without reasonable excuse, failed to comply with the RSEO.

### **Reason for decision**

9. The Landlord Mrs Jassal stated that the Landlords were not able to carry out necessary repair works, for financial reasons, at the Hearing on 14<sup>th</sup> March 2023. In her email to the Tribunal's office, dated 15<sup>th</sup> June 2023, Mrs Jassal said that the Landlords cannot carry out the works required by the RSEO because of their financial situation. The Landlords have not submitted the property safety compliance papers required by the RSEO. The Tribunal, therefore, find, on a balance of probabilities that the Landlords have not carried out the actions required by the RSEO. Accordingly, the Tribunal find that the Landlords have failed to comply with the RSEO. The Tribunal further find that, notwithstanding that the Landlords may have difficult financial circumstances, they do not have a reasonable excuse for not carrying out necessary repair works and for not complying with the terms of the RSEO. Landlords who let property have a legal obligation to ensure that it meets the Repairing Standard. In this case the Landlords have not fulfilled their obligation and have not complied with the RSEO.

### **Other Action to be taken**

10. Having determined that the Landlords have failed to comply with the RSEO, the Tribunal considered whether or not to issue a Rent Relief Order ("RRO") in terms of Section 27 of the 2006 Act. Given that the Tenant had been withholding rent for a number of months and has now left the Property the Tribunal found that it was not necessary or appropriate to issue an RRO.
11. Section 28 of the 2006 Act provides that Landlords who, without reasonable excuse, fail to comply with an RSEO commit an offence. In the circumstances of this case, the Tribunal have also determined that Police Scotland should be notified of the Landlords' failure to comply with the RSEO.

## **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 2006 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.**

# G McWilliams

**G McWilliams Legal Member**

**21<sup>st</sup> September 2023**