

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION:** in terms of Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

**Chamber Ref:** FTS/HPC/RT/22/4099

**Re:** Property at 4, Findhorn Place, Hallglen, Falkirk, FK1 2QJ registered in the Registers of Scotland under Title Number STG26428 (“the Property”)

### The Parties:

1. Falkirk Council per its employee, Mr. Craig Beatt, Private Sector Officer (Enforcement and Liaison), Housing and Communities, The Forum, Callendar Business Park, Falkirk, FK1 1XR as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Ms. Samantha Dalrymple residing at the Property (“the Tenant”) and
3. Mr. Calum Maclean Watt residing at 128, Henderland Road, Bearsden, Glasgow G61 1JA (“the Landlord”)

### Tribunal Members:

K Moore (Legal Member) and S Hesp (Ordinary and Surveyor Member)

### Decision

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), determined that it cannot be satisfied and so determines that the Landlord has failed to comply.

In addition, the Tribunal imposes a Rent Relief Order of **90%** of the monthly rent from the date 30 days from the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

This Decision should be read in conjunction with Decision and RSEO both dated 14 March 2023.

### Background

1. By application received on 14 November 2022 (“the Application”), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property 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 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (c), 13 (1) (d), 13 (1) (f), 13 (1) (g) and 13(1) (h) of the Act.

2. Following an Inspection of the Property and a Hearing on 8 March 2023, the Tribunal imposed the following RSEO:

*“The Landlord must on or before 28 May 2023 carry out all of the following:-*

1. *Instruct a SELECT, NAPIT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord’s appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) thereafter to issue a complete and compliant electrical installation condition report (“EICR”) and/or an Electrical Installation Certificate with no Category C1 or C2 items of disrepair in accordance with the Scottish Government statutory guidance on electrical installations and appliances in private rented property and exhibit the EICR to the Tribunal. This should include testing and certification of all electrical appliances provided by the Landlord and the repair or replacement of the socket in the main bedroom of the Property;*
2. *Ensure that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are properly installed throughout the Property in accordance with Scottish Government and statutory guidelines ;*
3. *Instruct a suitably qualified contractor to (i) replace the cracked double glazed windowpane in the living room and (ii) service the windows throughout the Property and, if necessary, repair or replace the windows throughout the Property so that these are properly sealed and have fully functioning catches and handles*
4. *Instruct a suitably qualified Gas Safe registered heating engineer to install thermostatic controls on each of the radiators in the Property to ensure that the heating system is safe, functional and that the heating is capable of being regulated by the Tenant;*
5. *Make good décor damaged as a result of these works.”*

3. By email on 3 May 2023, the Landlord submitted an EICR which had not been certified by a suitably qualified electrician and which did not comply with the terms of the RSEO

#### **Re-inspection and Hearing.**

4. A Re-inspection of the Property took place on 4 July at 11.30 a.m. at the Third-party Applicant was not present, having advised the Tribunal in advance that they would not attend. The Landlord was not present and was not represented. The Tenant was present as an observer.

5. At the Re-inspection the Tribunal noted that no work had been carried out by the Landlord and found that the crack in the window of the front/living room had worsened to the extent that the window appears to be in a dangerous condition and is a Health and Safety risk to the occupants, one of whom is a child.

6. The Tribunal immediately notified the Parties of its concern by email dated 4 July 2023 and, in terms of Rule 24(1) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), gave notice that it would hold a Hearing on 10 July 2023 at 14.00.

7. Following the Tribunal’s email to the Parties, the Landlord responded that he would have a contractor to attend “*to get the issue addressed*”.

8. A Hearing was held by telephone conference call on 10 July 2023 at 14.00. The Third-party Applicant was represented at the Hearing by Ms. Kate MacFarlane. The Landlord was not present and was not represented. The Tenant was present as an observer.

9. The Tribunal explained that the purpose of the Hearing was to consider the action to be taken in respect of the Tribunal’s findings at the Re-Inspection. The Tenant confirmed that no contractor had attended the Property and that no work had been carried out.

10. Ms. MacFarlane advised that she had reported the matter to the Third-party Applicant’s Building Standards who advised that they could not take action and to its Housing Options Team to offer housing advice to the Tenant. The Tribunal advised that, as far as the Tribunal is aware, the Third-party Applicant has power to carry out the work required by the RSEO and to re-charge the Landlord by lodging an Charging Order against the Property.

### **Findings of Fact**

11. The Tribunal’s findings in fact were made from all of the information before it being the Application, the Inspection and Hearing on 14 March 2023 and the Re-inspection and Hearing.

12. The Tribunal found the following matters established: -

- i) None of the work required by the RSEO has been carried out;
- ii) No compliant EICR has been provided for the Property;
- iii) No Gas Safety Certificate has been provided for the Property.

### **Summary of the Issues**

13. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or if it should make a finding of failure to comply with the RSEO.

### **Decision of the Tribunal and Reasons for the Decision of the Tribunal**

14. The Tribunal 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.*”

15. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The terms of the RSEO deal with health and safety. The Tribunal held the view that safeguarding any occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.

16. With regard to Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply. The Tribunal, being satisfied that the Landlord had had notification of the Inspection and Hearing, the RSEO and the Re-Inspection and Hearing and the RSEO, took the view that the Landlord was ignoring these to the extent that he had no intention of complying with the RSEO and so determined that there was no reason to vary the RSEO and allow further time for the Landlord to comply.

17. The Tribunal then had regard to Section 26 of the Act which states:-“*It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.*”. The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO without reasonable excuse. The Tribunal, having taken the view that the Landlord was ignoring the RSEO to the extent that he had no intention of complying with it, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.

### **Rent Relief Order**

18. The Tribunal then had regard to Section 27 of the Act which allows the Tribunal, having made a finding of failure to comply, to make a Rent Relief Order (RRO) of up to 90% and took the view that, in the circumstances of the whole application and procedure to date, an RRO was appropriate. The Tribunal took into account that no works had been carried out by the Landlord and that the condition of the Property is such that the health and safety of the occupants of the Property is endangered. Accordingly, the Tribunal determined that an RRO of the maximum of 90% of the monthly rent be imposed from the date 30 days of the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

19. The decision of the Tribunal is unanimous.

## **Appeal of tribunal's decision**

20. 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.

Signed

K Moore, Chairperson

Date 14 July 2023