

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(1) of the Act

Chamber Ref: FTS/HPC/RP/3599

Re: Property at 98, Main Street, East Kilbride, G74 4JY registered in the Registers of Scotland under Title Number LAN189570 (“the Property”)

The Parties:

Ms. Yvonne Paterson residing at the Property (“the Tenant”)

And

Mr. Peter More residing at Bayview Hotel, 21/22, Mount Stuart Road, Rothesay, PA20 9EB (“the Landlord”)

Tribunal Members:

K Moore (Chairman) and L Charles (Ordinary Member)

Decision

This Decision should be read in conjunction with Decision and Repairing Standard Enforcement Order (RSEO) both dated 10 February 2023 and Decision and Variation of RSEO both dated 6 April 2023

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 **10%** 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.

Background

1. By application received on 3 October 2022 ("the Application"), the Tenant of the Property applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1)(b), 13(d), 13(e) and 13(1)(h) of the Act. The Application comprised a copy of the tenancy agreement between the Tenant and the previous owner of the Property and copy correspondence from the Tenant to the Landlord and his solicitors Agents regarding repairs to the Property.

2. Following an Inspection of the Property and a Hearing, the Tribunal imposed the RSEO:

*"The Landlord must on or before **31 March 2023** carry out all of the following:-*

- 1. Obtain a report from a suitably qualified roofing contractor confirming the condition of the roof tiles ("the Roof Report") and submit the Roof Report to the Tribunal and the Tenant. The Roof Report should include details of the remedial action necessary to bring the roof covering into a reasonable state of repair, proper working order and wind and watertight condition. Thereafter, the Landlord must ensure that all works recommended in the Roof Report are completed and finished in accordance with the specifications as proposed in the Roof Report;*
- 2. Obtain a detailed report from a suitably qualified pest control contractor in respect of vermin infestation and bird nesting at the Property, specifically within the kitchen and in the ornamental gutter boxes at the front of the Property ("the Pest Control Report") and submit the Pest Control Report to the Tribunal and the Tenant. The Pest Control Report should include details of the remedial action necessary to address all issues with vermin, nesting birds and other pests in the Property. Thereafter, the Landlord must ensure that all works recommended in the Pest Control Report are completed and finished in accordance with the specifications as proposed in the Pest Control Report;*
- 3. Instruct a suitably qualified stonemason to repair (i) the boundary walls at either side of the stone steps which form the entrance to the Property and (ii) the boundary walls which surround the side and front garden at the Property to ensure that the boundary walls are in good order, that the coping stones are properly fixed and to address any damage caused by the movement in the stonework;*
- 4. Repair or replace the skirting throughout the Property to ensure that there are no gaps and that the walls at the skirting are draught-free and are wind and water-tight;*
- 5. Repair or replace the kickplates in the kitchen to ensure that there are no gaps and that the kickplate area is draught-free and wind and water-tight;*
- 6. Repair or replace the flooring in the kitchen to ensure that is not a trip hazard and, in doing so, ensure that the underfloor is secure;*
- 7. Repair or replace the hall carpet to ensure that it is not a trip hazard;*

8. *Repair or replace the doors of both fitted wardrobes to ensure that they are fully functional and in good working order;*
9. *Repair or replace the en-suite door lock to ensure that it is fully functional and in good working order;*
10. *Repair or replace the shower tray to ensure that it is fully functional and in good working order;*
11. *Redecorate as necessary following completion of all repairs and works required to comply with this Order."*

3. By email dated 15 February 2023, the Tenant pointed out that although the disrepair of the oven in the Property was noted in the Tribunal's Decision, reference to the oven had been omitted from the RSEO. The Tenant also requested that the RSEO be clarified in respect of the works required to the soffits and so applied to the Tribunal in terms of Section 25(3) of the Act to vary the RSEO in respect of both the wording of the RSEO and the time given for compliance.

4. A Re-inspection of the Property was arranged for 3 April 2023 and intimated to the Parties.

Re-Inspection

5. The Re-inspection took place on 3 April 2023 at 10.00 a.m. at the Property. The Tenant was present. The Landlord was not present and was not represented. The Tribunal noted that the Landlord had not carried out any of the works required by the RSEO and had not made any repairs to the oven or to the soffit boards. Therefore, the Tribunal varied the RSEO and allowed the Landlord further time to comply.

Further Re-inspection and Hearing.

6. A further Re-inspection of the Property took place on 10 July 2023 at 10.00 a.m. The Tenant was present. The Landlord was not present and was not represented.

7. At the further Re-inspection, the Tribunal noted that no work had been carried out by the Landlord and found that the condition of the boundary wall had worsened. A photographic record of the further Re-inspection was issued to the Parties.

8. Both Parties responded. The Landlord did not dispute that repair works are required or that the RSEO has not been complied with. The Landlord stated that he had not been able to gain access to carry out work, which statement the Tenant refuted.

Findings of Fact

8. The Tribunal's findings in fact were made from all of the information before it being the Application, the initial Inspection and Hearing and the Re-inspections.
9. The Tribunal found the following matters established: -
 - i) None of the work required by the RSEO has been carried out and

- ii) No technical reports as required by the RSEO had been carried out.

Summary of the Issues

10. 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

11. 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.”*
12. 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 the habitable condition of the Property. The Tribunal held the view that any occupants of the Property are entitled to reside in a habitable property. Accordingly, the Tribunal was not of a mind to revoke the RSEO.
13. 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-Inspections, took the view that the Landlord was ignoring these to the extent that, in spite of his assertion that he had been unable to gain access, he had not taken steps to comply with the RSEO and so determined that there was no reason to vary the RSEO and allow further time for the Landlord to comply.
14. 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 not taken steps to comply 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

15. 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 it affects the occupants' full enjoyment of the Property. Accordingly, the Tribunal determined that an RRO of 10% of the monthly rent be imposed to reflect the effect

of the disrepair and that from the date 30 days of the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

16. The decision of the Tribunal is unanimous.

Appeal

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.

Effect of Section 63

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.

Signed

K Moore, Chairperson

Date 9 August 2023