

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of the Decision of the Tribunal under section 26(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/22/4369

33 Bon Accord Crescent, Shotts, ML7 4EA being the subjects registered in the Land Register of Scotland under Title Number LAN140092 (“the Property”)

The Parties:-

Mrs Mary Craig residing at 33 Bon Accord Crescent, Shotts, ML7 4EA (“The Tenant”)

Miss Lisa Craig residing at Flat 3/1, 15 Dixon Avenue, Glasgow, G42 8EB (“The Tenant’s Representative”)

Andrew Sneddon residing at 9 Stanmore Gardens, Lanark, ML11 7RZ (“The Landlord”)

Tribunal Members:

Jacqui Taylor (Chairperson) and Mike Links (Ordinary Member)

Background

1. The Tribunal issued a Repairing Standard Enforcement Order (‘RSEO’) in respect of the Property which required the Landlord to :-

One. Repair the front door and front door kick plate to render them wind and water tight and in proper working order.

Two. Repair the gutters to the front and back of the Property to render them in proper working order.

Three. Repair the gutters to the Porch to render them in proper working order.

Four. Repair the slipped slates on the roof to render the roof wind and water tight.

Five. Repair the Porch roof and flashing to render it wind and water tight.

2. The Tribunal ordered that the works specified in the RSEO were to be carried out and completed by 30th June 2023.

3. On 6th September 2023 the Tribunal carried out an inspection of the Property to determine if the required works had been carried out. The reinspection report is annexed and executed as relative hereto. All of the repairs required in terms of the RSEO are outstanding.

4. The parties were sent a copy of the reinspection report on 8th September 2023. The covering letter dated 8th September 2023 was in the following terms:

'The time limit for completing the works specified in the Repairing Standard Enforcement Order (otherwise known as a RSEO) which relates to the above house has now expired, and an Ordinary Member of the tribunal, who is a chartered surveyor, has re-inspected the house. The re-inspection report is attached. The tribunal will now consider whether or not the landlord has carried out the works and has complied with the RSEO. The tribunal can consider a variation or revocation of the RSEO.

You may request an oral hearing before the tribunal to provide evidence in support of your written response to the report. To make this request, you should complete and return the enclosed hearing request form to us or otherwise let us know in writing within 7 working days of the date of this letter. The Tribunal will only consider convening a hearing if you can show why the case cannot be justly determined on the basis of written representations alone and not to hold a hearing would be contrary to the interests of the parties.

*You have the right to send written representations to give your response to the report to the tribunal, and these representations should be submitted whether or not a hearing is requested. A further form is enclosed for you to provide this information, which should be returned by **22 September 2023**.*

If no written request for a hearing is received from any party, then it will be assumed that you wish the tribunal to make a decision on the basis of any written representations received. Similarly, if a request for a hearing is refused, the Tribunal will make their decision on the papers, taking into account any written representations received.

If the tribunal decides that the landlord has failed to comply with the RSEO, then the tribunal can decide to reduce the rent payable under any existing tenancy agreement for the house by up to 90%. If you wish the tribunal to consider your views or the level of any rent reduction, then you should complete the final enclosed form.

Any views you express will be copied to the other parties to the application and there will be a further chance for them to comment in writing on your views. An oral Hearing may be conducted by telephone conference call.

*You will be notified by letter after **22 September 2023** with information on how the application will proceed.*

The parties are reminded that the existence of a RSEO over a house means that the house cannot be re-let if it becomes vacant. This means that if the tenant leaves, then the landlord cannot let the house to someone else otherwise an offence is committed by the landlord. It is also a criminal offence to fail to carry out the works detailed in the RSEO without reasonable excuse, and the tribunal will refer this matter to the Police for prosecution if they decide that the landlord has failed to comply with the RSEO. There is also a requirement on the tribunal to tell the local authority of any failure by a landlord to carry out works detailed in an RSEO and to register the RSEO in the Land Register.

If you are unsure of the process, then you should seek advice from a solicitor or from Citizens Advice Bureau.'

5. The Tenant's representative sent the Tribunal an email on 15th September 2023 which detailed the Tenant's response to the reinspection report and confirmed that she did not request a hearing, she agreed with the reinspection report and she considered that a 90% Rent Relief Order was appropriate as the Landlord had failed to comply with both the current Repairing Standard Enforcement Order and a previous one.

6. The Landlord did not respond to the reinspection report or the said letter dated 8th September 2023. The Landlord did not request a hearing and did not provide any comments on the reinspection report or potential Rent Relief Order.

Decision and Reasons

7. The Tribunal having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order, in relation to the Property concerned, determined that the Landlord has failed to comply with the RSEO in terms of section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the property is situated.

8. The Tribunal proceeded to make a Rent Relief Order in terms of section 27 of the Act, which order shall take effect 28 days after the date on which the decision to make the Rent Relief Order may be appealed under section 64 of the Act.

9. The Tribunal considered whether a Rent Relief Order should be made in terms of section 27 of the Act and determined that such an Order should be made given the Landlords failure to comply with the RSEO without reasonable excuse. They then considered the amount by which the rent payable under the tenancy in question should be reduced. They considered the failure by the Landlords to carry out the repairs materially affected the Tenant's enjoyment of the property. In all the circumstances they determined that an appropriate reduction in rent would be to reduce the rent payable under the tenancy by 90%. They considered that the Rent Relief Order should be effective from 28 days after the last date in which the decision the Rent Relief Order may be appealed under Section 64 of the Act.

Right of Appeal

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the Tribunal is granted, then the effect of the decision and the Rent Relief Order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

J Taylor

Signed

Chairperson

Date 13th October 2023