

# **Housing and Property Chamber**

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

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**Statement of Decision of the Housing and Property Chamber of the  
First-tier Tribunal for Scotland under Sections 26 and 27 of the Housing  
(Scotland) Act 2006**

**Chamber reference: FTS/HPC/RP/22/1387**

**Re; Property at 2/2, 27 Allison Street, Govanhill, Glasgow G42 8NP  
("the Property")**

**Land Register Number: GLA75938**

### **The Parties:**

**Roman Gomez Herrero, 2/2, 27 Allison Street, Govanhill, Glasgow G42  
8NP ("the Tenant")**

**Rubina Haq, 12 Hexham Gardens, Glasgow G41 4AQ ("the Landlord")**

**Martin & Co, 180 Kilmarnock Road, Glasgow G41 3PG ("the Landlord's  
agents")**

### **Tribunal Members:**

**G      Clark (Legal Member) and C      Jones (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 Landlord has complied with the Repairing Standard Enforcement Order made by the Tribunal on 27 July 2022, determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority. The Tribunal decided to make a Rent Relief Order.**

### **Background**

- 1. On 27 July 2022, following an inspection and hearing, the Tribunal made a Repairing Standard Enforcement Order ("RSEO") in respect of the Property.**

The RSEO required the Landlord to carry out such work as was necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of the Order was made good.

2. The RSEO required the Landlord to:

- 1. Instruct a suitably qualified contractor to investigate the cause of the dampness in the kitchen and bathroom in the Property and undertake all works required to prevent further water ingress and damp in the kitchen and bathroom and make good any damage caused.*
- 2. Redecorate the areas affected by the water ingress in the kitchen and bathroom of the Property to an acceptable standard.*

3. The Tribunal ordered that the works specified must be carried out and completed within the period of 8 weeks from the date of service of Notice of the RSEO.

4. The Tribunal reinspected the Property on 16 February 2023. A copy of the Reinspection Report was sent to the Parties for comment. Prior to the Reinspection, the landlord's agents told the Tribunal that since the initial inspection of the Property, the landlord had liaised with the Factors, Southside Housing Association, who had now progressed various communal repairs. Investigations to identify the cause of dampness in the kitchen and bathroom have been undertaken, and K&G Roofing instructed to carry out the works outlined on a quotation dated 6 September 2021. It was understood that the works were completed in August 2022. These works included a new skylight, pointing to ridge and hip tiles, chimney at rear eaves re-rendered, replacement of 18 roof tiles and leaking gutter joints repaired to front elevation. The landlord provided an email from Southside Housing Association dated 16 September 2022 confirming this and that City Building had also carried out works around joints on a pipe.

5. Damp meter readings, taken during the reinspection, continued to indicate high moisture levels in both the kitchen and bathroom walls around the areas previously affected by water ingress. The tenant pointed out that he had to release water from a light fitting in the bathroom that week but said he had not experienced any water running down the walls following heavy rainfall since the works were completed in August 2022.

6. The landlord had re-decorated the affected kitchen wall. The décor around the window in the bathroom was still in a very poor condition.

7. The Tribunal accepted that the wall might still be in the process of drying out and, accordingly, was reluctant at that stage to make a finding that the landlord had failed to comply with the RSEO. Accordingly, the Tribunal decided to continue consideration of the case to a further Reinspection.

8. The Tribunal arrived to reinspect the Property at 10am on the morning of 12 June 2023. The landlord's agents were present, but the Tribunal Members were unable to gain entry to the Property, as the tenant did not appear to be at home. Attempts to contact him on his mobile telephone were also unsuccessful and the Tribunal Members concluded at 10.15am that the reinspection could not go ahead. Accordingly, the case was continued to a further reinspection.
9. The Tribunal reinspected the Property on the morning of 20 September 2023. The tenant and the landlord's agents were both present.
10. The Reinspection Report noted that damp meter readings continue to indicate high moisture readings in both the kitchen and the bathroom. The newly painted wall in the kitchen has developed new damp staining and some areas of wallpaper have started to bubble and peel. The tenant advised that he is still occasionally experiencing water running along the ceiling in the bathroom and affecting the light fitting. The agents pointed out that the landlord has carried out further investigations, including an attempt to gain access for a plumber to identify whether the ongoing problem may be due to a leak under the floor of the flat above. She has also sought advice from the Environmental Health Department of Glasgow City Council. The landlord had re-decorated the affected kitchen wall prior to the previous re-inspection, but, as noted, there is evidence of new damp staining on the kitchen wall and associated damage to the wallpaper. The décor around the window of the bathroom and the wall adjoining the bathroom remains in poor condition.
11. Copies of the Reinspection Report were sent to the Parties for comment and their views sought as to whether a Rent Relief Order would be appropriate. On 13 October, the landlord's agents replied. The landlord had organised the repairs to the roof and gutters and had even paid the shares of owners within the building who had failed to pay, to ensure the works were carried out. The landlord had also replaced the windows. The agents also stated there was a new fault of water ingress from the flat above, but neither the landlord nor the property factors had been able to obtain access. The landlord had, therefore, involved Glasgow City Council. She had always been a responsible landlord, but this matter was out of her control. She accepted that the tenant had had to live with the nuisance for a while and suggested a Rent Relief Order, reducing the rent by 20% would be appropriate. The landlord's agents subsequently provided the Tribunal with a copy email of 31 October 2023 from the Technical Officer, Environmental Health at Glasgow City Council, stating that the Council would be serving an Abatement Notice on the building, requiring owners to investigate and repair the problem. The email advised the landlord's agents that, once the Notice has expired, the Council has certain powers to investigate the problem and that the Council accepted that the landlord had done as much as she can.

12. On 18 October 2023, the tenant responded to the Reinspection Report. In his opinion, a Rent Relief Order should be made to reduce the rent by 90%.

### **Summary of the issues**

13. The issues to be determined were whether the Landlord had carried out the works required by the RSEO made on 27 July 2022 and, if not, whether a Rent Relief Order in respect of the Property should be made.

### **Reasons for the Decision**

14. The Tribunal had no difficulty in deciding that the landlord has not complied with the RSEO. The Tribunal noted that the position could not be remedied until access was gained to the flat above, investigations carried out and any remedial work undertaken. It may be a new fault, but until it is fixed, the Tribunal cannot determine whether the work required by the RSEO has been carried out. The landlord has done her best and access to the flat above is not within her control. Nevertheless, in terms of Section 26 of the 2006 Act, where the Tribunal decides that a landlord has failed to comply with a RSEO, it must serve notice of failure on the local authority and decide whether to make a RRO. Section 26(3) allows the Tribunal to decide that a landlord has not failed to comply, if the Tribunal is satisfied that the landlord is unable to comply because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights. The view of the Tribunal was that the tenant has had to live with the water ingress problem for so long that it was not prepared to exercise its discretion under Section 26(3) of the Act.
15. Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. The Tribunal recognised that the Landlord has made efforts to comply with the Order and that, to a certain extent, matters are outwith her control, so decided that, in these particular circumstances of the case, the Landlord has not committed an offence under Section 29 of the Act.
16. The Tribunal then considered whether to make a Rent Relief Order. Both Parties had agreed that a RRO would be appropriate, the landlord accepting that the tenant had had to endure the situation for a long time. The Tribunal recognised that the landlord is in a difficult position regarding access to the flat above the Property, but, given the passage of time with no progress and the conditions the tenant has had to endure, a RRO was now appropriate. The view of the Tribunal was that a RRO for 30% of the rent would be reasonable, as the tenant has not lost the use of facilities in the Property but

is having to put up with an ongoing water ingress problem which has an inevitable impact on his enjoyment of the Property.

17. The decision of the Tribunal was unanimous.

### **Right of 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.**

**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

Date: 14 November 2022

