



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

**DECISION in respect of request for a review of a decision made under First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 Regulation 39**

Case Reference FTS/HPC/RP/23/2841

Property at 18 West Benhar Road, Harthill, Shotts, ML7 5PB ("the Property"), being the subjects registered in the Land Register of Scotland under Title Number LAN82740.

The Parties: -

Mr Alban Bartley-Jones, 18 West Benhar Road, Harthill, Shotts, ML7 5PB ("The Tenant"),

And

Mr Jesmond Sathiya Kumar and Mrs Shyla Sathiya Kumar, both residing at 4, Etna Court, Armadale, EH48 2TD ("The Landlords")

DECISION

**Background**

1. By decision dated 18<sup>th</sup> December 2023 the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of Housing (Scotland) Act 2006 ("the Act").

The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act.

2. By letter dated 20<sup>th</sup> December 2023 (received by the Tribunal on 27<sup>th</sup> December 2023) Messrs. Sheridans solicitors have on behalf of the Landlords, requested a review of the Tribunal's decision to grant the RSEO.



3. In terms of Rule 39(4) of the Tribunal rules of Procedure the Tribunal notified parties:
  - a. That the Tenant was required to respond to the terms of the application for review by 19<sup>th</sup> January 2023, and
  - b. All parties are required to confirm their views on whether the application for review can be determined without a hearing by 19<sup>th</sup> January 2023.
4. The Tenant lodged written representations in relation to the review application by email dated 16<sup>th</sup> January 2024. The Landlords' solicitor lodged further written representations by email dated 19<sup>th</sup> January 2024.
5. The Tribunal have had regard to the submissions lodged by parties in relation to the review application. The Tribunal have determined to reach a decision in relation to the review application without a hearing, in accordance with rule 18 of the Tribunal rules of Procedure.
6. The review application seeks a review of the Tribunal's decision of 18<sup>th</sup> December 2023 on two submissions:

#### Submission 1

That the Landlord has consistently been denied access to the Property by the tenant. The Landlord cites section 16(4) of the Housing Scotland Act 2006 in support of their reasoning as to why this should form a reason for the Tribunal to review their decision.

#### Submission 2

That the Property is not subject to a Tenancy, which it was at the time the application was raised, and it is therefore no longer subject to the Repairing Standard.



7. The Tribunal has considered each of the submissions made in support of the application for review and have determined to refuse the application for review for the following reasons.

Re Submission 1

- a. Section 16 of the Housing Scotland Act 2006 provides for certain exceptions to the landlords repairing duties (as required by section 14 of the Act).
- b. Section 16(4) of the Act provides that: -

**(4) A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.**

- c. The Landlord seeks to argue that the Tenants denial of access to the Property, for the purposes of carrying out necessary repairs, allows the Landlord to invoke the terms of S16(4) of the Act.

- d. The Tribunal does not accept that contention. Section 16(4) provides exemption from the duty to comply with the Repairing Standard where the Landlord lacks “necessary rights” of access or otherwise to the Property. The Tribunal consider that the Landlord did have rights of access to the**



**Property during the term of the tenancy between the parties. Clause 20 of the Tenancy Agreement between the parties specifically grants rights of access to the Landlord for the purposes of repairs, inspections, and valuations. The Landlord can seek to enforce those rights through appropriate action. If access is denied by the Tenant, a Landlord can apply to the Tribunal for assistance under section 28 of the Act in exercising a right of entry to the house. The Landlord has necessary rights of access to the Property. The Landlord is not excepted from the duty to comply with the Repairing standard under section 16(4) of the Act.**

8. Re Submission 2

- a. The Landlord accepts that the Property was subject to the terms of the tenancy agreement between the Parties at the time the application was raised by the Tenant.**
- b. The Tribunal found as fact, in terms of their decision dated 18<sup>th</sup> December 2023 that there was a tenancy agreement in place between the parties as at that date.**
- c. The Tenant has explained that he ended the tenancy after the Tribunal issued the decision of 20<sup>th</sup> December 2024. The Landlord has not sought to dispute that matter.**
- d. The Tribunal's decision of 18<sup>th</sup> December 2023 was made at**



**a time when the Property was subject to a tenancy between the parties.**

- e. The Tribunal does not accept the Landlord's submission that, as the Property is not subject to a Tenancy, the Property is not subject to the Repairing Standard. An order has been granted and requires to be complied with by the Landlord.**

### **Decision**

The tribunal refuses the application for review and confirms that its decision issued of 18<sup>th</sup> December 2023 remains unaltered

A Cowan

Date 30 January 2024

Andrew Cowan  
Legal Member: