



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)

**STATEMENT OF DECISION of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 26 (1) of the Housing (Scotland) Act 2006**

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.

Parties:

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

**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 (“RSEO”) as required by section 24(1) of the Act.

The RSEO confirmed that the works specified in the RSEO were to be carried out and completed by 31<sup>st</sup> January 2024.

2. Section 26 of the Act provides that:-

- (1) 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.
  - (2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must—
    - (a) serve notice of the failure on the local authority, and
    - (b) decide whether to make a rent relief order.
3. By letter dated 19<sup>th</sup> March 2024 the Tribunal intimated to the Landlords solicitors that the ordinary member of the tribunal (who is a chartered surveyor) intended to re-inspect the Property on 11<sup>th</sup> April 2024. That letter advised the Landlords:

“You have an opportunity at this stage to comment on whether you agree or disagree that the works have been satisfactorily completed or whether a variation/revocation of the RSEO is appropriate. The tribunal will make their decision based on written representations unless the tribunal considers an oral hearing is necessary. Therefore, it is important that you complete the attached form specifying your views on these issues, and return it to the office by 26 March 2024.”

The Landlords did not respond to the terms of that letter from the tribunal.

4. By email dated 8<sup>th</sup> April 2024 to the Landlords solicitor the Tribunal noted that no response had been received to the Tribunal’s letter of 19<sup>th</sup> March 2024, and reminded the Landlords that the Tribunal intended to re-inspect the property on 11 April 2024 at 9:30 when access was required.
5. By email dated 9<sup>th</sup> April 2024 the Landlord’s solicitor emailed the tribunal in the following terms:

“We refer to the inspection proposed for 11 April 2024.

Please note that the response form was intended to be issued however we had to await further information from our client.

As explained in the response form, the property has been subject to extensive flooding and so the property has dramatically deteriorated. Our client has not yet been able to carry out the required works described in the Repairing Standard Enforcement Order due to the substantial damage within the property. It is therefore our client's position that the Repairing Standard Enforcement Order no longer applies, and that the inspection is no longer required.

If you do wish to proceed with the inspection, please confirm by replying to this email and we will confirm the granting of access.”

The Response Form lodged with the email from the Landlords' solicitors reiterated the information given in their email.

6. As the Landlords confirmed in their email that they had not carried out the works required by the RSEO, the Tribunal cancelled the inspection of the Property which had been arranged for 11th April 2024.
7. The Landlords' solicitor submitted in their email dated 9<sup>th</sup> April 2024 that the RSEO no longer applies to the Property. No reasons were provided to support this submission and no submission was made to vary or revoke the RSEO.
8. On 22<sup>nd</sup> April 2024 the Tribunal issued Directions to the Landlords. Those Directions required the Landlords to lodge written submissions with reasons as to why they considered the RSEO no longer applies in relation to the Property. The Landlords were directed to lodge such submissions within 14 days of the date of those Directions. The Landlords were directed to confirm whether they wished a hearing before the Tribunal reached a decision as to whether the Landlords had complied with the RSEO. The Landlords were advised that, in the event that the Landlords failed to comply with the terms of the Directions, the Tribunal would proceed to make a final decision as to whether the Landlords have complied with the terms of the RSEO.
9. The Landlords have not responded to the terms of the Tribunal's Directions dated 22<sup>nd</sup> April 2024.

## **Decision**

10. The Tribunal has determined that the Landlord has failed to comply with the terms of the RSEO dated 18<sup>th</sup> December 2023. The Decision of the Tribunal is unanimous.

## **Reasons for Decision**

The terms of the RSEO issued by the Tribunal required the Landlord to:-

- a. "Instruct a suitably qualified specialist to
  - i. prepare a report on the condition of the Property (including the roof and guttering) detailing the cause and full extent of water ingress and damp throughout the Property and
  - ii. prepare a proposed specification of works outlining any necessary works required to ensure that the Property is wind and watertight, and that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair.
- b. Carry out such works as are necessary to draught proof the external doors at the Property so that they are in a reasonable state of repair and in proper working order.
- c. Submit the report and specification required at Paragraph 15a to the Tribunal for further consideration and, thereafter, carry out all works which are then further determined by the Tribunal as are necessary to ensure that the property meets the Repairing Standard.
- d. Repair the garage at the Property so that is in a reasonable state of repair and in proper working order.
- e. Repair the driveway at the Property so that is in a reasonable state of repair and in proper working order.

- f. Repair or replace the extractor fans in the bathroom and kitchen of the Property so that they in a reasonable state of repair and in proper working order.
  - g. Repair the Solar Panel system at the Property so that it is in a reasonable state of repair and in proper working order.
  - h. Instruct a SELECT, NICEIC or NAPIT registered electrician to carry out a full inspection of the electrical wiring, installations and apparatus throughout the Property and to repair or renew any parts which are identified in said report to be of Category C1 or C2 to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a new EICR to the Tribunal confirming that the installations, apparatus and wiring meet current regulatory standards”.
11. The Tribunal ordered that the works specified in this Order were to be carried out and completed by 31<sup>st</sup> January 2024.
12. By email dated 9<sup>th</sup> April 2024 the Landlords’ solicitor confirmed that the Landlords have not carried out the works required by the RSEO.
13. The Landlords have accordingly failed to comply with the terms of the RSEO and is accordingly in breach of the terms of the RSEO.

## **Observations**

14. In terms of Section 26 of the Act, where the Tribunal has decided that a landlord has failed to comply with a RSEO the Tribunal must further decide whether to make a rent relief order. in terms of Section 27 of the Act.
15. The Tenant of the Property has now vacated the Property. There is no continuing tenancy of the Property. In these circumstances the Tribunal has decided not to grant a rent relief order.

## Right of Appeal

16. 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.
  
17. 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, this decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

A Cowan

Andrew Cowan  
Chairperson

Date 14<sup>th</sup> May 2024