



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

STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 26 of THE
HOUSING (SCOTLAND) ACT 2006

Case Reference FTS/HPC/RP/23/4043

Property at Flat 0/1, 4 Lochend Path, Glasgow, G34 0NN (“the Property”), being the subjects registered in the Land Register of Scotland under Title Number GLA103193.

The Parties: -

Ms Nicola O’Rourke, residing at Flat 0/1, 4 Lochend Path, Glasgow, G34 0NN (“The Tenant”),

And

A.M.I. Development and Lettings Limited, a private limited company having a registered office at Iais Level One, 211 Dumbarton Road, Glasgow, G11 6AA (“The Landlord”)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit has determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order issued by the Tribunal and dated 29th February 2024. The Tribunal further determined to make a Rent Relief Order.

The Tribunal comprised: -

Mr. Andrew Cowan, Legal Member, and
Ms. Carol Jones, Ordinary Member (Surveyor)

Background

1. The Tribunal granted a Repairing Standard Enforcement Order (“RSEO”) in respect of the Property on 29th February 2024.

2. The RSEO required the Landlord to carry out such works as were necessary for ensuring that the property met the repairing standard.

3. In particular the RSEO requires the Landlord to: -

a. Instruct a suitably qualified specialist to

- i. Prepare a proposed specification of works (along with a method statement for the completion of such works) outlining any necessary works required to rectify the structural issues which affect the Property so that the structure of the Property is in a reasonable state of repair.
- ii. Provide the Tribunal with an estimate of the length of time to complete the required works once they are instructed.
- iii. Submit the specification and method statement for rectification of the structural defects at the Property 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.

b. Instruct a suitably qualified contractor to

- i. prepare a report on the cause and full extent of water ingress and dampness in the bathroom of the Property and
- ii. prepare a proposed specification of works outlining any necessary works required to ensure that the Property is watertight and in a reasonable state of repair.
- iii. Submit the report and specification of works required to ensure that the Property is watertight 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.

c. Instruct a suitably qualified "gas safe" engineer to Service and repair the boiler/central heating system, so that it is in a reasonable state of repair

and in proper working order. The Tribunal order that the actions and works specified in the RSEO must be carried out and completed by 26th April 2024.

4. A hearing to consider whether the Landlord had complied with the terms of the RSEO, and the effect of any failure to comply with the terms of that order was held by telephone conference on 9 August 2024.

The Hearing

5. The tenant joined the hearing. She was represented at the hearing by Ms Laura Simpson from Govan Law Centre.
6. The Landlord was represented at the hearing by his solicitor Mr. Ken Caldwell of Patten and Prentice solicitors. Mr. Zubair Anwar of Property 4U, the Landlord's letting agents, also joined the call as an observer.
7. Mr. Caldwell was invited to address the Tribunal in relation to whether the Landlord had complied with the terms of the RSEO. In his submissions to the Tribunal Mr Caldwell submitted that:
 - a. Part (c) of the RSEO (in relation to the boiler at the Property) had been complied with. The boiler at the Property was now in a reasonable state of repair and in proper working order.
 - b. Parts (a) and (b) of the RSEO had not been complied with and no reports or specifications as required by the RSEO had been produced to the Tribunal.
8. Mr. Caldwell explained to the Tribunal that:
 - a. the building is factored by Lowther Homes and that the building was subject to a common insurance policy

- b. the Property Factors had accepted that structural damage to the Property would be covered by the common buildings insurance policy.
- c. The Landlord had been led to believe that the property factors would coordinate works required to rectify the structural issues at the Property in terms of the common buildings insurance policy.
- d. The Property Factors' position in relation to the required repairs has recently changed. The Property Factors have now concluded that that the structural damage to the Property is not related to the common parts of the building. The structural damage only affects this Property and the flat above and each property is supported by joists which are not common. The design of these joists does not provide sufficient support for the load associated with the affected floors and walls at the Property. Accordingly, the Property Factor had notified the Landlord that the common insurance policy would not meet the costs of rectifying the structural defects at the Property. The Property Factors had notified the Landlord that he would require to instruct all necessary work to rectify the structural damage at the Property, and to meet the costs of such works. An estimated cost of the necessary work to rectify the structural damage at the Property was in the region of £30,000. A possible claim against this common insurance policy on behalf of the landlord for this property alone will be considered on examination of the policy documents which have only recently been received.
- e. No works to rectify the structural damage have, as yet, been instructed by the Landlord.
- f. The Tenant has been withholding payment of rent due in terms of the tenancy agreement between the parties.
- g. It was conceded on behalf of the Landlord that the terms of the RSEO had not been complied with. It was further conceded on behalf of the Landlord that it would be appropriate for the Tribunal to grant a Rent Relief Order in these circumstances. Mr. Caldwell submitted that he considered that a rent relief order which required a deduction of rent by between 50% and 70% of rent due was appropriate.

9. Ms. Simpson, on behalf of the Tenant, highlighted that the Landlord had failed to comply with the RSEO and invited the tribunal to issue a rent relief order with the maximum deduction of 90%. She highlighted that the required works at the Property had been outstanding over a long period and that no works had been started at the Property to rectify the identified structural defects. She also stated an opinion that the damp in the bathroom was unrelated to the structural defects and steps could have been taken to address this issue. It was accepted that the boiler at the Property was now in a reasonable state of repair and in proper working order.
10. The Tenant gave evidence to the Tribunal and explained the impact of the Landlord's failure to comply with the RSEO upon her. She explained that the structural condition of the Property had further deteriorated from the date that the Tribunal inspected the Property in February 2024. She believes the floors in the Property are now sloping further and that there has been further significant movement in the walls and floors of the Property. She is very worried about her safety and is "living on her nerves". She lives in constant fear that the walls may collapse.

Decision

11. Section 26 of the Act provides that

Effect of failure to comply with repairing standard enforcement order

(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) The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—
- (a) unless the period within which the order requires the work to be completed has ended, or
 - (b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—
 - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
 - (ii) that the work required by the order is likely to endanger any person.
- (4) Where the First-tier Tribunal is prevented by reason only of subsection (3)(b) from deciding that a landlord has failed to comply with a repairing standard enforcement order, the First-tier Tribunal must serve notice on the local authority stating that it considers the landlord to be unable to comply with the repairing standard enforcement order.

12. The Tribunal determined that the Landlord has not complied with the RSEO made by the Tribunal, dated 29 February 2024.

13. The Tribunal has further determined to make a rent relief order (“RRO”) in terms of Section 27 of the Act.

14. The Tribunal has determined that the RRO shall reduce the rent payable under the tenancy between the parties by 90% of the rent which would, but for the order, be payable.

Reasons for Decision

15. The Landlords have conceded that they have not complied with the RSEO.

16. The Landlords have been aware of the condition of the Property for a considerable period. Evidence was produced to the Tribunal (at the time the RSEO was granted) which showed that the structural issues at the Property had been raised with the Landlord from on or before January 2023. A report

prepared on behalf of the Tenant dated 26 March 2023 by Professor Tim Sharpe found the Property to be unsafe and not reasonably tenantable or habitable. The Landlord has a duty to ensure that the Property meets the repairing standard and has failed to do so. The extent of disrepair and the related risk to the safety of the occupants of the Property are of significant concern. Whilst the Landlord has sought to have necessary repairs carried out through the Property Factors there has been no work carried out at the Property to ensure that the Property is safely habitable by the Tenant. For these reasons the Tribunal have determined that an appropriate reduction in rent would be to reduce the rent payable by the maximum amount allowed under Section 27 of the Act by 90% of the rent which would, but for the order, be payable.

17. The decision of the Tribunal is unanimous.

Right of Appeal

28. 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.

A Cowan

A Cowan
Chairperson

Date 9th August 2024