



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

Chamber Ref: FTS/HPC/RT/24/0177

Title Number DMB13712

112G Beechwood Drive Bonhill G83 9LY (“the Property”)

Parties:

**West Dunbartonshire Council, Environmental Health, Council Offices 16 Church
Street Dumbarton G82 1QQ (“the Third Party Applicant”).**

Mr Danut Colceiru, 112G Beechwood Drive Bonhill G83 9LY (“the Tenant”)

Mr David Aitken, 19B Conic Way, Drymen G83 0QT (“the Landlord”).

Tribunal Members:

Lesley Ward (Legal Member) and Andrew McFarlane (Surveyor Member)

1. Decision

The Tribunal determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order dated 2 May 2024 (“RSEO”) within the period of time set out in the RSEO. Notice of the failure will be served on the local authority. The Tribunal also determined to make a rent Relief Order. The Tribunal's decision is unanimous.

Background

2. Mr Gary Stewart of Environmental Health, West Dunbartonshire Council made a third party application to the Tribunal on 3 January 2024 in terms of rule 48 of the Tribunal Rules of Procedure for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.

3. The application states that the Landlord has failed to ensure that the property meets the repairing standards in terms of section 13(1) (a) (c) and (f) which sets out the following obligations:

- the house is wind and watertight and in all other respects reasonably fit for human habitation.
- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating or heating water are in a reasonable state of repair and in proper working order.
- the house has a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

4. On 18 March 2024 the Tribunal issued a Direction for the landlord to produce no later than 12 noon on 12 April 2024 :

- (1) A current satisfactory Electrical Installation Condition Report (EIRC) from a SELECT, NICEIC or NAPIT accredited electrical in respect of the property containing no category C1 or C2 items of disrepair.
- (2) Evidence of the provision for smoke and heat detection in accordance with existing Scottish Government Statutory Guidelines.

5. No documentation was produced and an inspection of the property took place on 30 April 2024 at 10 am.

6. A hearing took place on 30 April 2024. The Tribunal found that the property did not meet the repairing standard and made a Repairing Standard Enforcement Order ('RSEO') in the following terms:

In particular the Tribunal now requires the landlord:

- (1) To produce a current satisfactory Electrical Installation Condition Report (EIRC) from a SELECT, NICEIC or NAPIT accredited electrical in respect of the property containing no category C1 or C2 items of disrepair.
- (2) To install smoke and heat detection in accordance with existing Scottish Government Statutory guidelines.
- (3) To investigate and remedy the source of water ingress from the common roof to ensure that the property is wind and watertight.
- (4) To replaster and redecorate the ceiling in the hallway of the property.

The Tribunal orders that the work specified in this Order must be carried out and completed within a period of 6 weeks, with the specified reports to be produced to the Tribunal for consideration and that any redecoration required as a consequence of the works being undertaken are also completed, from the date of service of this Notice and evidenced to the Tribunal.

7. The RSEO was intimated to the Landlord on 7 May 2024. The Landlord did not respond to the RSEO. A re- inspection took place on 19 September 2024.

Re-inspection

8. The Tribunal re-inspected the property on 19 September 2024 at 10 am. The tenant permitted entry. The Landlord and third party were invited but did not attend. The Landlord had not taken any steps to comply with the RSEO and the condition of the property was unchanged. The tenant had received notification of the re-inspection as an interested party. He had not received notification of the hearing due to take place on 19 September 2024 at 2pm by teleconference. In any event, he did not wish to attend.

Findings in fact

9. The Tribunal adopts the finding in fact contained in the written decision with reasons of 30 April 2024.

10. The Landlord has failed to comply with the RSEO made on 30 April 2024.

Reasons

11. This is a third party application for a RSEO. The Landlord did not attend either hearing but contacted the Tribunal on 11 April 2024 to state that the property is being repossessed. The Tribunal had regard to the Upper Tribunal decision of Sheriff Kelly in Pepper UK Ltd-v- Alvey and Rendle and was satisfied that even if a repossession had taken place (which was not clear) the correct respondent in an application of this type was the Landlord.

12. The Tribunal having decided that the landlord had failed to comply with the RSEO in terms of section 26 of the Act, went on to consider whether a rent relief order was appropriate in terms of section 27 of the Act which states:

“A rent relief order is an order by the First-tier Tribunal which reduces the rent payable under the tenancy in question by such amount (not exceeding 90% of the rent which would, but for the order, be payable) ...”.

13. The Tribunal decided that a rent relief order is appropriate as the property is very small and the failures in relation to the repairing standard are serious and are likely to affect the Tenant’s use and enjoyment of the property.

14. There can be a number of mitigating and aggravating factors which a Tribunal can take into account in determining the correct percentage to apply in any particular case. The failure to provide a suitable EICR in acceptable terms raises serious health and

safety concerns in relation to the property and that the Landlord has had a considerable period to address the issue. The lack of appropriate smoke and heat detection also gives rise to serious health and safety concerns. There is a hole in the ceiling and roof and there is water ingress whenever it rains. One possible mitigating factor is that the Landlord has contacted the Tribunal to advise the property is being repossessed however there has been no contact from the heritable creditor and the Landlord remains liable to comply with the RSEO.

15. Whilst there is no obligation to take account of decisions in other cases where the First-tier Tribunal has determined that there has been a failure to comply with a RSEO, they can be of assistance and foster a consistency of approach. A number of RROs at 90% have been issued in recent cases, particularly where there has been a lack of engagement on the part of the landlord. Taking all matters into account the Tribunal decided that a reduction of 50% of the rent is reasonable and proportionate in all of the circumstances.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

L Ward

23 September 2024

Legal Member/Chair

Date