

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
STATEMENT OF DECISION: in terms of Sections 26 and 27 of the Housing
(Scotland) Act 2006 (“the Act”) in respect of an application under Section
22(1A) of the Act

Chamber Reference number: FTC/HPC/RT/22/0445

Parties:

1. Glasgow City Council per its employee Ms. Janice Carey, Neighbourhood, Regeneration and Sustainability, 231, George Street, Glasgow, G1 1RX as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Mr. Khalid Hussain (erroneously referred to in the Applications as Mr. Khalid Malik) residing at Flat 1/1, 46, Herriet Street, Glasgow G41 2JY (“the Tenant”)
3. Mohammed Ashfaq and Yasrat Bibi both residing at 17, Laggan Road, Glasgow G43 2SY (“the Landlord”)

Property: Flat 1/1, 46, Herriet Street, Glasgow G41 2JY being the subjects registered under title sheet number GLA173308

Tribunal Members

Karen Moore (Chairperson) and Nick Allan (Surveyor and Ordinary Member)

Decision

This Decision should be read in conjunction with Decision and Repairing Standard Enforcement Order (RSEO) both dated 6 June 2024.

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 (RSEO), determined that it cannot be satisfied and so determines that the Landlord has failed to comply.

In addition, the Tribunal imposes a Rent Relief Order of **90%** of the monthly rent from the date 30 days from the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

Background

1. By application received between 29 January 2024 and 13 February 2024 (“the Application”), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (c), 13(1)(d), and 13(1) (h) of the Act.

2. Following an Inspection of the Property and a Hearing, the Tribunal imposed the following RSEO:
“The Landlord must on or before 6 August 2024 carry out all of the following:-
 1. *Install electrical mains supplied, inter-connected hard wired or, wireless long life battery, smoke and heat detectors in the Property;*

 2. *Install a carbon monoxide detector in the Property*

 3. *Repair or renew the defective flooring in the Property to ensure that it is securely fixed throughout and is free from trip hazards;*

4. *Refit or replace the flooring coverings in the Property to ensure that they are in good condition, securely fixed and free from trip hazards;*
5. *Repair or replace the cooker so that it is fully functional and not in a state of disrepair;*
6. *Engage a suitably qualified window contractor to repair or replace all windows in the Property to ensure that the windows are wind and watertight, are in proper working order and are capable of opening and closing securely and safely, to include all necessary reglazing, new ironmongery and draught proofing to ensure that the Property is capable of being properly ventilated;*
7. *Engage a suitably qualified building maintenance contractor to repair the plaster work in the bathroom and the damaged plaster work and skirting boards in the hallway;*
8. *Engage a suitably qualified heating engineer to repair or replace the heating and hot water system in the Property to ensure that it complies with Annex D: Installations for space heating by a fixed heating system of the “Scottish Government’s Repairing Standard Statutory Guidance for Private Landlords Directive”;*
9. *Engage an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme to repair or replace the switch for the electric shower;*
10. *Produce a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category and, where applicable, the*

outcome in respect of the individual areas should be appropriately marked with a “tick” if in an acceptable condition.

- 11. Produce a current Portable Appliance Test Certificate for the Landlord’s appliances in the Property. The Certificate requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme and should confirm that all such appliances are safe to use.*

- 12. Produce a Gas Safety Certificate for the Property. The Certificate requires to be prepared by an engineer register with the Gas Safe Register or other accredited or registered scheme.*

- 13. Ensure that all works required above are carried out in accordance with the standards set out in the Scottish Government’s Repairing Standard Statutory Guidance for Private Landlords Directive, the Tolerable Standards Guidance and the Domestic Technical Handbook all of which documents are in the public domain and can be accessed through the Scottish Government’s website at <https://www.gov.scot/publications> and*

- 14. Make good all décor disturbed as a result of these works.”*

Re-Inspection

3. The Re-inspection took place on 23 October 2023 at 10.00 a.m. at the Property. The Tenant was not present and was represented by his wife. The Landlord was not present and was not represented.

4. The Tribunal noted that the Landlord had not carried out any of the works required by the RSEO and that the condition of the Property had worsened. with had not made any repairs to the oven or to the soffit boards. Therefore, the Tribunal varied the RSEO and allowed the Landlord further time to comply.

Findings of Fact

5. The Tribunal's findings in fact were made from all of the information before it being the Application, the initial Inspection and Hearing and the Re-inspection.

6. The Tribunal found the following matters established: -

- i) None of the work required by the RSEO had been carried out;
- ii) The radiators in the Property and in the hallway continue to leak and water damage is worsening and is more significant;
- iii) There are further broken or cracked window panes;
- iv) The flooring coverings have deteriorated further and continue to cause trip hazards;
- v) The exposed plaster on the bathroom wall is showing evidence of dampness;
- vi) Neither an Electrical Installation Condition Report (EICR) nor a Gas Safety Certificate has been exhibited for the Property.
- vii) There are still no electrical mains supplied, inter-connected hard wired or, wireless long life battery, smoke detectors in the Property nor is there a carbon monoxide detector in the Property;

Summary of the Issues

7. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or if it should make a finding of failure to comply with the RSEO.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

8. The Tribunal had regard to Section 25 (1) of the Act which states:-“(1) *The first-tier tribunal which made a repairing standard enforcement order may, at any time (a)*

vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”

9. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The terms of the RSEO deal with the habitable condition of the Property and the health and safety of the occupants some of whom are children. The Tribunal held the view that any occupants of the Property are entitled to reside in a habitable property. Accordingly, the Tribunal was not of a mind to revoke the RSEO.
10. With regard to Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlords to comply. The Tribunal, being satisfied that the Landlord had had notification of the Inspection and Hearing, the RSEO and the Re-Inspection, took the view that the Landlords were ignoring these to the extent that they had no intention to comply with the RSEO and so determined that there was no reason to vary the RSEO and allow further time for the Landlords to comply.
11. The Tribunal then had regard to Section 26 of the Act which states: *“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.”* The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlords have failed to comply with the RSEO without reasonable excuse. The Tribunal, having taken the view that the Landlord was ignoring the RSEO to the extent that they had made no effort to comply with it, determined in terms of Section 26(1) of the Act that the Landlords had failed to comply with the RSEO.

Rent Relief Order

12. The Tribunal then had regard to Section 27 of the Act which allows the Tribunal, having made a finding of failure to comply, to make a Rent Relief Order (RRO) of up to 90% and took the view that, in the circumstances of the whole application and procedure to date, an RRO was appropriate. The

Tribunal took into account that no works had been carried out by the Landlord and that the condition of the Property is such that it affects the occupants' full enjoyment of the Property and affects their health and safety in their home. Accordingly, the Tribunal determined that an RRO of 90% of the monthly rent be imposed to reflect the serious effect and significant extent of the disrepair from 28 days after the last date on which a request may be made for permission to appeal this Decision until the RSEO is revoked or discharged.

13. The decision of the Tribunal is unanimous.

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.

Effect of Section 63

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

K Moore

Karen Moore, Chairperson

Date 23 October 2023

