

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



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

**STATEMENT OF DECISION:** in terms of Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

**Chamber Ref:** FTS/HPC/RP/23/1893

**Re:** Property at 0/2, 12, Cresswell Street, Glasgow G12 8BY being the subjects more particularly described as the righthand or eastmost flat on the ground floor of the tenement known as 12 Cresswell Street, Glasgow in Disposition in favour of Mary Russell and others recorded in the Division of the General Register of Sasines (Glasgow) on 27 October 1904 (“**the Property**”)

#### **The Parties:**

Ms. Alexandra Sidorova and Mr. Sean Arnold both residing at the Property (“the Tenants”)

And

Lanero Property Co. Ltd care of Clyde Property Ltd, 8 Busby Road, Clarkston, Glasgow G76 7XL (“the Landlord”) per their agents, Clyde Property Ltd (“the Landlord’s Agents”) and represented by Mitchells Robertson, George House, 36 North Hanover Street, Glasgow , G1 2AD (“ the Landlord’s Solicitors”)

#### **Tribunal Members:**

Karen Moore (Chairperson) and Andrew Taylor (Ordinary and Surveyor Member)

#### **Decision of the Tribunal**

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 reducing the monthly rent by £500.00 from the

date 58 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 9 June 2023 and 25 July 2023 (“the Application”), the first-named Tenant of the Property 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 them by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a) and 13(1) (h) of the Act. The Application comprised a copy of the tenancy agreement between the Tenants and the Landlord, copy correspondence between the Tenants and the Landlord’s Agents regarding repairs to the Property. The Application noted that the windows are in a state of disrepair and that there is a lack of ventilation in the bathroom.
2. Following an Inspection of the Property and a Hearing on 19 October 2023, the Tribunal imposed the following RSEO:

*“The Landlord must on or before 20 December 2023 carry out all of the following:-*

1. *Engage a suitably qualified sash and case window specialist to overhaul and repair or replace all windows ensuring that they are wind and watertight, that the windows are in proper working order and the windows are capable of opening and closing securely and safely, to include all necessary cill replacement, pointing, new ironmongery, draught proofing and any necessary painting inside and out.*
2. *Redecorate all areas affected by water damage and black mould within the Property including any necessary treatment of mould and damaged plaster and*
3. *Replace all blinds and window dressing affected by water damage and black mould*
4. *Carry out all incidental and decorative works occasioned by the works necessary to comply with this Order to leave the Property in the condition required by the Repairing Standard.”*

## **Re- Inspection and Hearing**

3. A Re-Inspection of the matters specified in the RSEO took place at the Property on 17 May 2024 at 10.00 am with a Hearing at 11.45 am at Glasgow Tribunal Centre on the same day. The outcome of the Re-Inspection and Hearing was that the RSEO was varied as follows:  
*“The Landlord must on or before 31 July 2024 carry out all of the following:-*

1. *Engage a suitably qualified sash and case window specialist to overhaul and repair or replace all windows ensuring that they are wind and watertight, that the windows are in proper working order and the windows are capable of opening and closing securely and safely and*
2. *Treat then redecorate all areas affected by black mould which has returned within the Property”*

### **Further Re- Inspection and Hearing**

4. A further Re-Inspection of the matters specified in the RSEO as varied took place at the Property on 28 November 2024 at 10.00 am. The first named tenant, Ms. Sidorova, was present. The Landlord was not present or represented.
5. At the further Re-inspection Ms. Sidorova, in answer to the Tribunal’s question stated that the monthly rent had been increased in or around September 2024 and was unclear of the exact amount which she thought was £1,020.00 or £1,080.00.
6. A Schedule of Photographs taken at the further Re- Inspection was prepared and issued to the Parties.
7. The Hearing took place on 28 November 2024 at 11.45 am at Glasgow Tribunal Centre. The Tenants were not present and were not represented. The Landlord was not present and was represented by Mr. A. Casady of the Landlord’s Solicitors.
8. Tribunal discussed the further Re-inspection with Mr. Casady and reported to him that the Tribunal found that the windows in the kitchen and bathroom could not be opened and the smaller bedroom could not be opened safely and with ease. The Tribunal advised that Ms. Sirdova had explained that the Landlord’s contractor suggested she open the bedroom window by standing on a stool and pushing the lower left-hand part of the window frame outwards whilst pulling the upper right-hand part of the frame inwards. The Tribunal advised that the lack of ventilation in the kitchen and bathroom contribute to, if not cause, the return of the mould and signs of dampness.
9. The Tribunal advised that two significant incidents of water ingress have occurred, one at the kitchen ceiling and one at the bathroom ceiling, with the probable cause being a water leak from the upstairs flat. Ms. Sirdova stated that leaks occurred around July 2024 and have been reported to the Landlord’s letting agent but have not been repaired.
10. Mr. Casady stressed that the Landlord had acted in good faith and had instructed a window refurbishment company to attend to the window repairs

and had thought that the other works had been attended to. He advised the Tribunal that the Landlord had relied on contractors and stressed the Landlord's commitment to have the work completed.

### **Findings of Fact**

11. The Tribunal found the following matters established:
- i) The windows in the bathroom and kitchen cannot be opened;
  - ii) The window in the smaller bedroom cannot be opened safely or with ease;
  - iii) The kitchen and bathroom cannot be ventilated properly and
  - iv) Mould and dampness have returned to the kitchen and the bathroom walls.

### **Summary of the Issues**

12. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part, 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**

13. 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.*” The Tribunal noted that the RSEO already had been varied to allow further time to comply and remedy the lack of ventilation in the kitchen and bathroom but the issue remained. Accordingly, the Tribunal was not of a mind to vary the RSEO further. 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 health and safety of the occupants and their entitlement to reside in a properly ventilated house.
14. 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 Landlord has failed to comply with the RSEO without reasonable excuse. The Tribunal, took the view that the Landlord had had ample time to comply with the RSEO but continues to fail to do so. Accordingly, the Tribunal determined in terms of Section 26(1) of the Act, that the Landlord had failed to comply with the RSEO.

### **Rent Relief Order**

15. 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) not exceeding 90% of the rent which would, but for the order, be payable. The Tribunal 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, although the original RSEO had been complied with to some extent, the condition of the Property is such that the health and safety of the occupants of the Property could be at risk due to the presence of mould and dampness. The Tribunal also had regard to the loss of full amenity of the kitchen, bathroom and smaller bedroom. Accordingly, the Tribunal determined that a RRO in the amount of £800.00 be imposed from the date 58 days of the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

16. 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.

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.

K Moore

Signed

Karen Moore, Chairperson

28 November 2024