



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 26 and 27 of the Housing (Scotland) Act 2006 (“the 2006 Act”)**

**Chamber Ref: FTS/HPC/RP/24/2889**

**Re: Property at 56 Hazlehead Gardens, Aberdeen, AB15 8EA (“the Property”)**

**Parties:**

**Steven Geddes, 54 Gordon Street, Aberdeen, AB11 6EW (“the Landlord”)**

**Rebeckah McCandless, 56 Hazlehead Gardens, Aberdeen, AB15 8EA (“the Tenant”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and David Godfrey (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“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) dated 31 December 2024, made a determination under section 26(1) of the 2006 Act that the Landlord has failed to comply.

The Tribunal further imposed a Rent Relief Order of 90% of the monthly rent due and determined that notice of the failure be served on the local authority.

**Background**

- 1 This is an application under Rule 48 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) in terms of which the Tenant sought a determination that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 On 31 December 2024 the Tribunal made an RSEO requiring the Landlord to:-

- (i) Instruct a damp and condensation specialist to inspect all rooms in the property, submit the specialist's report to the Tribunal for further consideration, and thereafter carry out the necessary works as directed by the Tribunal;
- (ii) Submit a recent electrical installation condition report to the Tribunal with no C1 or C2 defects identified. The report should specifically address the electrical socket in the attic bedroom and the lack of any smoke detector on the first floor landing;
- (iii) Repair and redecorate the ceiling of the rear first floor bedroom.

The RSEO required the Landlord to carry out the works required within a period of four weeks. Reference is made to the decision of the Tribunal dated 31<sup>st</sup> December 2024 in this regard.

### **The Re-inspection and Hearing**

- 3 The Tribunal re-inspected the property on 20 February 2025. The Tenant allowed access. The Landlord was not present, nor represented.
- 4 The following works had been completed:-
  - (i) The wall finish in the bathroom had been redecorated. The Tenant advised that the plasterwork had been sanded, treated and redecorated.
  - (ii) The loose socket in the attic bedroom had been secured.
  - (iii) The ceiling of the rear first floor bedroom had been repaired and redecorated.
- 5 The following works remained outstanding:-
  - (i) The Landlord had not provided a report from a damp and condensation specialist in respect of all rooms in the property. The new decoration was beginning to show signs of deterioration.
  - (ii) The Landlord had not submitted an electrical installation condition report ("EICR") in suitable terms and the smoke detector on the first floor landing was still missing.
- 6 A hearing took place following the re-inspection by teleconference. The Tenant was in attendance with her husband, Mr McCandless. The Landlord was not present, nor represented.
- 7 The Tribunal heard evidence from the Tenant regarding the items listed in the RSEO.

- 8 With regard to the damp and condensation report, the Tenant confirmed that no specialist had attended the property. Work had been carried out in the bathroom. The walls had been sanded, a seal had been applied, and repainting carried out. However the plasterboard was wet and the walls were already beginning to peel. It was a temporary fix.
- 9 With regard to the EICR, the Tenant confirmed that an electrician had attended the property to carry out a pre-work assessment. However, he did not feel comfortable carrying out work at the property, or putting his name against an EICR. He had confirmed this in an email to the Landlord. He would not expand on why this was the case. A different electrician had come out and fixed the plug socket. He had noted the missing smoke detector, as well as some others in the property that were out of date. The electrician had advised the Tenant that the Landlord should have arranged an EICR in 2023. He also indicated that there were problems with the electrics, although he would not provide any further detail.
- 10 With regard to the rear first floor bedroom, the Tenant confirmed that these works had now been completed. The leak had been caused by problems with incorrect sealing on the boiler piping which had led to a disconnection.
- 11 The Tenant expressed concerns regarding the comments that had been made by the electricians. She felt her family were at risk. She highlighted the missing smoke detectors, noting that there were other detectors in the property that had expired. She worried about the potential harm to her family.
- 12 Towards the conclusion of the hearing, the Tribunal were advised that the Landlord had contacted the Tribunal administration to indicate he was trying to join the call. The Tribunal therefore held the call open for a period of time to give him the opportunity to attend. The Landlord failed to do so. The Tribunal therefore concluded the hearing.
- 13 Following the hearing the Tenant submitted to the Tribunal the aforementioned email from the electrician who had attended the property to carry out the pre-work assessment.
- 14 A report of the re-inspection was issued to parties on 25 February 2025. Both were invited to make written representations by 11 March 2025.
- 15 On 4 March 2025 the Tribunal received written representations from the Tenant. She confirmed her agreement with the terms of the re-inspection report and provided photographs of the bathroom as evidence of paint blistering. The Tenant requested a rent relief order of 90% due to the outstanding works and the length of time it had taken for the Landlord to take action.
- 16 No written representations were received from the Landlord.

## Reasons for Decision

- 17 The Tribunal considered the findings from the re-inspection, the evidence from the hearing, and the written representations from the parties. The Tribunal was satisfied that it had sufficient information upon which to reach a decision on the Landlord's compliance with the RSEO.
- 18 In terms of section 26(1) of the 2006 Act, the Tribunal must decide whether the Landlord has complied with the RSEO. It was clear to the Tribunal that he had not. The Tribunal accepted that the works in the rear bedroom had been completed. However, the Landlord had failed to instruct a damp and condensation specialist report and produce same to the Tribunal, instead carrying out what appeared to be a temporary fix to the bathroom walls. He had also failed to provide an EICR.
- 19 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.*” With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal concluded that the works remained necessary for the reasons outlined in its decision of 31<sup>st</sup> December 2024 and therefore it would not be appropriate to revoke the RSEO at this time.
- 20 The Tribunal then considered Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply. The Tribunal accepted that the Landlord had complied in part with the RSEO by completing the works to the rear bedroom. However, the Tribunal could not ignore the fact that the Landlord had failed to adequately address what were serious and concerning matters of health and safety, particularly the lack of an EICR. These were not new issues. The RSEO had been intimated to the Landlord on 10 January 2025 and the Tribunal could see from the application paperwork that the Tenant had raised concerns with the Landlord at a much earlier stage. The Landlord had failed to provide any reasonable explanation as to why he had not produced the reports and certification required by the RSEO. Accordingly the Tribunal determined that, in the particular circumstances of this case, it would not be reasonable to vary the RSEO and allow further time for the Landlord to comply.
- 21 The Tribunal was conscious that the consequence of decision by it that a Landlord has failed to comply with the RSEO could lead to a criminal prosecution. However, the Tribunal could identify no reasonable excuse on the Landlord's part. Therefore, the Tribunal determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.
- 22 Having concluded that the Landlord had failed to comply with the RSEO, the Tribunal considered whether to make a rent relief order (“RRO”) under section 27 of the Act. The Tribunal took the view that, in the circumstances of the

application and procedure to date, an RRO was appropriate. The Tribunal had regard to the Landlord's failure to adequately address the issues of damp and condensation through the instruction of a specialist report. However, the Tribunal gave the most weight to the Landlord's failure to produce an EICR for the property. The Tribunal took into account the comments from the electrician who had attended the property, who had stated in his email to the Landlord that "*I got a bad feeling about the place from an electrical perspective*". The Tribunal agreed that the electrical installations in the property were a serious concern, and had the potential to cause significant risk to the occupants, when coupled with the lack of proper smoke detection. It was clear that this was a source of worry for the Tenant who resided in the property with two young children. It was having a significant impact on their enjoyment of the property. Accordingly, taking into account the lack of an EICR and the Landlord's apparent reluctance to take action to ensure the property was a safe environment for the Tenant and her family, the Tribunal concluded that a rent relief order at the highest end of the scale was justified. The Tribunal therefore made a rent relief order for 90% of the rent due.

23 The Tribunal further determined in terms of section 26(2)(a) of the 2006 Act that notice of the decision be served on the local authority.

24 The decision of the Tribunal was unanimous.

### **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.**

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or 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 determined.

# R O'Hare

**Legal Member/Chair**

**Date** 13 March 2025