

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Sections 26, 27 & 28

Chamber Ref: FTS/HPC/RP/23/3925

Property at 3A Strathmartine Road, Dundee, DD3 7RL ("the Property")

Land Register Title Number: ANG41642

The Parties:-

**Miss Beth Jowett, 3A Strathmartine Road, Dundee, DD3 7RL
("the Former Tenant")**

**Mr Ihsan Haq, 25 Lintrathen Gardens, Dundee, DD3 8EJ
("the Landlord")**

Tribunal Members:

Gillian Buchanan (Chair) and Angus Anderson (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") in relation to the Property, determined that (i) the Landlord has failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. Reference is made to the determination of the tribunal dated 26 March 2024 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that it had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - a. To instruct a suitably qualified timber and damp specialist to investigate and report on the extent and cause of the damp within the rear bedroom and the rear utility

area of the kitchen (including the cupboard housing the boiler) of the Property and produce a written report to the Tribunal for further consideration and further Decision. The said timber and damp specialist should be provided with a copy of the Tribunal's Decision dated 28 February 2024 for reference.

- b. Instruct a suitably qualified building contractor to inspect the damp within the rear bedroom and the rear utility area of the kitchen (including the cupboard housing the boiler) of the property and the exterior of the building of which the Property forms part and thereafter carry out such repairs as are necessary to the outer walls, windows and drain pipes to ensure the property is wind and watertight and its structure and exterior are in a reasonable state or repair. The building contractor should be provided with a copy of the Tribunal's Decision dated 28 February 2024 for reference.
- c. On completion of the works the Landlord is required to provide to the Tribunal written evidence from the contractors employed of the works done and confirmation that the source of the dampness has been eradicated.

The tribunal ordered that the works specified in paragraph (a) of the RESEO must be carried out and the specialist report referred to therein delivered to the tribunal within the period of 4 weeks from the date of service of the RSEO.

Variation

2. By Notice of a Decision to Vary dated 8 January 2025 the period allowed for the completion of the work required by the order was extended by a period 8 weeks.

Reinspection

3. On 8 May 2025 the tribunal re-inspected the Property. The Landlord was present.
4. No damp and timber report has been produced to the Tribunal.
5. It was not obvious from the re-inspection if any work had been undertaken.
6. Mr Haq described insulation works to the left side of the bedroom window (as viewed from inside the bedroom, facing the rear) which comprised drilling holes through the lath and plaster and injecting expanding foam to fill the void between the lath and masonry of the outer wall. Moisture meter readings taken to the plaster of the outer wall around the window and timber linings of the window ingo showed normal readings (below 20%).
7. Within the utility area, again it was not clear what remedial works had been undertaken. Externally, "Flashband", a proprietary repair tape had been applied to a section of the downpipe adjacent to the window. Internally, Mr Haq described repairs to the ceiling area. There was staining from water ingress to the alcove area above the boiler. Moisture meter readings were high (60% to 100%) to the alcove area and also to the plaster on the hard linings of the wall to the stairwell, to the left of the window, similar to those observed at the initial inspection and previous re-inspection.
8. No evidence in the form of reports, advice or invoices in relation to any works has been provided. It is clear for the re-inspection that dampness is still affecting areas of the property.
9. The tribunal then considered what steps to take.

Reasons for Decision

10. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a

landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").

11. The tribunal determined that the Landlord has failed to comply with the RSEO.
12. In terms of the RSEO the tribunal required that a suitably qualified timber and damp specialist be instructed by the Landlord to investigate and report on the extent and cause of the damp within the rear bedroom and the rear utility area of the kitchen (including the cupboard housing the boiler) of the Property and produce a written report to the Tribunal for further consideration. The Landlord had taken no steps to instruct such a specialist.
13. In terms of the RSEO the tribunal also required that the Landlord instruct a suitably qualified building contractor to inspect the damp within the rear bedroom and the rear utility area of the kitchen (including the cupboard housing the boiler) of the Property and the exterior of the building of which the Property forms part and thereafter carry out such repairs as are necessary to the outer walls, windows and drain pipes to ensure the property is wind and watertight and its structure and exterior are in a reasonable state or repair. The Landlord has produced no evidence that a suitably qualified building contractor has been instructed.
14. Accordingly the tribunal is obliged to serve notice of the failure on the local authority and resolved to do so.
15. The tribunal then decided whether or not to make an RRO. In that the Former Tenant has long since vacated the Property an RRO could not be made.
16. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord has offered no meaningful explanation as to his failure to comply with the RSEO nor any indication as to when he will comply. Accordingly, in the circumstances, the tribunal was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

17. The tribunal determined that in terms of the Act the Landlord had failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution.
18. The decision of the tribunal was unanimous.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

These presents type written on this and the preceding page(s) are executed by Gillian Buchanan, Solicitor, First Tier Tribunal for Scotland (Housing and Property Chamber), 3rd Floor, Glasgow

Tribunals Centre, 20 York Street, Glasgow, G2 8GT, Chairperson of the tribunal at Dundee on 9 June 2025 :-

G Buchanan