

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**STATEMENT OF DECISION:** in respect of an application Section 22(1A) of the Housing (Scotland) Act 2006 ("the Act")

Parties : Ms Siobhan Mackenzie residing at 118 Kirkton Avenue, Glasgow, G13 3AB ("the Tenant") and

Mr. John Deans residing at 110 Helensburgh Drive, Glasgow, G13 1RR ("the Landlord")

Property: 118 Kirkton Avenue, Glasgow, G13 1AB registered in the Land Register for Scotland under Title Number GLA65336 ("the Property")

Chamber reference: FTS/HPC/RP/16/1005

Tribunal Members

Karen Moore (Chairperson)

Nick Allan (Ordinary Member)

### Decision

The Tribunal determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order made by it and dated 14 February 2017 in relation to the Property and imposed a Rent Relief Order as a consequence of that failure to comply.

This decision should be read in conjunction with:

Statement of Decision and Repairing Standard Enforcement Order dated 14 February 2017

### Factual Background

1. By application received on 1 December 2016 ("the Application"), the Tenant applied to the First-tier Tribunal for Scotland 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 in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1) (b), 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act.

2. On 14 February 2017, the Tribunal issued 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 Section 13(1)(c), Section 13(1)(f) and Section 13(1)(g) of the Act and, on the same date, issued a Repairing Standard Enforcement Order (RSEO) as follows:-

*"The Landlord must on or before 30 April 2017:-*

- 1. Instruct a gas safe engineer to carry out a full inspection of the gas central heating system and to repair or renew any parts which require to be renewed or repaired to ensure the installation and system is fully functioning and meet current regulatory standards and provide a gas safety certificate to the tribunal;*
- 2. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICR to the tribunal and*
- 3. Provide and install sufficient carbon monoxide detectors to comply with current regulations and*
- 4. Make good any décor damaged as a result of these works."*

#### First and Second Re-Inspections

3. A Re-inspection of the Property was fixed for 16 June 2017 on which date the Ordinary Member of the Tribunal could not gain access to the Property. Subsequent to the issue of the Ordinary Member's Report on that attempted Re-inspection, the Landlord wrote to the Tribunal stating that he understood that re-inspections had been cancelled by the Tribunal. The Tribunal responded to the Landlord, copying to the Tenant, confirming that no re-inspections had been cancelled by the Tribunal and advising the Landlord that, if access was not made available for a further re-inspection, the Tribunal would seek a Sheriff Court warrant.
4. A further Re-inspection of the Property was fixed for 22 August 2017 at which Re-inspection the date the Ordinary Member gained access to the Property and noted that the works as required by the RSEO had not been carried out. Further, the gas safety certificate and EICR as ordered by the RSEO had not been provided to the Tenant or to the Tribunal. The Ordinary Member's Report on that Re-inspection was issued to the Landlord and the Tenant following which the Tenant made written representations to the Tribunal advising that all of the works had been completed and that the Property had been redecorated by the

Landlord. The Tribunal noted, however, that the gas safety certificate and the EICR had still not been provided to the Tenant or to the Tribunal.

5. The Tribunal took account of the Tenant's written representations and had regard to the outstanding works required by the RSEO, and, as these works related to the health and safety of the occupants of the Property, took the view that a further Re-inspection of the Property was necessary to ensure that the Property complied fully with the requirements of the Act.
6. The Tribunal, having regard to its powers in terms of the Act in the event of a failure to comply fully with a RSEO and the significant consequences for the Landlord of a finding of failure to comply, considered that, in all the circumstances, it was appropriate to have a Hearing following the Re-inspection and so fixed a further Re-inspection and Hearing for 19 December 2017 at 10.00am and 11.30 a.m., respectively.

#### Third Re-Inspection and subsequent Hearing.

7. The Re-Inspection took place on 19 December 2017 at 10.00 a.m. at the Property. The Tenant was present at the Inspection. The Landlord was not present at the Inspection. The Tribunal inspected the works required by the RSEO. After which Re-Inspection, a Hearing was held at Wellington House, Wellington Street, Glasgow on the same day at 11.30 a.m. at which neither the Tenant nor the Landlord was present.

#### Findings of Fact

8. From the Re-Inspection, the Tribunal found the following:  
The seals of the lower units of two of the living windows still appear to be defective allowing moisture to gather;  
The boiler appears to be operating but the tribunal could not establish if it is functioning fully and properly;  
The light fitting in the bathroom appears not to be suitable for use in a bathroom;  
There are smoke detectors which appear to be functioning but do not appear to be hard wired and connected;  
There is a carbon monoxide detector in the kitchen which appears to be functioning but it does not appear to be hardwired;  
The handrail at the front door is still loose;  
The tiling at the front doorstep, although repaired in part, is still damaged and loose.
9. There is no evidence that a gas safe engineer has carried out a full inspection of the gas central heating system and no evidence that a SELECT or NICEIC electrician has carried out a full inspection of the electrical installation and

apparatus throughout the Property. A gas safety certificate and an EICR has still not been provided to the Tenant or to the Tribunal.

10. Accordingly, the Tribunal found that the Landlord had failed to comply with the RSEO.

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

11. Having been satisfied that none of the works required by the RSEO had been carried out, the Tribunal had regard to its powers in terms of the Act, and, in particular, to Section 26 (1) and (2) 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 and (2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must (a) serve notice of the failure on the local authority, and (b) decide whether to make a rent relief order"*
12. As none of the works required by the RSEO had been carried out and as there had been no indication from the Landlord that he proposed to carry out any of the works, the Tribunal had no difficulty in deciding that the Landlord had failed to comply with the RSEO.
13. The Tribunal then had regard to Section 26 (2) (b) of the Act and proceeded to consider whether it should make a Rent Relief Order (RRO). Having regard to the nature of the works required by the RSEO, the Tribunal held that a RRO was appropriate. The Tribunal then considered the effect of the condition of the Property on the Tenant's safe enjoyment of the Property and held the view that the works required by the RSEO was such that the condition of the Property had a significant detrimental effect on the Tenant's safe enjoyment of the Property. The Tribunal determined that rent relief of 75% reflected this loss of amenity and Tribunal proceeded to make a RRO to that effect.
14. The decision of the Tribunal is unanimous.
15. The Tribunal draws the Landlord's attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence and to Section 28(5) of the Act which states that it is an offence for a landlord to enter into a tenancy or occupancy arrangement in relation to a house which is subject to a repairing standard enforcement order.

## Right of Appeal

16. The parties' attention is drawn to the terms of Section 64 (4) of the Act regarding their right to appeal and the time limit for doing so. It provides that a landlord or tenant aggrieved by a decision of a private rented housing committee may appeal to the Sheriff within a period of 21 days of being notified of the decision.
17. Where an appeal is made, the effect of the appeal is that the determination of the Tribunal is suspended until the appeal is abandoned or finally determined and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Karen Moore, Chairperson  
Date 22 January 2018