

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 (“the 2006 Act”),
Section 26(1)**

Chamber Ref: FTS/HPC/RP/19/2018

**Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH (Title number GLA12687)
 (“The House”)**

The Parties:-

**Mrs Maria Cernakova, Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH
 (“the Tenant”)**

**Govanhill Law Centre, Samaritan House, Lower Ground Floor, 79 Coplaw Street,
Glasgow, G42 7JG
 (“the Tenant’s Representative”)**

**Ms Shaheen Ashraf, Bellhaven Gulf Station Garage, 31 South Cabrain Road,
Cumbernauld, Glasgow, G67 2PL
 (“the Landlord”)**

**Mr Mohammed Ashraf, Bellhaven Gulf Station Garage, 31 South Cabrain Road,
Cumbernauld, Glasgow, G67 2PL and Mr Tahir Bashir, GPS Legal & Estate, 467
Victoria Road, Glasgow, G42 8RL
 (“the Landlord’s Representatives”)**

Tribunal members

**Ms Susanne L. M. Tanner Q.C., Legal Member and Chair
Mr Nick Allan, Ordinary Member**

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having taken account of the findings of the re-inspections on 27 November 2019 and 9 March 2020 and the written submissions of the parties, determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order dated 1 October 2019, in terms of Section 26(1) of the Housing Scotland Act 2006 (hereinafter "the 2006 Act").
2. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.
3. The tribunal will consider whether to make a Rent Relief Order in terms of section 26(2)(b) of the 2006 Act having given both parties the opportunity to submit written representations within a specified time of the date of this decision; and issued a Direction to both parties in relation to the same; and the tribunal will decide whether to issue a Rent Relief Order on the basis of any written submissions submitted on or by that date.
4. The decision of the tribunal was unanimous.

Reasons

1. On 1 October 2019 The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act and proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by section 24(2) of the 2006 Act. Reference is made to the tribunal's decision and statement of reasons dated 1 October 2019 and the RSEO of the same date, both of which were served on parties.
2. The RSEO required the Landlord or the Landlord's Representative, within the period of 28 days from the date of service of the RSEO:
 - 2.1. To repair or replace the living room ceiling and cornicing to ensure the structural integrity of the ceiling and cornicing and to ensure that it is in a satisfactory state of repair; and to make good the decoration.
 - 2.2. To ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

- 2.3. To remove all polystyrene tiles from the kitchen ceiling, reinstate the ceiling and ensure that it is structurally sound and in a satisfactory state of repair; and make good the decoration.
 - 2.4. To remove all mould in the bathroom and redecorate the walls and ceiling.
 - 2.5. To obtain a report from Environmental Health or an independent contractor in relation to the rat infestation in the Property; to take any recommended steps in any said Report or otherwise ensure that there is no rat infestation in the Property.
3. On 27 November 2019, after the date for compliance had passed, the ordinary member of the tribunal undertook the first re-inspection of the Property and the findings are contained in a first re-inspection report of that date which has been sent to parties. Reference is made to the full terms of the first re-inspection report. As at the date of the first re-inspection no report as specified in the RSEO order 2.5 had yet been undertaken. During the first re-inspection the Tenant advised orally that the rodent issue was persisting.
 4. The first re-inspection Report was sent to both parties and they were invited to give a response.
 5. On 15 January 2020, the Landlord's Representative returned a response to the tribunal stating that no Rent Relief Order should be made because "all works are completed and delay was due to access issues." The Landlord's Representative indicated that he did not wish to attend a hearing. The Landlord's Representative further stated that "rat infestation has been reported to Council...".
 6. On 27 January 2020, the tribunal issued a Direction, requiring the Landlord or Landlord's Representative to provide no later than 5pm on 3 February 2020:
 - 6.1. A copy of the letter sent by or on behalf of the Landlord to the local authority in respect of the rat infestation in the Property, as referred to in the Landlord's Representative's response to the re-inspection Report.
 - 6.2. A copy of any response from the local authority in relation to the letter referred to in order 1, above.
 - 6.3. Confirmation as to whether an inspection has been carried out by Environmental Health or any independent contractor on the instructions of the Landlord or on his behalf, in relation to the rat infestation in the Property, as required by the Repairing Standard Enforcement Order, order number 5, which requires the Landlord: "To obtain a report from Environmental Health or an independent contractor in relation to the rat infestation in the Property; to take

any recommended steps in any said Report or otherwise ensure that there is no rat infestation in the Property.”

- 6.4. A copy of any report produced following any such inspection as referred to in number 3, above.
 - 6.5. Evidence of any recommended steps having been taken by or on behalf of the Landlord in relation to the rat infestation pursuant to any inspection and/or report produced, as referred to in orders 3 and 4 above.
 - 6.6. If an inspection as referred in in order 3 is still to take place, written confirmation of the date and time of any such inspection.
 - 6.7. In relation to the Repairing Standard Enforcement Order, number 2, which requires the Landlord to “ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire”:
 - 6.7.1. Documentary evidence of a smoke detector having been fitted in the living room of the Property, such as a contractor’s invoice or small works certificate; and
 - 6.7.2. Photographic evidence of the location of a smoke detector having been fitted in the living room of the Property.
 - 6.8. Any written request for a variation of the Repairing Standard Enforcement Order to provide additional time to comply with its terms, in particular order numbers 2 and 5, as referred to above.
7. On 12 February 2020, following further reminders being sent to the Landlord’s Representative by the tribunal’s administration, the Landlord’s Representative produced correspondence, including an undated letter from City Pest Solutions referencing inspections held at the property on the 5th, 7th and 15th February 2020 in relation to rodents. The cover letter from the Landlord’s Representative indicated that further inspections in relation to this issue were planned and that no report had been obtained from the local authority. The correspondence from City Pest Solutions confirmed the presence of rodent droppings in the kitchen and outlined remedial action to be taken to resolve the problem.
 8. On 3 March 2020, the Tenant’s Representative wrote to the tribunal stating that although treatment has been undertaken at the Property the rodent issues at the Property were persisting. Reference was also made to matters which do not form part of the Application before the tribunal.

9. On 9 March 2020, the ordinary member of the tribunal undertook a second re-inspection of the Property and the findings are contained in a second re-inspection report of that date which has been sent to parties. As at the date of the re-inspection the Tribunal noted the correspondence submitted by the Landlord's Representative on 17th February 2020, referred to above. The Tenant confirmed during the second re-inspection that a further follow up inspection by City Pest Solutions was planned to take place in the future.
10. The second re-inspection report was sent to parties with an invitation to provide a response.
11. In response to the second re-inspection report, the Tenant's Representative submitted representations on behalf of the Tenant by email of 4 May 2020, in which it was stated that the problem with rodents was persisting at that time. It stated that the Tenant was in agreement with the findings of the second re-inspection report that the other items in the RSEO had been completed. A copy of the email was forwarded by the tribunal's administration to the Landlord's Representative on 4 May 2020.
12. The Landlord's Representative did not respond to the second re-inspection report or to the correspondence from the Tenant's Representative dated 4 May 2020.
13. On 4 June 2020, the tribunal issued a Direction requiring the Landlord or the Landlord's Representative to produce to the tribunal no later than 5pm on 10 June 2020, the following:
 - 13.1. A written response by email to the Tenant's Representative's email of 4 May 2020, which was sent to the Landlord's Representative on 4 May 2020, in particular the statement that the problem with rats in the Property was persisting at that time.
 - 13.2. Any written response to the findings in the second Re-Inspection Report which was issued to the Landlord's Representative on 6 April and 1 May 2020.
 - 13.3. Any proof of follow up remedial action taken in relation to the rat problem in the Property, following the inspections said to have been undertaken by City Pest Solutions on 5, 7 and 15 February 2020.
 - 13.4. Any documentary proof to show compliance with the Repairing Standard Enforcement Order, order number 5, which requires the Landlord: "To obtain a report from Environmental Health or an independent contractor in relation to the rat infestation in the Property; to take any recommended steps in any said Report or otherwise ensure that there is no rat infestation in the Property."

14. Within the Direction it was stated that the tribunal will proceed to make a determination as to whether the Landlord has complied with the Repairing Standard Enforcement Order on or after 11 June 2020.
15. The Landlord and the Landlord's Representative have not complied with the terms of the Direction and no information or documentation of the kind specified has been provided.
16. The Landlord and the Landlord's Representative have not submitted any evidence to show that that the works specified in the RSEO. The Landlord and the Landlord's Representative have not requested a variation or revocation of the RSEO. No request has been made by the Landlord or the Landlord's Representative for an oral hearing. No written representations have been submitted by the Landlord or the Landlord's Representative in relation to compliance or otherwise with the RSEO.
17. The tribunal has permitted the Landlord and the Landlord's Representative in excess of the time previously stated to supply the required evidence relative to the outstanding works in relation to the rodent issue in the Property and they have not produced anything further to the tribunal.
18. The tribunal proceeded to determine the question of compliance or otherwise with the terms of the RSEO on the basis of the re-inspection reports and the written submissions and evidence submitted by parties.
19. The 2006 Act, Section 26 provides that:
 - “(1) 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 .*
 - (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.*
 - (3) The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—*
 - (a) unless the period within which the order requires the work to be completed has ended, or*
 - (b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—*
 - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
 - (ii) that the work required by the order is likely to endanger any person. ...”*

20. The tribunal is satisfied that the Landlord has not complied with the RSEO, in particular the fifth order, in that the Landlord and the Landlord's Representative have not obtained a report from Environmental Health or an independent contractor in relation to the rat infestation in the Property; have not taken any recommended steps in any said Report or otherwise ensured that there is no rat infestation in the Property.
21. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.
22. The tribunal also considered whether to make a Rent Relief Order ("RRO") in terms of Section 26(2)(b) of the 2006 Act. The Tenant and her representative have not returned the completed form to the tribunal in which the party is asked whether they wish the tribunal to make a RRO. The tribunal wishes to make further inquiries before deciding whether to make a RRO. The tribunal issued a Direction dated 13 July 2020 requiring both parties to provide specified information and to make any written submissions they wish in relation to the making of a RRO, in the time period specified. After the time period specified in the Direction has passed, the tribunal may proceed to determine whether to make a RRO on the basis of information available and written submissions lodged on or by that date; or may direct further inquiries and/or procedure in terms of the 2016 Act and the 2017 Rules.

Right of Appeal

- 23. A landlord or tenant 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.**

Effect of section 63

24. Where such an appeal is made, the effect of the decision and of the order 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.

Susanne L.M. Tanner

Signed

Susanne L. M. Tanner, Queen's Counsel Legal Member / Chairperson of the tribunal

Date 13 July 2020