

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 Section 26
("the 2006 Act")**

Chamber Ref: FTS/HPC/RT/21/1988

Title no: ANG32091

The Parties: -

**Dundee City Council, Private Sector Service Unit, 5 City Square, Dundee
DD1 3BA ("the Third Party Applicant")**

Ms Carla Sinclair, 3/2, 223 Hilltown, Dundee DD3 7AG ("the Tenant")

**Mr Graham Bradley, 34 Strips of Craigie Road, Dundee DD4 7QG ("the
Landlord")**

Tribunal Members

Graham Harding (Legal Member)

Sara Hesp (Ordinary Member)

Decision

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), unanimously determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 19 May 2022. The Tribunal further determined that notice of the failure be served on the Local Authority in which the house is situated and that it should make a Rent Relief Order.**

Background

- 2. Reference is made to the determination of the Tribunal dated 19 May 2022 which determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act in that it had failed to ensure that the property met the repairing standard. The Tribunal therefore imposed a RSEO. The works required by the RSEO were:-**
 - 1. To provide a current Gas Safety Certificate by a suitably qualified gas engineer dated after the date of this order.**

2. To repair or replace the living room windows so that they open and close and are in proper working order.

The Tribunal required the works be completed within a period of six weeks from the date of service of the RSEO.

3. On 9 August 2022 the Tribunal was scheduled to carry out a re-inspection of the property but was unable to gain access. Mr Young of the third party was present and advised he had been in contact with the Landlord who had also been unable to gain access to the property.
4. Further attempts to arrange a re-inspection were made but postponed due to it being not possible to ensure that access would be given and a hearing assigned to determine further procedure.

The Hearing

5. A hearing was held by teleconference on 13 February 2023. Mr Young from the Third Party Applicant was in attendance. Neither the Landlord nor the Tenant attended.
6. Mr Young advised the Tribunal that he had been in communication with the Landlord and that as far as he was aware no access had been given to the Landlord to carry out a Gas Safety check or to complete the outstanding works. Mr Young was not aware of the Landlord making any application to the Housing and Property Chamber for access. Mr Young advised the Tribunal that the number he had for the Tenant was no longer in use. He said that he had not written to her or tried to call on her at the property. As far as he was aware the Tenant was still living in the property. He considered it was important that the Landlord provide a gas safety report as it was over a year since the new gas boiler had been installed.

Reasons for Decision

7. The Landlord has completely failed to engage with the Tribunal throughout these proceedings despite being given several opportunities to do so. Whilst it is no doubt frustrating for the Landlord to have a tenant who is not co-operating in providing access (if that is indeed the case) there are procedures open to him in terms of Section 28A of the Housing (Scotland) Act 2006 to apply to the Housing and Property Chamber for assistance in obtaining access to the property. So far as the Tribunal is aware the Landlord has not made any such application.
8. As a result of failing to engage with the Tribunal and making no attempt to comply with the terms of the RSEO the Tribunal considers

that the Landlord has shown a blatant disregard for the Tribunal over many months.

Decision

9. The Tribunal therefore determines that the Landlord has failed to comply with the terms of the RSEO and given the serious nature of the failure given that there is a statutory requirement to carry out an annual gas safety check and taking account of the Landlord's total failure to engage with the Tribunal throughout the proceedings the Tribunal considers that it is appropriate to make a Rent Relief Order and to reduce the rent payable by the Tenant by the maximum amount of 90%. The Tribunal also determines that intimation of the failure to comply is given to Dundee City Council.
10. The decision of the Tribunal was unanimous.

Right of Appeal

1. **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.**
2. **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.**
3. **Please note that in terms of section 28(1) of the 2006 Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes a landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of section 28(5) of the 2006 Act.**

Signed: Graham Harding
Chairperson

Date: 21 February 2023