

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Statement of decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)**

**Housing (Scotland) Act 2006 (“the Act”) Section 26**

**Chamber Ref: FTS/HPC/RP/20/1988**

**Title number: ELN7306**

**Re: 16 Robertson Avenue, Prestonpans, EH32 9AL (“the property”)**

**The Parties:**

Miss Elaine Winters, 16 Robertson Avenue, Prestonpans, EH32 9AL (“the tenant”)

Ms Jurgita Friis-Jorgensen, 921-k Eatrada Municipal, U 537 Faro, 8600-210, Praia Da Lagos, Portugal; 6 Caraben Brae, Dolphinton, West Linton, EH46 7HF (“the landlord”)

Represented by Stuart Miller, Northwood, 13 Comely Bank Road, Edinburgh, EH4 1DR (“the landlord’s representative”)

**Tribunal Members:** - Simone Sweeney (Legal Chair) and Sara Hesp (Ordinary member)

**Decision**

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”) of 26<sup>th</sup> August 2021, determined that the landlord has failed to comply with the RSEO. Therefore the Tribunal serve notice on the local authority and determine to issue a Rent Relief order (“RRO”) in terms of section 27 of the Act.

**Background**

1. Reference is made to earlier procedure and the RSEO and Tribunal’s statement of decision of 26<sup>th</sup> August 2021.

2. The RSEO required the landlord to undertake the following works within 28 days of 26<sup>th</sup> August 2021:-

*“(i) instruct a reputable contractor to apply new flooring to the kitchen. (ii) complete any other work necessary to ensure that the flooring in the kitchen is in a reasonable state and proper working order. (iii) install satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”*

3. An inspection of the property was undertaken on 11<sup>th</sup> February 2022. A report of even date was produced by the Tribunal’s surveyor member. The report was intimated to parties by email. The terms of the report are incorporated herein, *brevitatis causa*.
4. The surveyor recorded that whilst new vinyl flooring had been laid within the kitchen, *“it is badly joined and ill-fitting; for example, it does not meet the external door threshold.”* Reference is made to photographs 2 and 3 of the report.
5. Also, the surveyor recorded that a carbon monoxide detector was positioned on top the fridge freezer within the kitchen. When tested, the detector was found to be in working order. Reference is made to photographs 4 and 5 of the report.
6. A plastic bracket was attached to the door frame which provided access to the area in which the boiler is situated. There was nothing within the bracket. Reference is made to photograph 6 of the report.
7. A hearing was arranged to take place at the telephone on Friday 13<sup>th</sup> May 2022 at 10am. Details of the hearing and how to join the telephone call were intimated to parties and their representative through email addresses provided by parties.

### **Hearing of Friday 13<sup>th</sup> May 2022**

8. In attendance for the landlord was Mr Miller, manager at Northwood Letting agents, Edinburgh. Neither the tenant nor her representative (Ms McFadzean from East Lothian Council) took part in the hearing. The Tribunal allowed an additional five minutes for the tenant or her representative to join the meeting but they failed to do so. The Tribunal’s clerk made a call to East Lothian Council on the telephone provided by the tenant’s representative. The call went unanswered. Satisfied that

intimation of the hearing had been intimated to the tenant by email, the Tribunal continued with the hearing in the absence of the tenant and her representative.

9. Mr Miller confirmed that he was in possession of a copy of the re-inspection report of 11<sup>th</sup> February 2022.
10. In response to the surveyor's finding that the flooring laid within the kitchen was, *"badly joined and ill-fitting; for example, it does not meet the external door threshold,"* Mr Miller confirmed his agreement that the flooring did not meet the threshold. Mr Miller conceded that the flooring of the kitchen was not in a reasonable state in its current condition. Mr Miller agreed that the works did not satisfy the RSEO at number (ii). He undertook to undertake further repairs and had instructions from the landlord to do so. His intention was to secure the current flooring where it is loose and to fit a threshold between the edge of the flooring and the external door frame. The landlord had no intention to replace the flooring as it would not be economical. Eviction proceedings are currently on-going as the landlord intends to sell the property in the future. It would not be economical for her to replace the flooring at this time. Mr Miller accepted that there must be no tripping hazards in the flooring. He undertook to have these additional works completed within seven days subject to access being provided to contractors by the tenant. Asked why these additional works had not been undertaken in advance of today's hearing given Mr Miller's concession that the repairs to the flooring did not satisfy the terms of the RSEO, no satisfactory explanation was provided.
11. Regarding the surveyor's findings' that the carbon monoxide detector was positioned on top of the fridge freezer, Mr Miller referred the Tribunal to the bracket attached to the wall shown in photograph 6 on the report. It was his position that contractors had fitted the carbon monoxide detector into this bracket. He was disappointed that the contractors had not taken contemporaneous photographs to show this. He alleged that the carbon monoxide detector had been removed from the bracket and placed on top of the fridge freezer by the tenant. Mr Miller submitted that he, personally, had required to re-position the carbon monoxide detector in the wall bracket when he had visited the tenancy in the past.

12. It was submitted that the letting agents undertake to carry out routine inspections of the property every three months. When asked when he had last visited the property, Mr Miller submitted that the last official inspection took place in March 2021. Routine inspections have not been required since March 2021 as the letting agent has attended the property for various reasons during this time.

### **Findings in Fact**

#### **The Tribunal finds the following facts:-**

13. That the landlord has undertaken repair works to the kitchen by laying vinyl flooring.
14. That the vinyl flooring applied is badly joined and ill fitting.
15. That the vinyl flooring applied does not meet the external door threshold.
16. That the kitchen flooring is not currently in a reasonable state and in proper working order.
17. That a carbon monoxide detector is in working order.
18. That the carbon monoxide detector is not attached to the wall or ceiling.
19. Section 26 of the Act provides:-

***“26. Effect of failure to comply with repairing standard enforcement order***

*(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.*

*(4) Where the First-tier Tribunal is prevented by reason only of subsection (3)(b) from deciding that a landlord has failed to comply with a repairing standard enforcement order, the First-tier Tribunal must serve notice on the local authority stating that it considers the landlord to be unable to comply with the repairing standard enforcement order."*

### **Reasons for decision**

20. On behalf of the landlord, Mr Miller conceded that the works undertaken to the kitchen flooring since issue of the RSEO failed to comply with the requirements of the RSEO. He admitted that to comply with the RSEO, the landlord must carry out further work. Mr Miller indicated that this will be undertaken in the next seven days subject to access being provided by the tenant.
21. The Tribunal is satisfied that the period of time within which the order requires the work to be done has ended.
22. On the basis of the submissions and concessions of Mr Miller, there is no evidence or suggestion that the landlord has failed to comply with the order because of a lack of necessary rights or that the work required by the order is likely to endanger a person as set out at section 26 (3) of the Act.
23. Notwithstanding the efforts made by the landlord to address the issues, the Tribunal remains satisfied that the kitchen flooring does not meet the repairing standard as it presents and that the landlord has failed to comply the terms of number (ii) of the RSEO.
24. Section 27(2) of the Act provides:-

### ***"27 Rent Relief Orders***

*(2) The First-tier Tribunal may make a rent relief order only where it has decided that a landlord has failed to comply with a repairing standard enforcement order which has effect in relation to the house concerned."*

25. The Tribunal, having decided that the landlord has failed to comply with the RSEO of 26<sup>th</sup> August 2021, makes a Rent Relief Order (“RRO”) reducing the current rental charge by fifty percent, in terms of section 27 (2) of the Act.
26. Two issues remained outstanding at the time of the re-inspection on 11<sup>th</sup> February 2022. The landlord had addressed only one of these issues (provision for giving warning of carbon monoxide). The issues with the kitchen floor continue to be a live issue. On the basis that the landlord has failed to address fifty percent of the work required, the Tribunal determine that fifty percent of the rent is not due until this work is addressed.

### **Decision**

27. In light of the finding that the kitchen flooring is not in a reasonable state and not in proper working order, the Tribunal determines that the landlord has failed to comply with number (ii) of the RSEO of 26<sup>th</sup> August 2021.
28. Having decided that the landlord has failed to comply with the RSEO of 26<sup>th</sup> August 2021, the Tribunal (i) serves notice on the East Lothian Council as required by section 26 (2) (a) of the Act and (ii) makes a Rent Relief Order should be issued in terms of section 26 (2) (b) of the Act.

### **Appeals**

29. In terms of section 46 of the Tribunals (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 within 30 days of the date the decision was sent to them.
30. 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

..... Legal Chair, at Glasgow on 9<sup>th</sup> June 2022

