

# 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) (hereinafter referred to as “the Tribunal”) under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)**

**Chamber Ref:** FTS/HPC/RP/22/0263

**Property Address:** Flat 4/2, 75 Port Dundas Road, Glasgow G4 0HF (“the property”)

**The Parties:** Mrs Abeer Alghamdi, formerly residing at Flat 4/2, 75 Port Dundas Road, Glasgow G4 0HF (“the applicant”)

Lowther Homes Ltd, 25 Cochrane Street, Glasgow G1 1HL (“the respondent”)

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

## **Tribunal Members:**

Mr Mark Thorley (Legal)  
Ms Carol Jones (Ordinary)

## **Decision:**

1. The tribunal determined that the landlord has failed to comply with the Repairing Standard Enforcement Order.
2. The tribunal’s decision was unanimous.

## **Background:**

Whereas on 10 June 2022 the tribunal determined that a repairing standard enforcement order be made and required the undernoted work to be undertaken by the landlord—

- (a) To fix an inner cover to the letterbox within the hall.

- (b) To fix a wall mounted carbon monoxide detector in the living room to be located at a distance between 1-3 metres from the boiler and above all door and window openings in terms of the current statutory guidance.
- (c) To ensure that the smoke detectors in the living room and hall and the heat detector in the kitchen are interlinked in terms of the current statutory guidance.
- (d) In the main bathroom off the hall to instruct a suitably qualified plumber to investigate the cause of the smell within the bathroom and any potential water leakage/damage, produce a report to the Tribunal and to make good any recommended repairs in respect of any findings of that investigation.
- (e) In the en-suite shower room in respect of the sewage smell to instruct a suitably qualified plumber to investigate the cause of the smell and the issue with the shower tray and the drain, produce a report to the Tribunal and to carry out any recommended work identified within the report.

The tribunal ordered that all the works specified in the RSEO must be carried out and completed within a period of six weeks from the date of service of the RSEO.

The tribunal had scheduled a re-inspection of the property for 5 October 2022. On arrival the tribunal members were unable to obtain access. A further re-inspection took place on 12 January 2023 when access was provided. A copy of the tribunal's re-inspection report is attached to the decision.

### **Findings in Fact**

As a result of the re-inspection the tribunal made the following findings in fact:-

- (a) The landlord has not carried out any repair works to the letterbox. It is in the same condition as when inspected by the tribunal on 23 May 2022 and the inner cover is still missing.
- (b) There are ceiling mounted smoke detectors in the hall and living room and a ceiling mounted heat detector in the open plan kitchen area. They were all tested at the inspection but were found not to be interlinked as required by current statutory guidance.
- (c) The landlord has not provided any evidence of an investigation or report by a suitably qualified plumber on the smell and/or the potential leaks to the main bathroom. There is no evidence of any repair work having been carried out since the tribunal inspected the property on 23 May 2022.
- (d) The tribunal has not been provided with any evidence of an investigation by a suitably qualified plumber of the cause of the smell in the en-suite shower room and the issue with the shower tray and the drain and the

tribunal has not received a report. There is no evidence of any repair work having been carried out since the tribunal inspected the property on 23 May 2022.

The landlord has re-positioned the wall mounted carbon monoxide detector in the living room and it's location now complies with the current statutory guidance.

Following the re-inspection the landlord provided the Tribunal with further information in an email sent on 16 January 2023. This email included an email from Graeme Hill, City Building Glasgow which stated that "my operatives attended the property and carried out a service and alarms are all interconnected". The landlord also attached a DFPM19C report dated 13 January 2023 confirming that the fire detection and fire alarm system has been inspected by a "competent person" and was found to be in a satisfactory condition for continued use.

### **Reasons for decision**

1. It was unclear as to why the majority of the works identified in the RSEO had not been undertaken but they had not.
2. As at the date of re-inspection the tribunal found that there was still a significant amount of works in relation to the RSEO that had not been undertaken.
3. In terms of Section 26(3)(b) of the Act the tribunal may not decide that a landlord has failed to comply with an RSEO if the 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 purpose of acquiring those rights, or
  - (ii) that the work required by the order is likely to endanger any person.
4. The landlord in this case has not argued either such matter.
5. Having considered all the evidence before it the tribunal is not satisfied the landlord has demonstrated his failure to comply with the Repairing Standard Enforcement Order occurred because he lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights in terms of Section 26(3)(b)(i) of the Act.

### **Decision**

The tribunal having made such enquiries as are necessary for the purpose of determining whether the landlord has complied with the RSEO, therefore determines that the landlord has failed to comply with the RSEO in terms of

Section 26(1) of the Act and that a notice of his failure should be served on the local authority in whose area the property is situated.

### **Rent Relief Order**

The tribunal considered whether a rent relief order should be made in terms of Section 27 of the Act. The tribunal did not determine that such an order could be made as the applicant has vacated the property and it has been re-let to new tenants.

### **Right of appeal**

A landlord or tenant or third party applicant aggrieved by the decision of the tribunal may apply 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 from the first tier tribunal. That party must seek permission to appeal in 30 days from the date the decision was sent to them. Where such an appeal is made, the effect of the decision will be treated as having effect from the date of which the appeal is abandoned or so determined.

**M Thorley**

**Signed:**

**Date:** 6<sup>th</sup> March 2013

**Chairman: M Thorley**