

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

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 having failed to comply with the Repairing Standard Enforcement Order ("RSEO") made by it and dated 14 February 2017, it should not vary or revoke the said RSEO and it should not vary or revoke the Rent Relief Order ("RRO") made by it and dated 22 January 2018.

This decision should be read in conjunction with:

Statement of Decision dated 14 February 2017, Repairing Standard Enforcement Order ("RSEO") dated 27 March 2017 and Statement of Decision in respect of Failure to Comply with the RSEO and Rent Relief Order ("RRO") both dated 22 January 2018.

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, thereafter, 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."*
3. Following Re-inspections of the Property, the Tribunal, by its Decision dated 22 January 2018, determined that the Landlord had failed to comply with the RSEO dated 27 March 2017 and imposed the RRO dated 22 January 2018.

Further Re-Inspection

4. Having been advised by the Tenant that the works required by the RSEO had been completed by the Landlord, a further Re-Inspection was fixed and was carried out by the Ordinary Member of the Tribunal on 12 December 2018 at the Property. The Tenant was present; however, the Landlord was not present. he Inspection.
5. The Ordinary Member of the Tribunal took photographs of the further Re-Inspection and prepared a Report which photographs and Report were issued to the Tenant and the Landlord. Neither party made representations.

Findings of Fact

6. From the further 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 still 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;
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 and
A gas safety certificate and an EICR have still not been provided to the Tenant or to the Tribunal.

7. Accordingly, the Tribunal found that the Landlord still fails to comply with the RSEO.

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

8. Having been satisfied that Landlord still fails to comply with the RSEO, the Tribunal had regard to its powers in terms of the Act, and, in particular, to Sections 25 and 26 of the Act which states that it is for the Tribunal to determine if it should vary or revoke the RSEO. As the majority of the works required by the RSEO have not been carried out and as there had been no indication from the Landlord that he proposes to carry out any of the works, the Tribunal had no difficulty in deciding that the Landlord has still failed to comply with the RSEO and so determined not to vary or revoke it.
9. With regard to the RRO, the Tribunal then had regard to its powers in terms of Section 27 of the Act which states that it is for the Tribunal to determine if it should vary or revoke the RRO. As the majority of the works required by the RSEO have not been carried out and as there had been no indication from the Landlord that he proposes to carry out any of the works, the Tribunal had no difficulty in determining not to vary or revoke the RRO.
10. The decision of the Tribunal is unanimous.
11. The Tribunal again 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

12. 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.
13. 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

Karen Moore, Chairperson

Date 18 March 2019