

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 26 (1)

**House at 1H Castle Keep Gardens, Stanecastle, Girdle Toll, Irvine, KA11 1AF
registered in the Land Register of Scotland under Title Number AYR59606
("the Property")**

Case Reference FTS/HPC/RP/21/0390

Mrs Fiona A-E Bevan, formerly residing at 1H Castle Keep Gardens, Stanecastle, Girdle Toll, Irvine, KA11 1AF ("The Tenant")

Mr Jaswinder Basra, 22 Macara Drive, Irvine, KA12 0LH ("The Landlord")

24 7 Property Letting, 28 John Finnie Street, Kilmarnock, KA1 1DD ("The Landlord's Representative.")

Tribunal Members – Martin McAllister, Solicitor (Legal Member) and Donald Wooley, Chartered Surveyor (Ordinary Member)

Decision

The Landlord has failed to comply with a repairing standard enforcement order dated 13th September 2021 and served on 15 September 2021

Background

1. The First-tier Tribunal for Scotland made a Repairing Standard Enforcement Order ('RSEO') under Section 24 (2) of the Housing (Scotland) Act 2006 ("the Act") on 13th September 2021 in respect of the Property in the following terms:

The Landlord is to repair or replace the windows in the Property, including the patio doors, to ensure that they are in efficient working order and free from draughts.

2. The RSEO required the Landlord to comply with the RSEO by 30th November 2022.

3. The members of the Tribunal inspected the Property on 16th December 2021 and a copy of the Re-inspection report dated 16th December 2021 is attached to this Decision.
4. On 5th January 2021, the Landlord's Representative submitted a written representations form to the Tribunal and confirmed that it accepted the terms of the Re-inspection report and that it was unaware of the reasons why work had not been done. The representations stated that, if works were not done by 7th January 2022, the letting agent would arrange for them to be done and deduct the cost from future rent received.
5. On 17th January 2022, the Landlord emailed the Tribunal and stated that work "needing done at the property with the window has all been done" and that the joiner had a video to show this.
6. On 25th January 2022, the Landlord's Representative emailed the Tribunal and stated that it had sent a contractor to complete the works "listed on the surveyor's report as the landlord had not actioned the works." The email gave a list of works done to various windows involving replacement of handles and lubrication. It stated that, in respect of the en suite window, the "mechanism still has a broken part." The email stated that the Landlord's Representative had deducted the costs of the works from the rent received for the property.

The Hearing

7. A Hearing was held by audio conference on 10th February 2022. On the morning of 10th February, a member of staff at the company representing the landlord emailed the Tribunal office and intimated that its manager would be unable to participate in the Hearing but that the Landlord would.
8. No appearance of the Landlord was made despite the tribunal waiting until 2.20pm.

Decision and Reasons

9. The Tribunal determined that the RSEO has **not been complied with**.
10. The Re-inspection report discloses that there were no draughts noticed around the French doors (patio doors) where repairs have been completed to the rubber seal.

11. The Re-inspection report states that there were significant works outstanding at the remaining windows and “specifically their handles, hinged operating systems and closing mechanisms.” The report goes on to state that the windows require replacement or substantial repair.
12. The members of the tribunal noted the representations which had been made by the Landlord’s Representative. It had been stated on 5th January that the repairs had not been done and in the email of 25th January 2022 that some repairs had been done but that there was still a part of the window mechanism which was broken.
13. The members of the tribunal noted the terms of the email from the Landlord dated 17th January 2022 which referred to replacement of a window but made no reference to repairs to other windows.
14. The tribunal noted that the representations/emails from the Landlord and his representative were not consistent. It may be that some repairs have been done after the re-inspection on 16th December but it was clear from the email from the Landlord’s Representative on 25th January 2022 that, even if that is the case, there is still a window where the mechanism is broken.
15. The tribunal relied on its re-inspection of 16th December 2021 and the fact that, at that date, the works required by the RSEO had not been completed despite the requirement that this be done by 30th November 2021.
16. As a consequence of the Landlord failing to comply with the RSEO, notice of the failure will be served on the local authority in terms of Section 26 (2) (a) of the Act.
17. The tribunal was obliged, in terms of Section 26 (2) (b) of the Act to decide whether it should make a rent relief order. It noted the terms of Section 27 (1) of the Act: “*A rent relief order is an order by the First-tier Tribunal which reduces the rent payable under the tenancy in question by such amount (not exceeding 90% of the rent which would, but for the order, be payable) as may be specified in the order.*” The tenancy in respect of the Tenant has been terminated and the Landlord re-let the Property prior to the RSEO being made. In the circumstances, as a consequence of the “*tenancy in question*” no longer being in existence, the tribunal determined that no rent relief order should be made.

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 from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

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.

M McAllister

Martin J. McAllister,
Solicitor, legal member of
Tribunal.
11th February 2022