

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 Sections 26, 27 & 28

Chamber Ref: FTS/HPC/RP/18/2606

Title no: ABN10974

**House at 46a Charlotte Street, Fraserburgh, Aberdeenshire, Ab43 9JE
("The Property")**

The Parties:-

**Miss Kimberley Ritchie, 46a Charlotte Street, Fraserburgh, Aberdeenshire, Ab43 9JE
("the Tenant")**

**Mrs Helen Buchan, 8 Greenbank Grove, Fraserburgh, Aberdeenshire, AB43 7HX
("the Landlord")**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51
2WA
("the Third Party Applicant")**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('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") in relation to the Property, determined that (i) the Landlord had failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. Reference is made to the determination of the tribunal dated 12 February 2019 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that she had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - (a) To repair or replace the kitchen window to ensure that the window opens, closes and locks correctly and is in a reasonable state of repair and in proper working order.

- (b) To repair or replace the two windows in the bathroom to ensure that the windows open, close and lock correctly and are in a reasonable state of repair and in proper working order.
- (c) To repair or replace the electrical socket in the first floor bedroom (being the socket situated behind the door and towards the floor) to ensure that it is in a reasonable state of repair and in proper working order.
- (d) To repair or replace the cupboard door in the hallway to ensure that it opens and closes correctly and is in a reasonable state of repair and in proper working order.
- (e) To repair or replace the loose light switch in the main hallway (being the light switch situated to the right of the cupboard immediately opposite the main entrance to the Property) to ensure that it is in a reasonable state of repair and in proper working order.
- (f) (i) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the electrical installations of the Property, and thereafter follow the recommendations of that report to ensure that the entire system is safe and in proper working order.
 (ii) On completion of the works referred to in paragraph (c), (e) and (f)(i) above to provide to the tribunal a copy of the EICR with no items marked as Category 1 or Category 2.
- (g) To engage a suitably qualified Gas Safe engineer to carry out a Landlord's inspection of the gas hob and oven and gas boiler located in the kitchen of the property and any other gas appliances within the property and to carry out any repairs identified by the engineer as being necessary to ensure the safety of the occupants and safe use of the gas installations and to exhibit a copy of the Gas Safe Certificate provided by the engineer intimating the safety of the installations
- (h) To repair or replace the smoke detector in the hallway on the first floor of the Property.
- (i) Repair or replace the exterior front door and frame to ensure that the door is wind and watertight, in a reasonable state of repair and in proper working order and to provide keys to the front door to the Tenant.
- (j) To carry out any and all making good and decoration associated with the foregoing works.

The RSEO gave the Landlord 4 months to carry out the works.

2. On 19 June 2019 the tribunal wrote to the Landlord intimating that an inspection of the Property would take place on 10 July 2019 at 10.00am to determine whether the works required by the RSEO had been satisfactorily completed.
3. By email dated 19 June 2019 the Landlord responded to the tribunal in the following terms:-

"There is no tenant living at 46a Charlotte Street, nor will there be, the property is empty and the crown court have an inhibition on it, my mortgage company and myself are in discussion of a repossession, I apparently can't hand over keys to them while there is an inhibition on the property.

I have no intention of carrying out any repairs/works on the property either and will not be available on 10th July for an inspection."

4. By email dated 25 June 2019 the tribunal sought clarification from the Landlord that she had not carried out any of the repairs required in terms of the RSEO.
5. By email dated 25 June the Landlord responded to the tribunal stating:-
"I have not carried out any of the repair requirements detailed in the RSEO."
6. The tribunal then considered what steps to take. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
7. The tribunal determined that the Landlord had failed to comply with the RSEO. By her own admission all works required by the Landlord in terms of the RSEO were outstanding. No works of any description whatsoever had been carried out. Accordingly the tribunal was obliged to serve notice of the failure on the local authority and resolved to do so.
8. The tribunal then decided whether or not to make an RRO. The Property is vacant. The tribunal therefore determined that it had no jurisdiction to make a rent relief order.
9. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord had offered no indication as to when she would complete the outstanding works. Indeed, from the communications received from the Landlord the tribunal formed the view that the Landlord had no intention of undertaking the works. Accordingly, in the circumstances, the tribunal was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

10. The tribunal determined that in terms of the Act the Landlord had failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution.
11. The decision of the tribunal was unanimous.

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.

Where/

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.

In witness whereof these presents type written on this and the preceding pages are executed by Gillian Buchanan, Solicitor, First-tier Tribunal for Scotland (Housing and Property Chamber), 3rd Floor, Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT, Chairperson of the tribunal at Dundee on 1 July 2019 before this witness:-

J Lynch

G Buchanan

____ Witness

Legal Member
& Chairperson

Jenni Lynch ____ name in full

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