

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 26 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Reference number: FTS/HPC/RT/20/0330

Re: Property at 70, Lochleven Road, Lochore, Lochgelly, Fife, KY5 8DA being the subjects registered in the Land Register for Scotland under Title Number FFE63837 (“the Property”)

The Parties:

Mr Tasleem Arshad, residing at Bank House, 22 Station Road, Lochgelly, Fife, KY5 9QW (“the Landlord”)

Tribunal Members

Karen Moore (Chairperson)

David Godfrey (Ordinary Member)

Decision

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 2 March 2021 affecting the Property

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that it cannot be satisfied and so determines that the Landlord has failed to comply and that for the reasons set out below.

Background

1. By application received on 3 February 2020 (“the Application”), Fife Council on behalf of the then tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) 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 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (c), 13(1) (e) 13(1) (f) 13(1) (g) and 13(1) (h) of the Act.

2. On 20 November 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and an Inspection and Hearing were fixed for 26 March 2020. The Application and Inspection and Hearing were cancelled due to the national restrictions imposed by the COVID-19 pandemic.
3. Fife Council intimated to the Tribunal that the then tenant had removed from the Property. By Minute dated 25 August 2020, the Tribunal continued the Application in terms of Schedule 2 Paragraph 7(3) of the Act.
4. Prior to the CMD, and in application of the Overriding Objective as set out in Rule 2 of the Rules, the Tribunal issued the following Direction in terms of Rule 16 of the Rules:-

“The Landlord is directed to submit:

- i) A current Gas Safety Certificate*
 - ii) A current Electrical Installation Condition Report (EICR) and Portable Appliance Testing (PAT) on appliances provided by the Landlord.*
 - iii) Evidence that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings*
 - iv) Evidence that a heat alarm is installed in the kitchen.*
 - v) Evidence that a carbon monoxide detector is installed where there is a fixed carbon-fuelled appliance (excluding an appliance used solely for cooking)*
 - vi) A current Energy Performance Certificate (EPC): The said documentation should be lodged in hard copy or by email attachment with the Chamber no later than close of business on 19 JANUARY 2021.”*
5. The CMD notification and the Direction were received and signed for by the Landlord on 5 January 2021.
 6. The Landlord did not comply with the Direction.

Case Management Discussions

7. Under normal circumstances, the Tribunal would carry out an Inspection and hold a Hearing to ascertain the condition of the Property. This was not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a CMD was arranged for 22 January 2021 by telephone conference call, in order to discuss further procedure in the case. The Landlord did not take part and was not represented. The Tribunal had regard to both the serious nature of the complaints as outlined in the Application and also to the consequences for the Landlord and adjourned to 24 February at 10.00 am.
8. The Tribunal issued a Direction the Tribunal made it clear to the Landlord that purpose of the Direction was to make a determination in respect of compliance with the Repairing Standard as set out in the Act. Further, the Tribunal drew the Landlord's attention to the terms of Part 1 at Chapter 4 of the Act which set out his

specific statutory duties, to the Scottish Government Statutory Guidance issued under the Section 13 of the Act and to the Scottish Government Advice Pack for Private Landlords and to Sections 28(1) and 28 (5) of the Act which states that a landlord who, without reasonable excuse, fails to comply with an RSEO and/or who lets a property subject to an RSEO commits a criminal offence. The further CMD notification and the further Direction were intimated to the Landlord. A reminder letter was received and signed for by the Landlord on 26 January 2021. The Landlord did not comply with the Direction.

9. The further CMD took place on 24 February 2021 at 10.00 by telephone conference call. The Landlord did not take part and was not represented. The Tribunal had regard to all of the information before it and considered that it had sufficient information to proceed with the CMD in the absence of the Landlord and did so. The Tribunal thereafter determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b), and made the following Repairing Standard Enforcement Order (“RSEO”) as required by Section 24 (1) of the Act :

*“The Landlord must on or before **Wednesday 7 April 2021**:-*

1. *Instruct an approved gas engineer to (i) to carry out a full inspection of the gas systems and appliances throughout the Property, the purpose of which inspection is to ensure that the gas systems and appliances in the Property are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure gas systems and appliances are fully functioning and meet current regulatory standards and (iii) thereafter to issue a complete and compliant Gas Safety Certificate in accordance with the Scottish Government statutory guidance on gas installations and appliances in private rented property and exhibit the Gas Safety Certificate to the Tribunal;*
2. *Instruct a SELECT, NAPIT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord’s appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) thereafter to issue a complete and compliant electrical installation condition report (“EICR”) and/or an Electrical Installation Certificate in accordance with the Scottish Government statutory guidance on electrical installations and appliances in private rented property and exhibit the EICR to the Tribunal. This should include testing and certification of all electrical appliances provided by the Landlord.*
3. *Provide photographic or documentary evidence to the Tribunal that interlinked mains-powered smoke alarms or tamper proof long-life lithium battery alarms are installed in (i) the room which is frequently used by the occupants for general daytime living purposes and (ii) every circulation space such as hallways or landings;*
4. *Provide photographic or documentary evidence to the Tribunal that a heat alarm is installed in the kitchen;*

5. *Provide photographic or documentary evidence to the Tribunal that a carbon monoxide detector is installed where there is a fixed carbon-fuelled appliance (excluding an appliance used solely for cooking);*
 6. *Provide photographic or documentary evidence to the Tribunal that the gas central heating timer is in good working order;*
 7. *Provide photographic or documentary evidence to the Tribunal that the air vent in the living room has been repaired or renewed;*
 8. *Provide photographic or documentary evidence to the Tribunal that the cracks in the ceilings and walls throughout the Property have been repaired;*
 9. *Provide photographic or documentary evidence to the Tribunal that the hole in the bathroom wall behind the bath panel has been repaired;*
 10. *Provide photographic or documentary evidence to the Tribunal that the windows throughout the Property are fully operable and in good repair;*
 11. *Provide photographic or documentary evidence to the Tribunal that the toilet is fully operable and in good repair;*
 12. *Provide photographic or documentary evidence to the Tribunal that the bath panel has been repaired or renewed;*
 13. *Provide photographic or documentary evidence to the Tribunal that the shower cubicle door has been replaced and is fully operable and in good repair;*
 14. *Provide photographic or documentary evidence to the Tribunal that the kitchen radiator has been repaired or renewed;*
 15. *Provide photographic or documentary evidence to the Tribunal that the down pipe has been replaced and*
 16. *Make good all décor damaged as a result of these works.”*
10. The Landlord has made no contact with the Tribunal and has not provided or submitted any of the photographic or documentary evidence required by the RSEO as at the date hereof.

Decision of the Tribunal

11. The Tribunal's decision is based on all of the information before it. The Tribunal had regard to the Landlord's disregard of the Tribunal's Directions and the Landlord's failure to provide or submit any of the photographic or documentary evidence required by the RSEO
12. The Tribunal had regard to Section 25 (1) of the Act which states: -“(1) *The first-tier tribunal which made a repairing standard enforcement order may, at any time*

(a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”

13. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The terms of the RSEO deal with health and safety. The Tribunal held the view that safeguarding any occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.
14. With regard to Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply. The Tribunal, being satisfied that the Landlord had had notification of the CMDs, the Directions and the RSEO, took the view that the Landlord was ignoring these to the extent that he had no intention of complying with the RSEO and so determined that there was no reason to vary the RSEO and allow further time for the Landlord to comply.
15. The Tribunal then had regard to Section 26 of the Act which states:-*“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.”* The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO without reasonable excuse. The Tribunal, having taken the view that the Landlord was ignoring the RSEO to the extent that he had no intention of complying with it, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.
16. The decision of the Tribunal is unanimous.

Appeal

17. 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.

Signed

K Moore

Karen Moore, Chairperson

20 April 2021