

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Determination: Housing (Scotland) Act 2006: Sections 26 and 27**

**Chamber Ref: FTS/HPC/RT/22/0284**

**IB Wardrop Street, Paisley, PA1 2JA registered in the Land Register of Scotland under Title Number REN42221 (“the Property”)**

**The Parties:-**

**Renfrewshire Council, Cotton House, Paisley, PA1 1BR (“the Third Party Applicant”)**

**Ms Tracey Russell, 1B Wardrop Street, Paisley, PA1 2JA (“the Tenant”)**

**Mr Ian Tennie, 63 Victoria Road, Paisley, PA2 9PT (“the Landlord”)**

**Tribunal Members:**

**Mr Martin McAllister, Solicitor (Legal Member) and Mr Donald Wooley, Chartered Surveyor (Ordinary Member) (“the tribunal”)**

**Decision**

**The tribunal determined:**

**(One) that the Landlord had failed to comply with a repairing standard enforcement order (RSEO) dated 29th April 2022 and that a notice of failure be served on the local authority (Section 26 of the Housing (Scotland) Act 2006;**

**(Two) that a rent relief order be made reducing the rent payable under the tenancy by 90% (Section 27 of the Housing (Scotland) Act 2006).**

**Background**

1. By application dated 1<sup>st</sup> February 2022, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties

imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act.

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the House is not wind and watertight and in all other respects reasonably fit for human habitation, that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of suspected fire and that the Property does not meet the tolerable standard. Specifically, the application states that the Landlord has failed to provide an electrical installation condition report (EICR), that there were no smoke/ heat detectors installed in the Property, the hot water tap in the kitchen is defective and does not allow an adequate flow of water, that the electric shower is defective and frequently trips the circuit breaker when in use, that there is pigeon waste in the loft space and there is a large hole in the ceiling of a bedroom.
3. On 21<sup>st</sup> February 2022, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.
4. On 29<sup>th</sup> March 2022, the Tribunal issued a Direction under Regulation 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") requiring the Landlord to produce an EICR (including PAT testing) and a copy of the tenancy agreement.
5. Neither the tenancy agreement nor the EICR were submitted in response to the said Direction.

#### Repairing Standard Enforcement Order

6. Following upon an inspection of the Property by the members on 21<sup>st</sup> April 2021 and a Hearing on 27<sup>th</sup> April 2022, a repairing standard enforcement order (RSEO) was made in the following terms:

The Landlord was required to:

- 6.1 Produce a current Electrical Installation Condition Report (EICR) for the Property and PAT testing certificates in respect of those electrical appliances provided by the landlord. The Reports require to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category.**

- 6.2 Install smoke detectors within the living room, hall and upper floor landing and a heat detector in the kitchen, ensuring that they are all interconnected, fully functional and meet the requirements contained within the Housing (Scotland) Acts 1987 and 2006, as subsequently amended by the Modification of the Repairing Standard Regulations 2019.**
- 6.3 Produce a report from a suitably qualified Gas Safe Registered engineer, supported by a valid and satisfactory gas safety certificate, confirming that the boiler, providing hot water to all relevant fittings in the property, is in proper working order and that there is an appropriate volume and supply of hot water to both the kitchen and bathroom. Any recommendations contained within the report regarding hot water supply issues to these areas should be addressed and repaired by an appropriate contractor.**
- 6.4 Instruct a suitably qualified contractor to repair and or renew the defective ceiling plaster within the second bedroom, removing all associated debris and pigeon droppings around and above the affected area and throughout the loft to a standard compliant with current health and safety requirements.**
- 6.5 Complete any necessary redecoration required within the property as a consequence of complying with the terms of the RSEO.**

**The Landlord was required to comply with the RSEO before 15<sup>th</sup> June 2022.**

7. The members of the tribunal arranged to reinspect the Property on 28<sup>th</sup> June 2022.

The Inspection on 28<sup>th</sup> June 2022

8. The Legal and Ordinary member arrived at the Property at 10.30 am. Mr Salisbury, Environmental Health Compliance Officer, of the Third Party Applicant was in attendance. No one was present to give access despite the members of the tribunal waiting until 10.45 am.
9. It was noted that the kitchen window was ajar that and it was possible to see the kitchen ceiling. There was no evidence of a heat detector having been installed.
10. A reinspection report prepared by the ordinary member is attached to this Decision.

## The Hearing on 28<sup>th</sup> June 2022

11. A Hearing was held by audio conference on 28<sup>th</sup> June 2022 at 2pm. Mr Salisbury participated. He said that he had emailed the Tenant to invite her to participate and he provided the tribunal with a copy of the response he had received from her. It stated that the Tenant had forgotten about the inspection which had been arranged for that morning and that, because of work commitments, she would be unable to participate in the Hearing. In response to Mr Salisbury's enquiry as to whether the Landlord had completed any of the work required by the RSEO, the Tenant had responded: *"I won't be able to attend but no he hasn't done a single thing or even contacted me."*

## Determination

12. The tribunal had regard to Section 26 (2) of the 2006 Act:

*Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must-*  
*(a) serve notice of the failure on the local authority, and*  
*(b) decide whether to make a rent relief order.*

13. The tribunal noted that, at no time, had the Landlord participated in the Tribunal process despite appropriate notifications having been served on him.
14. Non- production of the E.I.C.R and the gas safety certificate was evidence that the Landlord had not complied with that part of the RSEO. At the inspection earlier that day, the members of the tribunal had been able to ascertain that there was no heat detector in the kitchen. The tribunal noted the terms of the Tenant's email to Mr Salisbury and accepted that the other work required by the RSEO had not been done. The tribunal determined to serve notice of the failure to comply on the local authority.
15. The necessity to ensure that a property complies with the repairing standard in relation to matters surrounding gas and electrical safety and the detection of smoke and fire is important and a significant health and safety issue. The tribunal took this into account when exercising its discretion as to whether or not to make a rent relief order and to what percentage should be applied to the reduction of rent. The tribunal also considered it relevant that the bedroom with the hole in the ceiling is not able to be used by the Tenant.
16. The tribunal determined that it would be appropriate to make a rent relief order. The amount by which the rent due under the tenancy is reduced is a matter of discretion and the tribunal determined that a rent relief order of 90% be made to reflect the seriousness and significant health and safety considerations of the landlord's failure to comply with the RSEO. This reduces the rent payable under the tenancy by 90% of the rent which would, but for the order, be payable.

**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 J McAllister

Martin J. McAllister,  
Solicitor, legal member of  
Tribunal.  
29<sup>th</sup> June 2022

# Housing and Property Chamber First-tier Tribunal for Scotland



## First-Tier Tribunal for Scotland (Housing and Property Chamber) Re-inspection report



**Property** 1B, Wardrop Street, Paisley, PA1 1BR

**RefNo:** FTS/HPC/RT/22/0234

**Surveyor:** Donald Wooley MRICS

### **Previous inspection**

The subject property was previously inspected on 21 April 2022 by the First-tier Tribunal for Scotland (Housing Property Chamber). Following a subsequent hearing a Repairing Standard Enforcement Order (RSEO) was issued to the parties by both email and by post.

### **Access:**

A re-inspection of the subject property was arranged for Tuesday 28 June 2022 at 10.30 am. I arrived at the property at 10.20 am and met Mr. Martin McAllister, the legal member of the Tribunal. Also in attendance was Mr. Martin Salisbury representing Renfrewshire council, the third party applicant. Neither the landlord or a representative of the land lord attended.

Although the tenant remains in occupation, the property was unoccupied at the time of the re-inspection.

The Tribunal remained at the property until 10.45 before departing without securing internal access. The observations as detailed in this report are therefore based on an external inspection and any subsequent correspondence, or lack of correspondence, received by the Tribunal since the original date of inspection.

Weather conditions at the time of the inspection were wet and overcast.

### **Purpose of re-inspection**

The purpose of this re-inspection was to determine if the required works as detailed under the Repairing Standard Enforcement Order had been completed.

### **Work required under the Repairing Standard Enforcement Order (RSEO):**

1. Produce a current Electrical Installation Condition Report (EICR) for the Property and PAT testing certificates in respect of those electrical appliances provided by the landlord. The Reports require to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category.
2. Install smoke detectors within the living room, hall and upper floor landing and a heat detector in the kitchen, ensuring that they are all interconnected, fully functional and meet the requirements contained within the Housing (Scotland) Acts 1987 and 2006, as subsequently amended by the Modification of the Repairing Standard Regulations 2019.
3. Produce a report from a suitably qualified Gas Safe Registered engineer, supported by a valid and satisfactory gas safety certificate, confirming that the boiler, providing hot water to all relevant fittings in the property, is in proper working order and that there is an appropriate volume and supply of hot water to both the kitchen and bathroom. Any recommendations contained within the report regarding hot water supply issues to these areas should be addressed and repaired by an appropriate contractor.
4. Instruct a suitably qualified contractor to repair and or renew the defective ceiling plaster within the second bedroom, removing all associated debris and pigeon droppings around and above the affected area and throughout the loft to a standard compliant with current health and safety requirements.
5. Complete any necessary redecoration required within the property as a consequence of complying with the terms of the RSEO.

**Observations:**

1. No Electrical Installation Condition Report (EICR) for the Property or PAT testing certificates in respect of those electrical appliances provided by the landlord have been received by the Tribunal.
2. No “gas safety” report has been received by the Tribunal and neither have any reports from a suitably qualified Gas Safe Registered engineer in respect of the boiler or hot water supply.
3. Despite the lack of internal access at the time of the inspection, the kitchen and in particular the kitchen ceiling, was clearly visible through the window adjacent to the front entry door.



(a) Kitchen ceiling with no functioning heat detector 21 April 2022



(b) Kitchen ceiling with no visible functioning heat detector 28 June 2022





(c) Kitchen ceiling with no visible functioning heat detector 28 June 2022

4. As no internal access was obtained, the Tribunal were unable to visually inspect the defective ceiling plaster within the second bedroom in order to confirm if it had been repaired and all associated debris and pigeon droppings removed. The third party applicant stated that he would email the tenant, prior to the hearing, to confirm if the necessary repairs had been completed.

### **Outstanding Repairs and items in RSEO:**

The Tribunal has seen no evidence that an Electrical Installation Condition Report has been completed by a suitably qualified person or “competent person”, as defined by Scottish Government statutory guidelines and as specified under item 1 of the RSEO.

There is no visible evidence of a functional heat detector in the kitchen which is interconnected with smoke detectors suitably located within the property and in accordance with current Scottish Government guidelines. The Tribunal are satisfied that item 2 of the RSEO remains outstanding.

No satisfactory gas safety certificate has been produced nor have any subsequent reports on the boiler as detailed under item 3 of the RSEO and the Tribunal are satisfied that item remains outstanding.

I am currently unable to confirm that any of the items listed in the RSEO have been addressed.

**Comments:**

All of the items in the RSEO and in particular items 1-3, raise significant “Health and Safety” issues regarding occupation of the property. Item 4, which would also appear to remain outstanding, effectively renders one bedroom uninhabitable.

Donald Wooley MRICS  
Ordinary Member  
First-Tier Tribunal for Scotland  
28 June 2022