

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 26 (1)**

**Chamber Ref: FTS/HPC/RT/17/0118**

**Title no GLA199987**

**Flat 1-2, 33 Whitehaugh Road, Glasgow G53 7JQ ("The house")**

**The Parties:-**

**Mr Graham McBride, 34 Lothian Road, Clarkston, Glasgow G76 7ND (The Landlord)**

**Mr David Cardigan, Glasgow City Council-Development and Regeneration Services, Exchange House, 231 George Street, Glasgow G1 1RX ("third party applicant")**

**Ms Pamela Hannah, Flat 1-2 , 33 Whitehaugh Road, Glasgow G53 7JQ ("the Tenant")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") comprised:-**

**Judith Lea (Legal Member)**

**Andrew Murray (Ordinary Member)**

### **Background**

1. On 21 July 2017 the tribunal issued a determination which stated that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). On the same date the tribunal issued a Repairing Standard Enforcement order ("RSEO") in respect of the house. The RSEO required the Landlord to :-

- (a) Repair/replace the gas boiler to ensure it is in a reasonable state of repair and in proper working order and thereafter supply an up to date gas safety certificate.
- (b) Install a heat detector in the kitchen and an additional smoke detector in the living room all to be hard wired and interlinked with the existing smoke alarm in the hallway.
- (c) Install a carbon monoxide alarm in the kitchen fixed in accordance with current statutory guidance.
- (d) Repair/replace the kitchen floor vinyl, the toilet seats, the broken/cracked bathroom tiles and the broken wardrobe door to ensure they are in a reasonable state of repair and in proper working order.

The tribunal ordered that the works specified in the RSEO were to be carried out and completed within 6 weeks of service of the RSEO.

2. The Third Party Applicant advised that the Tenant left the house on around third June 2017. Notice of re inspection was sent to the landlord. The ordinary member of the Tribunal attempted to reinspect the house on but was unable to gain access. It appeared to the ordinary member that there was someone in the flat who was not answering the door. A number of further re inspections were arranged but were postponed as there was no contact from the landlord regarding access. On 20 December 2017 notice of reinspection and hearing set for 23 January 2018 was served on the landlord by sheriff officer advising that if access was not provided a warrant would be sought to exercise a right of entry. There was no response from the landlord.

On 23 November 2018 the tribunal attempted to re inspect the house but were unable to gain access. A hearing was held at Wellington House 134 -136 Wellington Street, Glasgow but no one attended.

3. The tribunal then issued a Notice in the undernoted terms to the Landlord.

“The time limit for completing the works specified in the Repairing Standard Enforcement Order (otherwise known as a RSEO) which relates to the above house expired some time ago and on 23 January 2018 the tribunal re-inspected the house externally. You will recall that sheriff officers served papers on you advising of the date and time of the re-inspection and hearing and the requirement on you to provide access to the house but such access was not provided for the re-inspection. The tribunal then held a hearing and you failed to attend. The tribunal will now consider whether or you have carried out the works and have complied with the RSEO. Part of the RSEO was that you produce an up to date Gas Safety Certificate and you have failed to do this. It is possible that the First-tier Tribunal will draw an inference from the failure to provide the up to date Gas Safety Certificate required in the RSEO that there has been a failure to repair/replace the gas boiler, install a heat detector and an additional smoke alarm interlinked, install a carbon monoxide alarm or repair the kitchen floor, toilet seat, broken/cracked bathroom tiles or bedroom wardrobe door which are also works detailed within the RSEO. If the Landlord disputes this inference, then evidence of

works to rectify these matters, for example in the form of photographs, electrical certificates or VAT receipts, must be provided to the First-tier Tribunal. If no such evidence is produced, the First-tier Tribunal is likely to make the inference stated.

The tribunal can consider a variation or revocation of the RSEO. Before making a decision on this issue, the tribunal has asked that you be given an opportunity to write to them to explain the current situation with the house and why you have failed to engage with the tribunal. If you disagree with the inference to be drawn you should include any details or other written evidence which you wish the tribunal to consider. You can use the attached form if you wish. You have the option to request an oral hearing before the tribunal. If no written request for a hearing is received by the tribunal, then it will be assumed that you wish the tribunal to make a decision on the written representations and you do not wish to request a hearing. If you wish to exercise this option, there is an attached form which you can use to let us know if you wish a hearing. You should return the hearing request form to us or let us know that you wish a hearing within 7 working days of the date of this letter. If any hearing is arranged, then you as landlord (or your representative) will be notified, and you are entitled to attend the hearing or be represented. Alternatively, the tribunal can make a decision based on the written evidence and comments submitted by you. If you wish to send in any written comments or evidence, then you should ensure that the First Tier Tribunal receive these no later than **28 February 2018**. If you are sending papers to the First Tier Tribunal by ordinary post or requesting a hearing, then it is best to check that the papers have been received.

The landlord and representative are reminded that the existence of a RSEO over a house means that the house cannot be re-let if it is vacant. It is also a criminal offence to fail to carry out the works detailed in the RSEO without reasonable excuse, and the tribunal will refer this matter to the Police for prosecution if they decide that the landlord has failed to comply with the RSEO. There is also a requirement on the tribunal to tell the local authority of any failure by a landlord to carry out works detailed in an RSEO and to register the RSEO in the Land Register.”

This Notice was served by Sherriff Officers on 8 February 2018 on the landlord’s father who advised that the Shaban Rehman had acted as letting agent for his son and that the tenant had not paid rent for 2 years and his son had not been attending to the house.

4. The tribunal takes the view that the Landlord has had ample time to comply with the RSEO and has failed to do so. He has failed to allow the tribunal access to the house and has failed to provide documentation asked for by the tribunal. He has also failed to provide a Gas Safety Certificate.

## **Decision**

5. The tribunal, having made such enquiries as it thinks fit for the purposes of determining whether the Landlord has complied with the RSEO in relation to the house, determined that the Landlord has failed to comply with the RSEO in terms of Section 26(1) of the Act and that a notice of the failure be served on the Local Authority for the area in which the house is situated.

6. The decision of the tribunal is unanimous.

## **Right of Appeal**

**In terms of Section 46 of the Tribunals (Scotland ) Act 2014 a landlord, tenant or third party applicant aggrieved by the decision of the tribunal 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.**

J Lea

Signed .....

Date ..... 19/3/18 .....

Legal Member