

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RT/17/0173

Re: Flat 0/1, 220 Langside Road, Glasgow G42 8XL (“the house”)

Land Register Title No: GLA188994

The Parties:-

Glasgow City Council – DRS Housing and Regeneration Services, Samaritan House, 3rd floor, 79 Coplaw Street, Glasgow G42 7JG (“the third-party applicant”)

Mr Stelian Radulescu and Lacrimioara Radulescu, residing at the house (“the tenants”) (non-participating parties)

Mr Saqib Deen, STH Properties, 727 Pollokshaws Road, Glasgow G41 2AA (“the landlord”)

Tribunal members: Sarah O'Neill (Chairing member), Alex Hewton (Ordinary member)

Decision

The tribunal determined that the landlord has failed to comply with the Repairing Standard Enforcement Order.

The tribunal's decision was unanimous.

Background

1. On 13 July 2017, the tribunal issued a determination that the landlord had failed to comply with his duties under Section 14(1) (b) of the Act. On the same date,

the tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the house.

2. The RSEO required the landlord to:

1. Provide either:

a) an up to date Electrical Installation Condition Report (EICR) in respect of the house by a suitably qualified and registered SELECT or NICEIC electrical contractor, or a member of NAPIT, or an electrician who can otherwise provide the necessary evidence of competence to carry out such a report, as required by the statutory guidance issued by Scottish Ministers on electrical safety standards. This certificate must show the date when the inspection was carried out and that all electrical installations, fixtures and fittings and all appliances have been checked and are working safely, and must show no category C1 or C2 observations.

Or

b) a Minor Electrical Works Installation Certificate by a suitably qualified and registered SELECT or NICEIC electrical contractor, or a member of NAPIT, or an electrician who can otherwise provide the necessary evidence of competence to carry out such a report, showing that the works required to address the category C2 observation mentioned in the EICR by James Adair Electrical Contractor in respect of the house dated 28 March 2017, have been carried out in order to bring it up to the repairing standard.

2. In the event that the report or certificate required at 1) above is provided by an electrician who is not a registered SELECT or NICEIC electrical contractor, or a member of NAPIT, a completed and signed checklist provided by that electrician certifying that s/he is competent to carry out an EICR, as set out in Annex A (pages 12-13) of the statutory guidance, together with the evidence of competence listed in the checklist to support this. Written confirmation should also be provided by the electrician that 1) the protective bonding to the Gas Installation has been checked and is working safely and 2) the earthing arrangement in the house is satisfactory.
3. Instruct a suitably qualified contractor to install a suitable carbon monoxide detector in the bedroom within which the boiler is situated, in order that the detector is installed in accordance with the statutory guidance.

The tribunal ordered that the works specified in the order must be carried out and completed within the period of 21 days from the date of service of the RSEO.

3. An email and supporting documents were received from the landlord on 8 August 2017. These included a completed and signed checklist by Gary O'Rourke of AA Electrical Services, the electrician who had carried out the EICR dated 2 June 2017 relating to the house, which had previously been provided by the landlord. This checklist certified that he was competent to carry out an EICR, as set out in Annex A (pages 12-13) of the statutory guidance issued by Scottish Ministers on electrical safety standards. It also included the statement: 'I certify that I can provide the above listed evidence of competence.'
4. Also received with the landlord's email were 1) an email from Mr O'Rourke, stating that the electrical bonding to gas and water at the house was satisfactory and 2) photographs which appeared to confirm that a carbon monoxide detector had been installed at the house.
5. On 6 September 2017, the tribunal issued a direction (no. 2) to the parties, requiring further clarification from the landlord with regard to point 2 of the RSEO. The tribunal noted that the landlord had provided an email from the electrician, but that: 1) the date of the email was not clear on the copy provided and 2) the email confirmed only that the electrical bonding was satisfactory, but did not refer to the earthing arrangement, as required at point 2 of the RSEO. The tribunal therefore required the landlord to provide the following information by 20 September 2017:
 - i. A further copy of the email from the electrician, clearly showing the date on which it was sent.
 - ii. Written confirmation from the electrician that the earthing arrangement in the house is satisfactory.
6. No response to the direction was received from the landlord. The tribunal caseworker again wrote to the landlord on behalf of the tribunal on 10 October 2017, giving him a further opportunity to provide evidence of compliance with item 2 of the RSEO by 25 October 2017. He did not provide this evidence by that date.
7. On 13 November 2017, the tribunal issued a further direction (no. 3) dated 10 November 2017. The tribunal noted that the landlord had provided evidence of compliance with items 1 and 3 of the RSEO, but had not provided evidence of compliance with item 2 of the RSEO, despite being given several opportunities to do so. The tribunal stated that it was therefore minded to issue a Failure to Comply decision, and invited the parties to confirm to the tribunal by 30 November 2017: a) whether they thought that a Rent Relief Order should be issued by the tribunal and b) if so, what percentage reduction they thought would be appropriate. No response was received from either party by that date.

Reasons for decision

8. The tribunal determines that the landlord has complied with items 1 and 3 of the RSEO, for the reasons outlined above.
9. The tribunal determines, however, that the landlord has not complied with item 2 of the RSEO. While it regrets that it must make a decision that the landlord has failed to comply with the RSEO, given the relatively minor nature of the issues which have not been complied with, he has been given several further opportunities to provide the information required, and has failed to do so.

Decision

10. The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlord has complied with the RSEO, therefore determines that the landlord has failed to comply with the RSEO in terms of section 26(1) of the Act, and that a notice of this failure should be served on the local authority in whose area the property is situated.

Rent relief order

11. The tribunal considered whether a Rent Relief Order should be made in terms of section 27 of the Act. It noted that no response to its direction had been received from either the third-party applicant or the landlord with regard to a) whether they thought that a Rent Relief Order should be issued by the tribunal and b) if so, what percentage reduction they thought would be appropriate. The tribunal had also written to the tenants, as interested parties, inviting them to give evidence to the tribunal on a) whether they thought that a Rent Relief Order should be issued by the tribunal and b) what percentage reduction they thought would be appropriate, in the event that a Rent Relief Order was granted. The letter, which had been translated into the tenants' first language, was sent on 13 November 2017, inviting them to respond by 30 November 2017. No response was received from them by that date.
12. The tribunal determined that such an order should be made. While it noted that the matters which the landlord had failed to comply with were relatively minor in nature, the landlord had nevertheless failed to comply with the RSEO without reasonable excuse.
13. The tribunal then considered the amount by which the rent payable under the tenancy should be reduced. In the absence of any representations from either party or from the tenants, the tribunal considered the impact which the failure was likely to have on the tenants. It noted that the failure by the landlord to provide confirmation from the electrician that the earthing arrangement in the

house is satisfactory is an issue of electrical safety. It also noted, however, that the EICR provided by the landlord was otherwise satisfactory. Having weighed up these considerations, the tribunal determined that an appropriate reduction would be to reduce the rent payable under the tenancy by **10 %** until the RSEO has been complied with. The Rent Relief Order will be effective from 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

Rights of Appeal

14. 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.

15. 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 will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

Signed... **S O'Neill**
Chairing member

Date... 13/12/17

Housing and Property Chamber

First-tier Tribunal for Scotland



Rent Relief Order

by the First-tier Tribunal for Scotland (Housing and Property Chamber)
(hereinafter referred to as "the tribunal")

Under Section 26(1) of the Housing (Scotland) Act 2006 ("the Act")

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Mr Stelian Radulescu and Lacrimioara Radulescu, residing at the house ("the tenants") (non-participating parties)

Mr Saqib Deen, STH Properties, 727 Pollokshaws Road, Glasgow G41 2AA ("the landlord")

The tribunal: – Sarah O'Neill (Chairing Member); Alex Hewton (Ordinary Member, Surveyor))

NOTICE TO Mr Saqib Deen ("the Landlord")

Whereas in terms of its decision dated 13 December 2017, the tribunal determined in terms of section 26(1) of the Housing (Scotland) Act 2006 ('the Act') that the landlord has failed to comply with the Repairing Standard Enforcement Order dated 13 July 2017 in relation to the house.

The tribunal determined to make a Rent Relief Order in terms of section 27 of the Act, reducing the rent payable in respect of the property by **10%**. The rent reduction will

take effect 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

Rights of Appeal

1. 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.
2. 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 Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Sarah Frances O'Neill, solicitor, Chairing Member of the First-tier Tribunal for Scotland (Housing and Property Chamber), at Glasgow on the thirteenth day of December Two Thousand and Seventeen before this witness:

G Cusick _____ witness **S O'Neill** _____ chairperson

GARY CUSICK. name in full

1 ATLANTIC QUAY Address

GLASGOW.

G2 8JB