

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**Notice of Failure to Comply with a Repairing Standard Enforcement Order:  
Housing (Scotland) Act 2006 ("the 2006 Act"), section 26**

**Chamber Ref: PRHP/RP/16/0194**

**Title Number: FFE11918**

**Property at 40 Findlay Street, Rosyth, KY11 2RF  
("The Property")**

**The Parties:-**

**Ms Sharen Tallis, formerly residing at the Property  
("the Tenant")**

**Mr Ehsanel Haq Anwar, 7 Queen Margaret Fauld, Dunfermline, KY12 0UY  
("the Landlord")**

**Tribunal Members:**

**Maurice O'Carroll (Legal Chair)  
David Lawrie (Ordinary Member)**

## **Decision**

The Tribunal, having carried out such enquiries as are appropriate, determined that the Landlord has **failed to comply** with the requirements of the Repairing Standard Enforcement Order ("RSEO") issued further to a decision of the Tribunal's predecessor, the Private Rented Housing Committee, dated 29 July 2016. It further determined that notice of that failure should be served on the Local Authority in whose area the Property is situated. The Tribunal further determined not to make a Rent Relief Order in this matter as the Tenant has since vacated the Property.

## **Background**

- 1, The Tribunal's statutory predecessor, the Private Rented Housing Committee issued a Repairing Standard Enforcement Order ("RSEO") relative to the Property on 29 July 2016 following an inspection and a decision that the Landlord had failed to comply with his duty under section 14(1)(b) of the 2006 Act. The RSEO required the Landlord to carry out the following works within 4 calendar months of the date of the RSEO.

1. To eliminate all water ingress into the Property, in particular in relation to bedrooms 1 and 2 as referred to in the relative decision, and repair all damp staining in the said bedrooms;
  2. Repair or replace all windows to the Property so as to ensure that they are draught proof;
  3. Repair or replace the front door to the Property so as to eliminate draughts;
  4. Provide the Tribunal with a copy of an up to date Electrical Installation Condition Report ("EICR") containing no C2 or C3 recommendations in respect of the House.
2. On 16 December 2016, the Tribunal varied the RSEO to permit further time to carry out the works required in terms thereof. The variation permitted the Landlord until 31 January 2017 to carry out the necessary works.
  3. A reinspection was carried out by the surveyor ordinary member of the Tribunal after the expiry of the renewed deadline. His report dated 8 February 2017 indicated that items 1 and 4 of the RSEO had not been completed. It is understood by the Tribunal the item 1 entails a communal repair requiring the co-operation of adjoining proprietors.
  4. On 16 February 2017, the Tribunal issued a Direction requiring the Landlord to state the steps which he had taken to comply with item 1 of the RSEO and to provide the EICR as required by item 4.
  5. On 2 March 2017, the Landlord provided an EICR report in satisfactory terms as required by the Direction. He also provided information regarding efforts that had been made by him to obtain co-operation in relation to communal works from neighbouring proprietors. He confirmed that as at the date of his response to the Direction, the works in relation to Item 1 of the RSEO had not been completed.

### **Reasons for decision**

6. In terms of section 28(1) of the Housing (Scotland) Act 2006, it is an offence not to comply with the terms of an RSEO. Section 28(2) allows a reasonable excuse defence where the landlord is unable to comply with the order because of a lack of necessary rights despite having taken reasonable steps for the purposes of acquiring those rights.
7. Following the Landlord's response of 2 March 2017, the Tribunal was not satisfied that the Landlord's failure to comply with item 1 of the RSEO fell within the exception provided for within section 28(2) of the 2006 Act. Section 14(1)(b) of the 2006 Act requires the Landlord to ensure that the house meets the repairing standard at all times during the tenancy. This applies irrespective of whether communal repairs require to be funded by more than one proprietor. The obligation is on the Landlord to ensure that the House complies with the Repairing Standard.

8. Section 14(4) requires the Landlord to complete the works necessary to bring the house up to the repairing standard within a reasonable time of being notified by the tenant that such work is required.
9. The original RSEO was issued following a decision of the Tribunal's predecessor dated 29 July 2016. Accordingly, more than seven months have passed since service of the RSEO without the necessary works having been carried out. The Tribunal is not minded to grant any further extension of time in order to permit such works to be completed.
10. In terms of section 28(4) of the 2006 Act, the Tribunal decided on 9 March 2017 that the Landlord has failed to comply with the terms of the RSEO, in particular in relation to item 1 thereof.
11. Therefore in terms of section 26(2)(a) of the Act, the Tribunal determined to send a notice of that failure to the Local Authority in whose area the House is situated.
12. The Tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. In this case, the Tenant has vacated the Property. Accordingly, the Tribunal decided not to make a Rent Relief Order.
13. As noted in the re-inspection report, access to the Property was provided by a new tenant, the Tenant who made the original application having vacated the Property during the time in which the RSEO was in force. This is an offence in terms of section 28(5) of the 2006 Act and will be the subject of separate proceedings.
14. The decision of the Tribunal was unanimous.

## **Appeal**

**A landlord, tenant or third party applicant 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 within 30 days of the date the decision was sent to them.**

Where such an appeal is made, the effect of the decision and the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed:

Date: 9 March 2017

**M O'Carroll**

Chairman