

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Sections 26, 27 & 28

Chamber Ref: FTS/HPC/RP/18/0012

**Property at 24 Newark Drive, Glasgow, G41 4PZ
("the Property")**

The Parties:-

**Dr Catherine Carroll and Mr David Ross, 24 Newark Drive, Glasgow, G41 4PZ
("the Former Tenants")**

**Prof Michael Fan, 45 Albert Drive, Glasgow, G41 5HJ
("the Landlord")**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that (i) the Landlord had failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. Reference is made to the determination of the tribunal dated 20 March 2018 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that he had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - (a) (i) Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report on the safety, suitability and effectiveness of the gas fired heating and hot water supply installation including boiler, all radiators, valves, programmers and thermostats.

(ii) Follow the recommendations of the report referred to in paragraph (a)(i) above to ensure that the entire system is safe and in proper working order.
 - (b) (i) Engage a suitably qualified engineer to carry out an inspection and report on the safety and effectiveness of the gas hob.

(ii) Follow the recommendations of the report referred to in paragraph (b)(i) above to ensure that the hob is safe and in proper working order.

- (c) On completion of the above works referred to in paragraphs (a) and (b) above provide to the tribunal a valid CP12 Gas Safety Certificate.
- (d) (i) Provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.
- (ii) Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property and including testing of the electric shower, and thereafter follow the recommendations of that report to ensure that the entire system is safe and in proper working order.
- (e) On completion of the works referred to in paragraph (d) above to provide to the tribunal a copy of the EICR.
- (f) Replace the damaged w.c suite (pedestal, cistern and seat) so that it is in proper working order.
- (g) Carry out any and all making good and decoration associated with the foregoing works.

The RSEO gave the Landlord 8 weeks to carry out the works.

2. By email dated 24 April 2018 the Landlord sent to the tribunal the following documents:-

- (a) A Landlord Gas Safety Record dated 13 April 2018 prepared by David Lavelle, 1st Call Gas & Electric Limited, 11 Kingscliffe Avenue, Glasgow, G44 4JW; and
- (b) An EICR dated 13 and 20 April 2018 prepared by David Lavelle, 1st Call Gas & Electric Limited, 11 Kingscliffe Avenue, Glasgow, G44 4JW.

The Landlord's email indicated that he would carry out the required works to the w.c. suite and would make good any decoration associated with the RSEO when the Property goes on the market for sale.

- 3. By emails dated 2, 10 and 16 May 2018 the Landlord purported the challenge the requirement to carry out works to the w.c suite and make good any decoration associated with the works required by the RSEO.
- 4. By email dated 6 June 2018 the Landlord purported to continue to challenge the terms of the RSEO and purported to seek a "revocation" thereof.
- 5. On 28 June 2018 the Ordinary (Surveyor) Member of the tribunal, Mr Andrew Taylor, re-inspected the Property on behalf of the tribunal. The Former Tenants were neither present nor represented. The Landlord was not present but was represented by Mr Ewan Blair and Mr Jamie McGregor of Corum Estate Agents.
- 6. The re-inspection revealed that the following works required in terms of the RSEO had been carried out.

- (a) A suitably qualified gas engineer had inspected and serviced the heating installation and hob and has provided a valid CP12 Gas Safety Certificate.
 - (b) A suitably qualified electrical contractor had tested the electrical installation and provided a valid Electrical Installation Condition Report.
 - (c) The w.c pedestal and set had been replaced and the cistern serviced and the suite was found to be in proper working order.
7. The re-inspection revealed the following works remained outstanding:-
- (a) To provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.
 - (b) Carry out any and all making good and decoration associated with the fitting of the detection and alarms.
8. By emails dated 23 and 25 July and 1 and 14 August 2018 the Landlord continued to challenge the terms of the RSEO and the works required in terms thereof.
9. The tribunal then considered what steps to take. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
10. The tribunal determined that the Landlord had failed to comply with the RSEO. Works required in terms of the RSEO were outstanding. In particular the Landlord had failed to provide and install a smoke detection and alarm equipment which gives rise to serious issues of health and safety.
- On 20 March 2018 the tribunal had previously issued a clear and fully reasoned decision for the RSEO. The challenges that the Landlord purports to repeatedly make are answered in the Decision, particularly in paragraph 15 thereof to which the Landlord should refer. The RSEO was not appealed.
- The RSEO has not been complied with. Accordingly the tribunal is obliged to serve notice of the failure on the local authority and resolved to do so.
11. The tribunal then decided whether or not to make an RRO. The Former Tenants vacated the Property in around February 2018. There are no Tenants currently in occupation of the Property. The tribunal therefore determined that it had no jurisdiction to make a rent relief order.
12. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord has consistently stated that he has no intention of completing the outstanding works. Accordingly, in the circumstances, the tribunal was of the view that

Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

13. The tribunal determined that in terms of the Act the Landlord had failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution.

14. The decision of the tribunal was unanimous.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

In witness whereof these presents type written on this and the preceding pages are executed by Gillian Buchanan, Solicitor, First-tier Tribunal for Scotland (Housing and Property Chamber), 3rd Floor, Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT, Chairperson of the tribunal at Dundee on 20 August 2018 before this witness:-

J Lynch

G Buchanan

Witness

(Jenni Lynch /

Legal Member & Chairperson

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