

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/18/0675

Title no: STG61542

**House at Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF
("The Property")**

The Parties:-

**Mr William Harland, Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF
("the Tenant")**

**Mr Archibald Tannock & Mrs Jacqueline Tannock, 48 Gartmore Road, Paisley, PA1 3NQ
("the Landlords")**

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 Landlords have complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that (i) the Landlords had failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the 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, (iii) a 90% Rent Relief Order should be made under Section 27 of the Act, and (iv) the matter should be reported to the Police for consideration for prosecution under Section 28 of the Act.

Background

1. Reference is made to the determination of the tribunal dated 5 June 2018 which determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that they 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 boiler.
 - (ii) Follow the recommendations of the report referred to in paragraph (a)(i) above to ensure that the boiler is safe and in proper working order.
 - (iii) To produce to the tribunal a valid Gas Safety Certificate.
- (b) (i) To repair or replace the ceiling light fitting in the hall, the spotlights in the unused

bedroom accessed from the utility room, the extractor fan and the ceiling spotlights in the bathroom, and to make safe the cabling serving the former wall lights located in the lounge.

- (ii) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the electrical installations of the Property, and thereafter follow the recommendations of that report to ensure that the entire system is safe and in proper working order.
- (iii) On completion of the works referred to in paragraph (b)(i) and (ii) above to provide to the tribunal a copy of the EICR.
- (c) To carry out any and all making good and decoration associated with the foregoing works.
- (d) To instruct a reputable contractor to carry out an investigation of and prepare a report on the septic tank and all associated underground pipework, to identify the reasons for the septic tank not operating correctly and to repair or replace the septic tank and any associated underground pipework to ensure the septic tank and the associated underground pipework is in a reasonable state of repair and in proper working order and to make safe the hole in the lawn to the rear of and make good any other damage caused to the Property.

The RSEO gave the Landlord 4 weeks to carry out the works.

2. On 7 August 2018 the Ordinary (Surveyor) Member of the tribunal, Mr Nick Allan re-inspected the Property on behalf of the tribunal. The Tenant was present along with his wife, Mrs Catherine Harland. The Landlords were neither present nor represented.
3. The re-inspection revealed that the following works required in terms of the RSEO had been carried out.
 - (a) The ceiling light fitting in the hall had been replaced. However, when switched on the light caused the RCD unit on the switchboard to trip off all power within the Property.
 - (b) The tenant confirmed the spotlights in the unused bedroom accessed from the utility room were now in working order.
 - (c) The extractor fan and the ceiling spotlights in the bathroom have been replaced and are now in working order.
 - (d) The exposed cabling previously serving the former wall lights located in the lounge has been removed.
4. The re-inspection revealed the following works remained outstanding:-
 - (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 boiler.
 - (ii) Follow the recommendations of the report referred to in paragraph (a)(i) above to ensure that the boiler is safe and in proper working order.

(iii) To produce to the tribunal a valid Gas Safety Certificate.

- (b) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the electrical installations of the Property, and thereafter follow the recommendations of that report to ensure that the entire system is safe and in proper working order and on completion of the works referred to provide to the tribunal a copy of the EICR.
 - (c) To carry out any and all making good and decoration associated with the works required in terms of the RSEO.
 - (d) To instruct a reputable contractor to carry out an investigation of and prepare a report on the septic tank and all associated underground pipework, to identify the reasons for the septic tank not operating correctly and to repair or replace the septic tank and any associated underground pipework to ensure the septic tank and the associated underground pipework is in a reasonable state of repair and in proper working order and to make safe the hole in the lawn to the rear of and make good any other damage caused to the Property.
5. 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").
 6. The tribunal determined that the Landlords had failed to comply with the RSEO. Works required in terms of the RSEO were outstanding. In particular the Landlords had failed to instruct suitably qualified contractors to undertake the necessary checks and associated works required to issue and exhibit to the tribunal the required gas and electrical certificates and had failed to take any steps to address the issues relative to the septic tank, all of which give rise to serious issues of health and safety.

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.

7. The tribunal then decided whether or not to make a Rent Relief Order ("RRO") under Section 27 of the Act. The tribunal had no explanation from the Landlords as to why the outstanding works required in terms of the RSEO had not been undertaken. The tribunal determined that the outstanding works are significant and involve the Tenant's safety. The Landlords had continued to collect rent in respect of the Property.

The tribunal was of the view that a 90% RRO was appropriate. The Tenant continues to endure serious health and safety risks. The Landlords had not shown any intention to address the outstanding works despite having had considerable opportunity to do so and had not engaged with the tribunal at all. Accordingly the tribunal was satisfied that a 90% RRO was the appropriate measure to take.

8. 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 Landlords had offered no excuse as to their failure to complete the outstanding works nor any indication that they would complete the outstanding works.

The Landlords had continued to collect rent but had failed to maintain the Property to the appropriate standard. The outstanding works are significant and put the Tenant at risk. 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

9. The tribunal determined that in terms of the Act the Landlords 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. The tribunal also made rent relief order.
10. 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.

Date: 20 December 2018

G Buchanan

Signed:
Legal Member & Chairperson

