

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 26 of the Housing (Scotland) Act 2006

Chamber Ref : PRHP/RP/15/0114

Parties: Deepkamal Kaur, having an address at 215 Glencoats Drive, Paisley PA3 1RR ("the Landlord").

Property: 215 Glencoats Drive, Paisley PA3 1RR registered in the Land Register for Scotland under Title Number REN77970 ("the Property")

Tribunal Members: Karen Moore (Legal Member and Chairperson)
Kingsley Bruce (Ordinary Member)

Decision

The Tribunal determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order made by the Tribunal (then the Private Rented Housing Committee) dated 16 June 2015 and varied by Orders dated 11 October 2016 and 26 July 2017 in relation to the Property.

This decision should be read in conjunction with:

Statement of Decision and Repairing Standard Enforcement Order dated 16 June 2015;

Statement of Decision and Variation of Repairing Standard Enforcement Order dated 9 October 2015;

Statement of Decision and Variation of Repairing Standard Enforcement Order dated 11 October 2016;

Statement of Decision and Variation of Repairing Standard Enforcement Order dated 26 July 2017 and;

Statement of Decision and determination of Failure to Comply with Repairing Standard Enforcement Order dated 3 May 2018

Factual Background

1. On 31 March 2015, Allison McGill, then residing at the Property and, at that time, the tenant of the Property, lodged an application under Section 22 of the Housing (Scotland) Act 2006 ("the Act") against Victoria Carol Ronaldson or McEnroe or Taff, the Landlord at the date of the application.

2. On 16 June 2015, the Private Rented Housing Committee, now the First-tier Tribunal for Scotland (Housing and Property Chamber), and hereinafter referred to as “the Tribunal”, issued a determination that Mrs Taff had failed to comply with the duty imposed on her by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) and Section 13(1)(d) of the Act and on the same date, issued a Repairing Standard Enforcement Order (RSEO) as follows:-

“The Landlord must on or before 24 July 2015:-

- 1. (a) Instruct a full inspection of the boiler and hot water installation by a suitably qualified gas engineer and (b) complete the resultant repairs or replacement, if necessary, to ensure that there is domestic hot water throughout the Property and ensuring that there is an even, effective flow of water through heating radiators;*
- 2. (a) Instruct an inspection by a suitably qualified electrician of both (i) the electrical installation in the Property and (ii) the adequacy of provision of fire and smoke detection in the Property and (b) carry out such works as are found necessary as a result of the inspection and*
- 3. (a) Instruct an inspection by a suitably qualified roofing contractor of the lead cover flashing at the front porch of the Property and (b) carry out such works as are found necessary as a result of the inspection.”*

Re-Inspections

3. Following Re-inspections of the Property, the Tribunal varied and further varied the RSEO and allowed further time, until 21 January 2018, for the works required by the RSEO to be carried out. Thereafter, a Re-inspection was fixed for 31 January 2018 on which date the Ordinary Member of the Tribunal could not gain access to the Property, albeit there appeared to be occupants in the Property at that time. Although, the works carried out in terms of item 3 of the PFEO were evident from a visual inspection of the outside of the Property, no evidence that the works required in terms of items 1 and 2 of the RSEO were submitted to the Tribunal. Accordingly, the Tribunal could not be satisfied that the RSEO had been complied with and so made a determination of failure to comply.
4. The Ordinary Member re-inspected the Property a further time on 11 June 2018 at which time he gained access and noted that the only remaining item requiring to be attended to was the inspection by a suitably qualified electrical engineer in respect of the electrical installation and fire and smoke detectors. Ordinary Member's re-inspection Report was issued to the Landlord who replied by email on 21 and 24 August 2018 that the flashing work had been carried out and a new boiler had been installed and on 5 September 2018 that an electrician had been instructed.

Matter for determination by the Tribunal

5. Having been satisfied that the works required by the RSEO as varied and as further varied had not been carried out fully, the matter before the Tribunal was how to proceed further.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

6. The Tribunal firstly had regard to Section 25 (1) of the Act which states:-

“(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”

7. With regard to Section 25(1)(a), the Tribunal again gave consideration to the history of the case and in particular, gave weight to the fact that, in spite of previous variations of the RSEO to allow further time for the works to be carried out, the RSEO still had not been complied with in full. The Tribunal took the view that, on the balance of probability, the Landlord having had extended time to comply with the RSEO, and in spite of the Landlord's recent emails, the Tribunal had little confidence that the Landlord would comply fully with the RSEO. Accordingly, the Tribunal determined not to vary the RSEO to allow further time to comply.
8. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal, again, had regard to the history of the case and acknowledged that the Landlord had indicated that she resided in the Property and did not intend to lease it. From the Re-inspection on 31 January 2018 and again on 11 June 2018, it was clear to the Tribunal that the Property is occupied but the Tribunal could not be certain if the Property is tenanted or occupied by the Landlord herself. As the RSEO at item 2, *“(a) Instruct an inspection by a suitably qualified electrician of both (i) the electrical installation in the Property and (ii) the adequacy of provision of fire and smoke detection in the Property and (b) carry out such works as are found necessary as a result of the inspection.”*, deals with the health and safety of the occupants of the Property, which is of paramount importance, the Tribunal was not of a mind to revoke the RSEO.
9. There being no evidence of a current tenant in the Property, the Tribunal did not require to consider the terms of Section 27 of the Act in respect of a rent relief order.
10. The decision of the Tribunal is unanimous.
11. The Tribunal draws the Landlord's attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence and to Section 28(5) of the Act which states that

it is an offence for a landlord to enter into a tenancy or occupancy arrangement in relation to a house which is subject to a repairing standard enforcement order.

Review of tribunal's decision

12. 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.

K Moore

Signed

Karen Moore, Chairperson

Date 14 September 2018