

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being the statutory successor to the Private Rented Housing Committee in terms of the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (SSI 2016/337).

Statement of facts and reasons for a decision that there has been a failure by the landlord to comply with the terms of a Repairing Standard Enforcement Order under section 26 (1) of the Housing (Scotland) Act 2006 (“the Act”).

Chamber Ref: PRHP/RP/16/0050

Property:

Flat 3/1, 55 Broomlands Street, Paisley, PA1 2NQ (“the property”)

Parties:

Miss Liene Visokiha, Flat 3/1, 55 Broomlands Street, Paisley, PA1 2NQ (“the tenant”)

Robert and Joy Saunderson, c/o Castle Residential Scotland Limited, 63 Causeyside Street, Paisley, PA1 1YT (“the landlords”)

Title Number: REN 1591

Tribunal Members: Simone Sweeney (chairing legal member) Andrew Taylor (surveyor member)

Decision:

1. The Tribunal determines that the works required of the Repairing Standard Enforcement Order (“RSEO”) of 29th April 2016 and varied on 2nd February and 15th November 2017 remain outstanding. The Tribunal determines that the landlords have failed to comply with the terms of the RSEO.
2. The Tribunal determines that the RSEO as varied will not be revoked and will remain in place.
3. The Tribunal determines that notice of the landlords’ failure to comply with the terms of the RSEO as varied will be intimated to the local authority.
4. The Tribunal determines that no rent relief order will be issued in terms of section 27 (2) of the Act.
5. The decision of the Tribunal is unanimous.

Background

6. The tribunal refers to the terms of the RSEO and determination of 29th April 2016 and the decisions of 2nd February and 15th November 2017 varying the terms of the RSEO.
7. The varied RSEO required the landlords to complete the following works at the property:
 - (i) ***To carry out such repairs or replacements as are required to ensure that the roof of the house is wind and watertight;***
 - (ii) ***To carry out such repairs or replacements to eradicate all staining and water damage and mould growth on all affected walls and to the ceiling of the bedroom;***
 - (iii) ***To carry out all ancillary works necessitated by the above works to and make good all decoration.***
8. The order of variation of 2nd February 2017 provided additional time to the landlords to complete the works. The final date for completion was extended to 10th March 2017.

9. In November 2017, this time period was extended for a further 6 months by the Tribunal. Reference is made to the terms of the Tribunal's determination of 15th November 2017 which sets out the reasoning for the further extension.

10. A re-inspection of the property was undertaken by the surveyor on 22nd June 2018. A copy of the surveyor's report of his findings dated, 26th June 2018, is attached.

11. No access was gained to the property. The Tribunal is satisfied that notice of the re-inspection date was intimated to the landlords in writing on 29th May 2018 by the Tribunal administration.

12. A copy of the surveyor's re-inspection report was intimated to the landlords by first class recorded delivery post. The Tribunal administration had confirmation from a 'Track and Trace' investigation that the report was received by the landlords.

13. A copy of the surveyor's re-inspection report was also intimated to the landlords through their solicitor, R. S. Vaughan and co.

14. By letter of 27th June 2018 the landlords' solicitor advised that he was no longer acting for the landlords. The letter provided,

“Please note that we no longer act for Robert Sanderson in respect of this matter. Our communications to him have not resulted in any instructions. We confirm that we did forward to him your letter of 29 May and all your previous correspondence in this matter.”

15. No response was received from the landlords to the report. In the absence of anything to suggest the contrary, the Tribunal has no evidence that the works required of the RSEO, as varied, have been completed.

Statutory provisions

16. Section 26 (2) of the Act provides that where a decision has been reached that the terms of the RSEO have not been met then it is a requirement of the Tribunal to:-

(a) serve notice of the failure on the local authority, and

(b) decide whether to make a rent relief order.

17. Section 26 (3) provides that the Tribunal may take the decision that there has not been a failure on the part of the landlord to comply with the terms of the RSEO if (i) the period within which the work is to be completed is not yet at an end or (ii) the landlord has been unable to comply with the order because of, *“a lack of necessary rights”*.

Reasons for decision

18. The Tribunal is satisfied that previous re-inspection reports show that the landlords have not completed the works required by the RSEO.

19. The landlords have never disputed this position and there is a positive admission within the email of 10th May 2017 from the letting agents that the works had not been completed at that time.

20. The Tribunal is satisfied that the landlords received intimation of the re-inspection of 22nd June and received a copy of the surveyor's report of 26th June.

21. There has been no communication from the landlords since the RSEO was varied on 15th November 2017 to indicate that the works had been completed or were in contemplation.

22. Previously the landlords have relied on the role of the factor, the property being vacant and there being no intention on the part of the landlords to let the property to tenants at this time. Reference is made to the terms of the statement of reasons of 2nd February 2017. The landlords have been reminded of their responsibilities to satisfy the terms of the RSEO and that it is not reasonable for them to rely upon any acts or omissions on the part of the factors or others to excuse their failure to carry out the necessary works.
23. The date for completion of the works was May 2018. The period within which the work is to be completed is at an end. There is no evidence before the Tribunal which suggests that there has been any change to the state of the property.
24. The Tribunal has not received any submissions from the landlords to suggest their failure to comply with the terms of the RSEO are due to anything which might be considered a lack of necessary rights in terms of section 26 (3).
25. Section 27 of the Act permits a rent relief order to be issued should a decision be taken that there has been a failure on the part of the landlords to comply with the RSEO. Given that the property is currently untenanted it continues to be the view of the Tribunal that there is no requirement for a rent relief order to be issued at this time.

Appeal provisions

26. 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.

27. 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.

S Sweeney

Chairing legal member of the Tribunal, 4th September 2018.