

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/20/0347

Property at Flat 3/2, 3 Caledonia Street, Paisley, PA3 2JG
("The House")

The Parties:-

Mr Jiri Ondo, Mrs Zuzana Ondora ("the former Tenants")

Mr Ian Tennie, 63 Victoria Road, Paisley, PA2 9PT ("the Landlord")

Renfrewshire Council, Renfrewshire House, Cotton Street, Paisley, PA1 1JD ("the Third Party Applicant")

The Tribunal comprised:-

Mrs Ruth O'Hare - Legal Member
Mr Mike Links - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 4 February 2022. The Tribunal further determined that notice of the failure be served on the Local Authority in which the house is situated.

Background

1. Reference is made to the decision of the Tribunal dated 4 February 2022 which determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Tribunal therefore made a Repairing Standard Enforcement Order requiring the Landlord to undertake the following works:-
 - (i) To produce a valid and up to date Gas Safety certificate in respect of the property as required by the Gas Safety (Installation and Use) Regulations 1998 confirming that the property meets the requirements of those regulations;

- (ii) To produce a report from a registered Gas Safe engineer confirming that the gas boiler within the property has been inspected within the last three months and that the said boiler is, in the professional opinion of the engineer, safe and fit to use and complies with the appropriate Gas Safety regulations;
- (iii) To produce a valid and up to date electrical inspection condition report (EICR) in respect of the property as required by sections 19A and 19B of the Housing (Scotland) Act 2006; and
- (iv) To provide evidence showing the installation of smoke detectors, heat detectors and carbon monoxide detectors within the property in compliance with the requirements set out in the Housing (Scotland) Act 2006.

The First-tier Tribunal ordered that the actions specified in the order be completed within four weeks of the date of service of the order on the Landlord.

2. A re-inspection of the property was scheduled for 13th May 2022. On 26 April 2022 the Tribunal received, via email, a request for postponement from the Landlord, advising that he would be out of the country on that date. No further details were provided in support of this request. On 29 April 2022 the Tribunal responded to the Landlord requesting that he provide the following information to allow Members to consider his request:-

- (i) Confirmation as to whether a representative could arrange access for the reinspection in his absence.
- (ii) Supporting evidence to confirm he was out of the country, for example travel bookings or flight confirmations;
- (iii) Confirmation of his expected return date; and
- (iv) An explanation as to why he had failed to comply with the terms of the Repairing Standard Enforcement Order.

The Landlord was requested to provide said information no later than Tuesday 3rd May. He was further advised that, in the event of the Tribunal refusing the postponement request and if access could not be gained on 13th May, the Tribunal could proceed to make a decision without further notice, which could include a determination that he had failed to comply with the Repairing Standard Enforcement Order.

3. The Tribunal received no further correspondence from the Landlord. On 12th May 2022 the reinspection was cancelled, on the basis that access to the property could not be confirmed and the relevant coronavirus safety checks undertaken. The Landlord and the Third Party Applicant were advised of the cancellation.

Reasons for Decision

4. The Tribunal considered it had sufficient information to make a determination and it did not require to hold a hearing in the matter. It was clear from the history of this application as narrated in the Tribunal's decision of 4 February 2022, which evidenced an ongoing lack of cooperation and engagement from the Landlord, that he had no intention of fully participating in the proceedings.
5. The lack of both a Gas Safety Certificate ("GSC") and an Electrical Installation Condition Report ("EICR") gave significant cause for concern, as did the absence of evidence of smoke and carbon monoxide detectors within the property. The Landlord's failure to address these issues highlighted a clear disregard of matters that are crucial to the health and safety of persons occupying the property. The importance of the GSC and EICR for letted properties is reflected in the statutory duties which are incumbent on landlords to produce such documents and ensure they are kept up to date. Accordingly it was clear that by his failure to provide the documentation, the Landlord was in breach not only of his duties under the Repairing Standard but also his duties under Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 and section 19 of the Housing (Scotland) Act 2006.
6. No mitigation had been put forward for the Landlord's failure to address what he was required to do under the terms of the Repairing Standard Enforcement Order. He had been given the opportunity to make representations in this regard, in terms of the request for information that was sent to him by the Tribunal on 29 April 2022. The Tribunal could therefore reasonably conclude that he simply had no intention of complying.
7. The Tribunal was therefore satisfied that there was no justification for a variation of the order under section 25(3) of the Act. The Tribunal further concluded that in view of the Landlord's failure to comply with the order, notification should be given to the Local Authority in terms of section 26 of the Act, particularly given the concerns the Tribunal had regarding the Landlord's failure to comply with key legal duties.
8. The Tribunal thereafter had regard to section 27 of the Act and whether it should make a Rent Relief Order. The Tribunal was conscious that whilst the Repairing Standard Enforcement Order remained in place the Landlord would be prevented from reletting the property, it being an offence to do so. Accordingly, on the basis that the property would remain unoccupied until such time as the Repairing Standard Enforcement Order was complied with the Tribunal concluded that there was no need to make a Rent Relief Order at this time.
9. The decision of the Tribunal was unanimous.

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 to appeal 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.

R O'Hare

Signed

Ruth O'Hare
Chairperson

Date – 8 July 2022