

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Notice of Failure to Comply with a Repairing Standard Enforcement Order:
Housing (Scotland) Act 2006 ("the 2006 Act"), section 26

Chamber Ref: FTS/HPC/RP/17/0330

Title Number: MID90943

Property at 5 Appin Place, Edinburgh EH14 1PW
("The Property")

The Parties:-

Majda Al-Kharusi, 5 Appin Place, Edinburgh EH14 1PW

("the Tenant")

Mark Gordon Meldrum, 12 Home Street, Edinburgh EH3 9LY

("the Landlord")

Tribunal Members:

Rory Cowan (Legal Chair)

Nick Allan (Ordinary Member)

Decision

The Tribunal, having carried out such enquiries as are appropriate, determined that the Landlord has **failed to comply** with the requirements of the Repairing Standard Enforcement Order ("RSEO") issued further to a decision of the Tribunal dated 15 December 2017. It further determined that notice of that failure should be served on the Local Authority in whose area the Property is situated. As the Tenant has vacated the Property, the Tribunal further determined not to make a Rent Relief Order.

Background

- 1, The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") relative to the Property on 15 December 2017 following an inspection and a decision that the Landlord had failed to comply with his duty under section 14(1)(b) of the 2006 Act. The RSEO required the Landlord to carry out the following works within 2 months of the date of the RSEO:

- 1) To instruct an Electrical Installation Condition Report on the Property by an appropriately qualified electrician being a member of NICEIC, SELECT or NAPIT. To carry out all works identified as either category C1 or C2 in the said Electrical Installation Condition Report in order to ensure that the Property's electrical installations are in a reasonable state of repair and in proper working order. The Electrical Installation Condition Report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.
 - 2) To repair or replace the affected area of the ceiling in the master bedroom of the Property to ensure that the said ceiling is in a reasonable state of repair and in proper working order.
 - 3) To repair the opening to the outlet to the run-off drainage from the upstairs apartment's balcony and in particular to seal the said opening on the exterior wall of the Property to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation.
2. A reinspection was carried out by the surveyor ordinary member of the Tribunal after the expiry of the deadline. His report dated 4 May 2018 indicated that all repairs with the exception of item 1) had been completed satisfactorily.
 3. Following reinspection, the Landlord, via his representatives, forwarded a copy of an Electrical Installation Certificate (EICR) to the Tribunal. The EICR sent was dated 28 November 2016. As such it predated the RSEO. Further, the EICR appeared to be issued by a Bakerfield Testing Services who did not appear to be members of NICEIC, SELECT or NAPIT as required by the RSEO. Standing the fact the Landlord had carried out the other work as directed by the RSEO, the Tribunal wrote to the Landlord advising of the above and requesting that an EICR that post dated the RSEO, and prepared by a member of NICEIC, SELECT or NAPIT be provided within 7 days of that letter. No response has been received and no further EICR, as required by the RSEO, has been produced by the Landlord.
 4. The re-inspection report was issued to all parties for comment with a deadline for such responses on 13 June 2018. No further response was received from the Landlord.

Reasons for decision

5. In terms of section 28(1) of the Housing (Scotland) Act 2006, it is an offence not to comply with the terms of an RSEO. Section 28(2) allows a reasonable excuse defence where the Landlord is unable to comply with the order because of a lack of necessary rights despite having taken reasonable steps for the purposes of acquiring those rights.

6. The Landlord has failed to provide an EICR as directed by the RSEO and as subsequently reminded by the Tribunal. No explanation for his failure to comply with part 1) of the RSEO has been given.
7. The original RSEO was issued following a decision of the Tribunal dated 15 December 2017. Accordingly, nearly 8 months have passed since service of the RSEO without the necessary works having been carried out.
8. In terms of section 28(4) of the 2006 Act, the Tribunal decided on 19 August 2018 that the Landlord has failed to comply with the terms of the RSEO.
9. Therefore, in terms of section 26(2)(a) of the Act, the Tribunal determined to send a notice of that failure to the Local Authority in whose area the Property is situated.
10. The Tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. As the Tenant has vacated the Property, the Tribunal decided it was not appropriate to make such a Rent Relief Order.
11. The decision of the Tribunal was unanimous.

Appeal

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 within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed:
R Cowan

Date: 21st August 2018

Chairman