

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 Section 26(1))

Chamber Ref: FTS/HPC/RP/17/0396

Title no: LAN25956

7 Belmont Street, Coatbridge ML5 2LJ ("The House")

The Parties:-

- **Mr Mark MacDonald, 7 Belmont Street, Coatbridge ML5 2LJ, ("the Tenant")**
- **Mr John Campbell and Mrs Louise Campbell, 11 Torrance Wynd, East Kilbride G75 0RY ("the Landlord")**

The Tribunal comprised:-

Ms Gabrielle Miller	-	Legal Member
Mr Nick Allan	-	Ordinary Member

Background

1. On 27th June 2018, the Tribunal issued a determination which stated that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). On the same date, the Tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property. The RSEO made by the Tribunal required the Landlords:
 - a. To provide smoke detectors in the upstairs hall, downstairs hall and living room and a heat detector in the kitchen to ensure that the house has satisfactory provision for detecting fire and for giving warning in the event of fire or suspected fire. This should be in accordance with the Domestic Technical Handbook (revised 2016) as issued by the Scottish Government.
 - b. To replace and make good the sliding door at the front entrance to the House.
 - c. To replace and make good the kitchen window.
 - d. To replace, repair and make good the remaining rear windows.
 - e. To repair and replace all fascia and soffit boards to ensure that they are in good order and fit for purpose.

- f. To clean and repair the gutters and downpipes to ensure that any water in the gutter is able to run freely and does not overflow,
 - g. To replace the boiler with a new boiler and ensure that the new boiler is appropriately located and fully working with all the appropriate certification.
 - h. To repair or replace and make good the handrail at the front entrance of the property.
 - i. To provide an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported and it to be dated after the date of the inspection by the Tribunal. The aforementioned EICR should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor.
 - j. To provide a Gas Safety Certificate for the House from a Gas Safe Registered Engineer addressing the working order, condition and safety of the gas installation and the Boiler and issued within the last six months and should also address whether there is a carbon monoxide alarm which complies with the statutory guidance in the House;
2. The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within 3 months from the date of service of the RSEO, that is, by 27th June 2018. The RSEO was served on 26th September 2018.
 3. On 21st July 2018 the Housing and Property Chamber received an email from the Landlord requesting a Leave To Appeal. This was refused as it was deemed to not have any merit.
 4. A further inspection of the property was undertaken by the Ordinary Member (Surveyor) on 22nd November 2018. It was noted at the inspection that no works in the RSEO had been undertaken.
 5. The Inspection report was circulated to the Landlord, the only remaining party. The Landlord then indicated that he wished to have a hearing on the matter.
 6. A hearing was held at the Glasgow Tribunal Centre on 29th March 2019. The Landlord represented himself. The Landlord was asked if he was aware of the Tribunal's power. He confirmed that he was and that he was aware that he could be reported to the Police for failure to comply. The Landlord was asked for his comments on the inspection report. He was in agreement that the works detailed in the RSEO had not been completed. The Landlord was of the view that he should not be subject to the RSEO as he believed that he did not have a right of access over the property. He had a print out from the Housing and Property Chamber website that stated that the Landlord can be exempt from the obligation if he does not have a right of entry. The Landlord was of the view that he did not have a right of entry to the property. He confirmed to the Tribunal that he had written to the Tenants to advise

that he needed access but had not heard anything further. He had not taken any steps to gain lawful entry to the Property. The Landlord did not bring any evidence to substantiate this point. The Landlord confirmed to the Tribunal that prior to the application the Property did not meet the Repairing Standard. He confirmed that he has not complied with the RSEO to any degree since he has had full access to the Property when the Tenant left in June 2018. He informed the Tribunal that he had not complied with the RSEO as a point of principle. The Landlord informed the Tribunal that he would be seeking legal advice in connection to this matter. The Tribunal encouraged him to do so as the Tribunal was not in a position to give legal advice to any party.

Decision

7. The Tribunal takes the view that the Landlord has had ample time to carry out the works. The Tribunal noted that in terms of the application itself, the Tenant had lodged an email complaining to the Landlord about the repairs on 13th February 2018. This is in addition to the text correspondence lodged which appears to run from 7th August 2017 to 20 January 2018. The Tribunal did not consider that a variation or extension was appropriate.
8. The Tribunal rejects the Landlord's position that the application was *ultra vires* due to him not having a right of entry. The Landlord produced no evidence to support that. The tenancy is a short assured tenancy. The Landlord had failed to take the proper legal steps to gain lawful entry to the Property to undertake the repairs needed. Further the Landlord has had complete access to the Property since the Tenant left in June 2018. He has taken no steps whatsoever to address the repairs required by the RSEO.
9. Accordingly, the Tribunal takes the view that the Landlord's failure to implement the RSEO amounted to a breach of the RSEO. In accordance with the relevant provisions of Section 26 of the 2006 Act.
10. The Tribunal took the view that the works required by the RSEO had been outstanding for over a year. The Tribunal took the view that these works could have easily been completed in that period of time.
11. The Tribunal, having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the RSEO in relation to the Property, determined that the Landlord has failed to comply with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that a notice of failure be served on the Local Authority in which the property is situated.
12. The decision of the Tribunal is unanimous.

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.

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.

In Witness Whereof these presents type written on this and the preceding 3 pages are executed by Gabrielle Miller, solicitor, legal member and chairperson of the Tribunal, at Dundee on the 16th April 2019 in the presence of the undernoted witness:-
G Miller

J Haddow _____ witness _____ Legal member

JUDY HADDOW name in full

CALEDONIAN HOUSE address

GREEN MARKET

DUNDEE