

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 (“the 2006 Act”),  
Section 26(1)**

**Chamber Ref: FTS/HPC/RP/18/0898**

**Flat 3/1, 337 Wellshot Road, Glasgow, G32 7QW  
TITLE number GLA15179  
 (“The House”)**

**The Parties:-**

**Mr David Wright, 14 Glebe Wynd, Bothwell c/o 24/7 Property Letting, 1257  
Shettleston Road, Glasgow, G32 7NG  
 (“the Landlord”)**

**represented by**

**Mark Breen, 24/7 Property Letting, 1257 Shettleston Road, Glasgow, G32 7MG  
 (“the Landlord’s Representative”)**

**Tribunal members**

**Susanne L. M. Tanner Q.C. (Legal Member)  
Andrew Taylor (Ordinary Member)**

### **DECISION**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”), having taken account of the findings of the re-inspection on 1 October 2018 and the written submissions submitted by the Landlord’s Representative in response to the re-inspection report, determined that the Landlord has failed to comply with the

Repairing Standard Enforcement Order dated 4 August 2018, in terms of Section 26(1) of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”).

2. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.
3. The tribunal decided not to make a Rent Relief Order in terms of section 26(2)(b) of the 2006 Act.
4. The decision of the tribunal was unanimous.

## **Reasons**

5. On 17 April 2018 the former tenant’s representative made an Application on her behalf to the tribunal for a determination of whether the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.
6. On 25 May 2018 the tenancy of the House terminated. On 26 June 2018 the tribunal decided to continue its determination of the Application. Reference is made to the tribunal’s decision of the same date.
7. On 23 July 2018 an inspection of the House and a hearing took place, at which the Landlord’s Representative attended on behalf of the Landlord.
8. On 4 August 2018 the tribunal reached a Decision in terms of Section 24(1) of the 2006 Act and made a Repairing Standard Enforcement Order (“RSEO”), requiring the Landlord to carry out such work as is necessary for the purposes of ensuring that the House meets the repairing standard in Section 13 of the 2006 Act and that any damage caused by the carrying out of any work in terms of the RSEO is made good. In particular the tribunal required the Landlord:
  - 8.1. To repair or replace the windows in the rear bedroom and bathroom so that they are capable of opening and closing and they are wind and watertight.
  - 8.2. To repair or replace the broken double glazing unit to the right hand casement of the living room window.
  - 8.3. To seal off the openings around the pipework in the ceilings in the hall cupboard and the front bedroom.

The tribunal ordered that the works specified in the RSEO had to be carried out and completed within 30 days from the date of service of the RSEO.



9. The Decision and RSEO dated 4 August 2018 were served on the Landlord and Landlord's Representative on 6 August 2018.
10. On 1 October 2018 the Landlord's Representative returned a form to the tribunal dated 18 September 2018, stating that the works specified in the RSEO had been completed and that he did not wish a variation or revocation of the RSEO.
11. On 1 October 2018, the ordinary member of the tribunal carried out a re-inspection of the House, after the time limit for completing the works specified in the order had expired. Reference is made to the full terms of the Re-inspection Report which was sent to the Landlord and the Landlord's Representative. The ordinary member found that some of the works ordered in the RSEO had been completed and others had not. With reference to the three orders which were made:
  - 11.1. Items 1 and 3 had been carried out. The windows in the rear bedroom and bathroom had been replaced with new uPVC units, were capable of opening and closing and were wind and watertight. The openings around the pipework in the ceilings in the hall cupboard and front bedroom had been sealed.
  - 11.2. The works ordered in Item 2 were outstanding at the time of the re-inspection. The broken double glazing unit to the right hand casement of the living room window had not been repaired or replaced.
12. The Re-inspection Report was sent to the Landlord and Landlord's Representative on 5 October 2018. They were advised that the tribunal would now consider whether or not the Landlord has carried out the works and has complied with the RSEO and that the tribunal can consider a variation or revocation of the RSEO. They were given the opportunity to request an oral hearing within seven days of the date of the letter and the right to submit written representations by 19 October 2018. They were advised that if no written request for a hearing was received from any party, then it would be assumed that they wished the tribunal to make a decision on the basis of any written representations received. The Landlord and his Representative were reminded that the existence of a RSEO over a house means that the house cannot be re-let if it is vacant and that to do so would be an offence committed by the landlord. They were also advised that it is also a criminal offence to fail to carry out the works detailed in the RSEO without reasonable excuse, and the tribunal will refer this matter to the Police for prosecution if they decide that the landlord has failed to comply with the RSEO. Further they were advised that there is also a requirement on the tribunal to tell the local authority of any failure by a landlord to carry out works detailed in an RSEO and to register the RSEO in the Land Register.



13. No request was made by the Landlord or the Landlord's Representative for an oral hearing. No written representations were submitted by the Landlord or the Landlord's Representative.
14. On 31 October 2018 the tribunal's administration wrote to the Landlord and the Landlord's Representative to advise that although the Landlord's Representative had returned a form prior to the re-inspection to confirm that the works in the RSEO had been completed, the re-inspection had revealed that repair or replacement of the double glazing casement in the living room window was outstanding. The Landlord and/or his Representative were asked to provide the required evidence within seven days of the date of the letter.
15. On 5 November 2018 the tribunal's administration wrote to the Landlord and the Landlord's Representative to confirm that the response date for the required information was 8 November 2018 and that if they did not respond and provide the required information by that date the tribunal would proceed to make a decision as to whether there has been a failure to comply with the RSEO, as indicated in the previous letter.
16. On 6 November 2018 Mr Breen from the Landlord's Representative sent an email in response to the tribunal's letter to confirm that he was awaiting the invoice and the pictures from the contractor regarding the window. He stated that he had followed this up that morning and expected to receive the invoice and pictures that afternoon. He stated that once he had received the documents he would forward them to the tribunal.
17. The tribunal has allowed the Landlord and the Landlord's Representative in excess of the time previously stated to supply the required evidence relative to the outstanding works and they have not provided anything further to the tribunal.
18. On 28 November the tribunal's administration contacted the Landlord and the Landlord's Representative to advise that since the Landlord had not submitted anything further the tribunal would proceed to determine the question of compliance or otherwise with the terms of the RSEO on the basis of the re-inspection Report and the documentation already submitted and that a decision would be issued in due course.
19. The 2006 Act, Section 26 provides that:
  - "(1) It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal .*
  - (2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must—*
    - (a) serve notice of the failure on the local authority, and*
    - (b) decide whether to make a rent relief order.*

*(3) The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—*

*(a) unless the period within which the order requires the work to be completed has ended, or*

*(b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—*

*(i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*

*(ii) that the work required by the order is likely to endanger any person. ...”*

20. The tribunal proceeded to determine the question of whether or not the Landlord has complied with the RSEO on the basis of the Landlord's Representative's written representations received since the re-inspection Report was issued on 5 October 2018.

21. The Landlord has not complied with the RSEO, in particular the second order, in that:

21.1. The Landlord and the Landlord's Representative have not produced any evidence to satisfy the tribunal that they have repaired or replace the broken double glazing unit to the right hand casement of the living room window since the re-inspection of the Property on 1 October 2018.

22. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.

23. The tribunal also considered whether to make a rent relief order in terms of Section 26(2)(b) of the 2006 Act. The tribunal decided not to make a rent relief order as the Property is currently vacant and cannot be re-let while the RSEO is in place without the Landlord committing a criminal offence.

## **Right of Appeal**

**24. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

## **Effect of section 63**

25. Where such an appeal is made, the effect of the decision and of 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.

S Tanner

Signed ..... Susanne L. M. Tanner, Queen's Counsel  
Legal Member / Chairperson of the tribunal

Date 4 December 2018