

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/17/0450

Title Number: MID136552

Property at 1 Muirhouse Crescent, Edinburgh EH4 4QF
("The Property")

The Parties:-

Miss Claire Williamson, 1 Muirhouse Crescent, Edinburgh EH4 4QF
("the Tenant")

Ms Farah Yousaf, 52 Mountcastle Drive South, Edinburgh EH15 1PL
("the Landlord")

Tribunal Members:

Rory Cowan (Legal Chair)

David Lawrie (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 27 March 2018. It further determined that notice of that failure should be served on the Local Authority in whose area the Property is situated. The Tribunal further determined to make a Rent Relief Order.

Background

- 1, The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") relative to the Property on 27 March 2018 following an inspection and a decision that the Landlord had failed to comply with her duty under section 14(1)(b) of the 2006 Act. The RSEO required the Landlord to carry out the following works within 30 days of the date of the RSEO:

- 1) To instruct a Gas Safety inspection of the Property by an appropriately qualified Gas Safe engineer. To carry out all works identified as being required to allow a Gas Safety Certificate to be issued for the Property in order to ensure that the Property's installations for the supply of gas and any gas appliances are in a reasonable state of repair and in proper working order. The Gas Safety Certificate 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 cover for the sewer/drain in the rear garden of the Property in order to ensure that the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - 3) To repair or replace the internal and external seals round the living room front window and window sill in order to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation.
 - 4) To repair or replace the front door to the Property to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation.
 - 5) To instruct specialist heating contractors to inspect the installations (including the boiler and radiators) for space heating and heating water within the Property and identify any works required to remediate same. To carry out all such works identified in the specialist report in order to ensure that such installations for space heating and heating water are in a reasonable state of repair and in proper working order. The specialist contractor's report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.
2. A reinspection was carried out by the surveyor ordinary member of the Tribunal after the expiry of the deadline. His report dated 4 June 2018 indicated that none of the required work had been completed.
 3. The re-inspection report was issued to all parties for comment with a deadline for such responses on 28 June 2018. A response was received on behalf of the Tenant, but no response has been received from the Landlord.

Reasons for decision

4. 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.

5. The Landlord has failed to engage with the Tribunal in relation to this application and has provided no explanation for her failure to comply with the RSEO. As such, the Tribunal has nothing in front of it which would suggest that any such a defence may apply and it would appear that the Landlord has simply ignored the RSEO completely.
6. The original RSEO was issued following a decision of the Tribunal dated 27 March 2018. Accordingly, nearly 5 months have passed since service of the RSEO without the necessary works having been carried out.
7. In terms of section 28(4) of the 2006 Act, the Tribunal decided on 20 August 2018 that the Landlord has failed to comply with the terms of the RSEO.
8. 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.
9. The Tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. The Landlord has failed to engage with the Tribunal and has had plenty of time to carry out the required works. It appears to the Tribunal that the Landlord has simply chosen to ignore the RSEO. Accordingly, the Tribunal decided to make a Rent Relief Order to the extent of ninety (90%) per cent of the rent payable in terms of the lease agreement between the parties.
10. 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