

Housing and Property Chamber
First-tier Tribunal for Scotland



RENT RELIEF ORDER

**ORDERED BY THE FIRST-TIER FOR SCOTLAND, HOUSING AND PROPERTY
TRIBUNAL**

Chamber Ref: RP/HPC/RP/18/2071

THE PROPERTY:

27 Everard Drive Glasgow G21 1XG

Title Number: GLA32462

THE PARTIES:

**Ms Barbra Janowski, residing at the property, (“the tenant”) per her Solicitor,
Ms Wendy Malloy, Govan Law Centre, Enterprise Centre, 18-20 Orkney Street,
Govan G51 2BX,**

and

Ms Madiha Tariq, 15, Cairngorm Road, Glasgow G43 2XA, (“the landlord”)

THE TRIBUNAL:

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

David M Preston (Legal Chair) and Colin Hepburn, Surveyor (Ordinary Member)

NOTICE TO the Landlord

Whereas in terms of its decision dated 3 July 2019, the tribunal determined, in terms of Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”), that the landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the property made by the tribunal on 7 December 2018.

The tribunal determined to make a Rent Relief Order in terms of Section 27 of the Act reducing the rent payable under the tenancy for the house by an amount of 90% of the rent which would, but for this Order, be payable.

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.

D Preston

..... Chairman

3 July 2019

Housing and Property Chamber
First-tier Tribunal for Scotland



**STATEMENT OF DECISION FOR NOTICE OF FAILURE AND RENT RELIEF
ORDER UNDER SECTION 24 HOUSING (SCOTLAND) ACT 2006 (“the Act”).**

Chamber Ref: RP/HPC/RP/18/2071

THE PROPERTY:

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THE TRIBUNAL:

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

David M Preston (Legal Chair) and Colin Hepburn, Surveyor (Ordinary Member)

Decision:

The tribunal determined:

- 1. To refuse the landlord’s request for variation of the Repairing Standard Enforcement Order (RSEO);**
- 2. That the landlord had failed to comply with the RSEO dated 7 December 2018;**

3.To serve a Notice of Failure on the local authority; and

4.To make a Rent Relief Order under section 27 of the Act, reducing the rent payable under the tenancy by 90%.

All under section 26 of the Act

Background:

1. Following the issue of the Re-inspection Report dated 17 February 2019 to the parties, on 1 March 2019 the landlord, through her agents, Hardy MacPhail, Solicitors, submitted representations to the tribunal and requested a variation of the RSEO to allow more time for the repairs to be carried out. She also said that she wished to attend a hearing in respect of the re-inspection report.
2. With the letter from the landlord's agent the tribunal was provided with representations made on her behalf and a report from Everest Builders UK Ltd dated 2 February 2019, with Summary Report attached.
3. On 11 March 2019 the tenant indicated that if a hearing were to take place, she would wish to attend.
4. A hearing was scheduled for 20 June 2019 at 10.00 in the Glasgow Tribunal Centre Details of the hearing were intimated to the landlord through her agents by email dated 23 May 2019. On 6 June 2019 a letter was received from the landlord's agents withdrawing from acting on her behalf and confirming that they had advised her of the hearing on 20 June 2019 at 10.00.
5. On 20 June 2019 the tribunal met at the appointed hour, at which point there was no appearance by or on behalf of the landlord. The tribunal waited until 10.05 before convening with the parties present, which were the tenant and her agent, Ms Malloy. At that time there was still no appearance by or on behalf of the landlord.
6. The tribunal noted that the landlord had attended the re-inspection along with Mr Sadiq Tariq, her father. She indicated that he attended to the property affairs. The tribunal had no formal authorisation in relation to representation of the landlord by her father.
7. It is noted herein that some time after the conclusion of the hearing, after the tenant and her representative had departed, the tribunal was advised that the landlord's father had appeared in the building. As the hearing had concluded and the tenant and her agent had left, the tribunal did not meet with him and he was told the matter had been concluded at the appointed hour when neither he nor his daughter were present.

Hearing:

8. At the start of the hearing the tribunal noted the absence of the landlord and confirmed the procedure which it was intended should be followed.
9. By completed pro forma submitted with her letter dated 28 February 2019 the tenant's agent advised that the tenant had allowed access to the property for the purpose of the inspection and report by the contractors, but no work had been attended to. In view of the length of time for which the tenant had endured the condition of the property and the extent of necessary repairs the tenant sought a Rent Relief Order (RRO) for the maximum limit (90%) to reflect the limited use of the property available to the tenant.
10. At the hearing, the tenant advised that some work had been carried out to the property after the re-inspection. She said that contractors had attended at the end of March / beginning of April. They had replaced the aqua-wall cladding, toilet and shower tray in the upstairs bathroom and had replaced radiators in the small upstairs bedroom and upstairs hall. There had been no further work carried out.
11. In particular, the tenant confirmed that she had received neither an Electrical Installation Condition Report (EICR) nor a Gas Safe Certificate. The central heating boiler had not been serviced and was still leaking
12. Ms Malloy advised that she had acted for the tenant in relation to the condition of the property since July 2018 and the landlord had consistently failed to engage with her or to respond to communications.
13. The landlord's written representations were to the effect that the RSEO required extensive repairs to be carried out by 5 February 2019. The Decision had been received on 11 December 2018. Due to the time of year it had been difficult to identify a contractor to prepare a report and attend to the work. The landlord had eventually been able to instruct Everest Builders UK Ltd to prepare a detailed report, a copy of which was provided to the tribunal. The report identified extensive necessary work. The landlord asserted that further complications had arisen in relation to obtaining access to the property, requests having been refused by the tenant until access was allowed after 1 March 2019. Accordingly, the landlord sought a variation of the RSEO to allow more time for the repairs to be carried out.

Findings of fact:

14. In reaching its decision the tribunal had regard to the documentation listed above submitted with the application as well as the representations made by and on behalf of the tenant. In addition, the tribunal had regard to the report from Everest

Builders dated 2 February 2019 following their inspection of the property on that date.

15. The tribunal finds in fact that the landlord has:

- a. Continued to fail to comply with her duty under section 14 of the Act; and
- b. Failed to comply with the RSEO;

Reasons for the decision:

16. The tribunal noted that the landlord had failed to engage with the application process. The first occasion on which she had taken any action in relation to the condition of the property was in obtaining the report on 2 February 2019 which was two weeks before the intended re-inspection of the property after the expiry of the time limit specified in the RSEO. She had then attended the re-inspection but apart from carrying out what the tribunal considered to be minimal repairs to the property since then, no further engagement had occurred.

17. The tribunal noted in the representations submitted on behalf of the landlord that she claimed to have had difficulty in arranging access to the property. The tenant denied that any attempts had been made. The tribunal accepted the evidence of the tenant in this regard. The landlord presented no evidence of any such attempts. The overwhelming evidence was that the landlord simply failed to engage with the tenant at any level in relation to the condition of the property. It was only on 1 March 2019 that any attempt was made by her to seek to have the RSEO varied to extend the time for the work to be carried out. It had been open to her to seek such a variation on receipt of the RSEO if she felt that the time limit was too short. The tribunal had deliberately imposed a short time limit, taking account of the holiday period, specifically in view of the landlord's lack of action and engagement with either the tenant, her representatives or the tribunal process after the application had been made. We expected that she would immediately seek an extension, but she did not do so.

18. The current situation is that despite the passage of six months since the date of the RSEO, only the most minimal attention has been paid to her obligations.

19. The tribunal considered that the landlord's continuing failure to comply with her duties is a matter of the utmost concern. She has failed to provide basic safety certificates in respect of gas and electrical installations, and has failed to attend to a service, replacement or repair of a condemned central heating boiler.

20. The tribunal noted that the RSEO itself had specifically referred to the dangerous situation in respect of the central heating boiler in particular, and the general

condition of the property, and yet she had taken no action to rectify the situation and had only engaged to a minimal extent.

21. The tribunal has rarely been faced with such a flagrant disregard for the duties of a landlord and takes the most serious view of the situation.
22. As required by section 26 of the Act, we must decide whether to make a RRO and, having done so, we must make an order to reduce the rent payable by such amount of up to 90% as we consider appropriate. In view of the gravity of this situation we feel obliged to impose the maximum restriction of 90% of the rent payable in this case.

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.

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D Preston

..... Chairman

3 July 2019