

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 26 (1)

Flat 0/2, 154 Gallowhill Road, Paisley, PA3 4UF registered in the Land Register of Scotland under title number REN88709 (“the Property”)

Chamber Ref: FTS/HPC/RT/21/1609

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The Parties:-

Communities and Housing Services, Renfrewshire Council, Renfrewshire House, Cotton Street, Paisley, PA1 1BR (“the Third Party Applicant”)

Ms Michelle McColgan, sometime residing at the Property (“the Tenant”)

Mr Ian Tennie, 63 Victoria Road, Paisley, PA2 9PT (“the Landlord”) and (“the Respondent”)

Tribunal Members – Martin McAllister, Solicitor (Legal Member) and Donald Wooley, Chartered Surveyor (Ordinary Member) (“the tribunal”)

Decision

The Landlord has failed to comply with a repairing standard enforcement order dated 12th November 2021 and served on him by Sheriff Officer on 17th November 2021.

Background

1. The First-tier Tribunal for Scotland made a Repairing Standard Enforcement Order (‘RSEO’) under Section 24 (2) of the Housing (Scotland) Act 2006 (“the

Act”) on 12th November 2021 in respect of the Property in the following terms:

- 1) The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who either is employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist. The Report requires to have no recommendations of the C1 or C2 category.
 - 2) The Landlord is required to produce a report from a suitably qualified Gas Safe Registered engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property and an appropriate supply of hot water.
 - 3) The Landlord is required to produce a current certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe.
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2. The RSEO required the Landlord to comply within twenty eight days of service of it on him. The RSEO was served on the Respondent on 17th November 2021.
 3. No evidence of compliance with the RSEO was submitted to the Tribunal by the Respondent.
 4. The tribunal was scheduled to inspect the Property on 4th April 2022 and this was intimated to the Respondent on 24th February 2022. This intimation was by email and post. On 1st April 2022, a member of the Tribunal’s staff telephoned the Respondent to confirm access and arrangements. She was advised by the Respondent that the Property was on the market and that access was being denied.
 5. The tribunal noted that it was not able to inspect the Property and that the Respondent had not submitted an Electrical Installation Condition Report, Gas Safety Certificate and report from a gas engineer. These were all required by the RSEO.

6. The tribunal noted that it had previously been denied access to the Property on 24th September 2021, 13th October 2021 and 5th November 2021 as well as on 4th April 2022.

Decision and Reasons

7. The tribunal determined that, in terms of Section 26(1) of the 2006 Act, it required to decide whether the Respondent had complied with the RSEO. The tribunal had been denied access to the Property and the Respondent had not produced the necessary documentation which he was required to by 15th December 2021.
8. The Tribunal determined that the RSEO has not been complied with.
9. As a consequence of the Landlord failing to comply with the RSEO, notice of the failure will be served on the local authority in terms of Section 26 (2) (a) of the Act.
10. The tribunal was obliged, in terms of Section 26 (2) (b) of the Act to decide whether it should make a rent relief order. It noted the terms of Section 27 (1) of the Act: *"A rent relief order is an order by the First-tier Tribunal which reduces the rent payable under the tenancy in question by such amount (not exceeding 90% of the rent which would, but for the order, be payable) as may be specified in the order."* The tenancy in respect of the Tenant has been terminated. In the circumstances, the tribunal determined that no rent relief order should be made.

Note

11. The tribunal was concerned to note that the Property is on the market. The Act has the following provisions:

Section 28 (1): A landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence.

Section 28 (5): A landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house.

Section 194: "occupancy arrangement" means an arrangement other than a lease under which a person is entitled, by way of contract or otherwise, to occupy any land or premises.

12. It appeared to the tribunal that a sale of the Property would constitute an occupancy arrangement.

13. The tribunal noted that the Respondent is marketing the Property with Purple Bricks estate agents. The estate agency had made the Home Report available on its website and it is therefore in the public domain. Home Reports contain a Property Questionnaire which is completed and signed by the seller of a property. The Respondent had completed this on 22nd February 2022. Clause 16, "Notices that affect your property", and specifically sub sections (b) and (c) of the Property Questionnaire contains the following question:

In the past 3 years, have you ever received a notice

b) that affects your property in some other way or

c) that requires you to do any maintenance, repairs or improvements to your property.

The Respondent answered this in the negative despite having had the RSEO served on him on 17th November 2021.

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.

Martin J. McAllister,
Solicitor, Legal Member of the
Tribunal.
4th April 2022