

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: PRHP/RT/16/0221

Title No: GLA213840

**Flat ½, 431 Victoria Road, Glasgow, G42 8RW
("The Property")**

The Parties:-

Mr. John Dundas, Glasgow City Council, DRS Housing and Regeneration Services, 3rd Floor Samaritan House, 79 Coplaw Street, Govanhill, Glasgow, G42 7JG ("the Third Party Applicant")

**Mr. Gabriel Ostachi, formerly residing at the property
("the former Tenant")**

**Mrs. Farzana Ali, 18 Larch Road, Glasgow, G41 5DA
("the Landlord")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal')
comprised:-**

Patricia Anne Pryce - Chair and Legal Member

Kingsley Bruce - Ordinary Member

Background

- 1. On 9 August 2016, the Private Rented Housing Committee ("the Committee") 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 Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property. The RSEO made by the Committee required the Landlord:-**

- (a) To repair or replace the windows to the front of the property to ensure that the property is wind and watertight and to ensure that the windows are in proper working order.
- (b) To repair or replace the gas boiler and to produce a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances within the property, including the gas boiler, and to carry out all works identified as required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered Gas Safe engineer confirming that said works have been carried out.
- (c) To produce a Gas Safety Certificate in respect of the property.
- (d) To produce an Energy Performance Certificate in respect of the property.
- (e) To repair or replace the washing machine and to produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment supplied by the Landlord and located within the property and to repair or replace any appliance supplied by the landlord and identified by the PAT as defective.
- (f) To obtain an Electrical Installation Condition Report (EICR) by a suitably qualified electrician and to carry out all works identified as recommended or required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered electrician confirming that said works have been carried out.
- (g) To install a heat detector in an appropriate location within the kitchen.
- (h) To install sufficient smoke detection devices within the property as required by current regulations and to ensure that all smoke detection devices are hard wired and interlinked.
- (a) To provide compliant and appropriately positioned carbon monoxide detector within the property which CO detector should be powered by a battery designed to operate for the working life of the detector which is usually between five and seven years. The detector should incorporate a warning device to alert the users when its working life is due to expire and should be replaced on or before the expiry date. A hard wired mains operated CO detector with fixed wiring (not plug in types) may be used as an alternative, provided they are fitted with a sensor failure warning device.

The Committee ordered that the works specified in the RSEO were to be carried out and completed within 21 days from the date of service of the RSEO, that is, by 6 September 2016.

The jurisdiction of the PRHP was assumed by the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") on 1 December 2016.

2. A further inspection of the property was undertaken by the ordinary member of the tribunal on 9 January 2017. A copy of his inspection report dated 17 January 2017 is attached. The ordinary member found that some of the works required by the RSEO had been completed, namely, the windows to the front of the property had been entirely replaced, the gas boiler had been renewed, electrical works had been undertaken including replacement of the consumer unit, adequate heat and smoke detectors had been installed and a carbon monoxide detector had been fitted. However, at the time of inspection, no Gas

Safe Certificate, Electrical Installation Condition Report (“EICR”) and Energy Performance Certificate (“EPC”) had been provided to the tribunal. The washing machine also required to be replaced.

3. The Landlord subsequently provided to the tribunal a Gas Safe Certificate and EICR. However, the tribunal noted that the contractor who produced the EICR was not duly registered as required by the RSEO. Furthermore, the tribunal noted that the Landlord had still not provided an EPC in respect of the property nor had she replaced the washing machine in terms of the RSEO. To give the Landlord a final opportunity to comply fully with the terms of the RSEO, the tribunal instructed the administration to send a letter to the Landlord on 6 March 2017 confirming that the Landlord had seven days from the date of the said letter to fulfil the outstanding parts of the RSEO, failing which the tribunal may issue a failure to comply decision. The letter also reminded the Landlord that failure to comply with an RSEO is a criminal offence. To date, the Landlord has not responded to this letter.

Decision

4. The tribunal notes that many of the works required by parts the RSEO have been completed. All other issues remain outstanding in terms of the RSEO.
5. The tribunal takes the view that the Landlord has had ample time to carry out the remaining works. The tribunal noted that in terms of the application itself, the Third Party first wrote to the Landlord about the present repairs issues in May 2016. The tribunal afforded the Landlord a further opportunity to comply fully with the RSEO by writing to the Landlord urging to Landlord to comply with the remaining parts of the RSEO.
6. Accordingly, the tribunal takes the view that the Landlord’s failure to implement the outstanding parts of the RSEO amounted to a breach of the RSEO. In accordance with the relevant provisions of Section 26 of the 2006 Act, the tribunal required to determine whether a Rent Relief Order should be made. As the original tenancy had come to an end, the tribunal could not make such an order.
7. The tribunal took the view that the works required by the RSEO had been outstanding for over seven months. The Landlord had been made aware of the repairs issues by the Third Party in May 2016, almost eleven months ago.
8. 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 the failure be served on the Local Authority in which the property is situated.
9. 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.

P Pryce

Signed 

Date 18 March 2017

Patricia Anne Pryce, Chair and Legal Member



HPC Re-inspection Report

Property: Flat 1/2, 431 Victoria Road, Glasgow, G42 8RW
Ref No: PRHP/RP/16/0221

Surveyor: Kingsley K Bruce, MRICS

Access:

I re-inspected the property at 14:00 on Monday 9 January 2017.

The interior of the house was inspected visually, whilst standing at floor level within the various rooms, the exterior, whilst standing at ground level or from the street adjacent.

In Attendance:

My inspection was accompanied, by the Landlord's son Mr Ali, who was present in the property throughout my inspection.

The property was vacant, unoccupied and unplenished.

Weather:

Conditions were generally dry, bright and frosty at the time of my re-inspection.

Requirements of the Repairing Standard Enforcement Order (RSEO):

The RSEO dated 9 August 2016 required the Landlord as follows:

- (a) To repair or replace the windows to the front of the property to ensure that the property is wind and watertight and to ensure that the windows are in proper working order.*
- (b) To repair or replace the gas boiler and to produce a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances within the property, including the gas boiler, and to carry out all works identified as required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered Gas Safe engineer confirming that said works have been carried out.*
- (c) To produce a Gas Safety Certificate in respect of the property.*
- (d) To produce an Energy Performance Certificate in respect of the property.*
- (e) To repair or replace the washing machine and to produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment*

supplied by the Landlord and located within the property and to repair or replace any appliance supplied by the landlord and identified by the PAT as defective.

(f) To obtain an Electrical Installation Condition Report (EICR) by a suitably qualified electrician and to carry out all works identified as recommended or required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered electrician confirming that said works have been carried out.

(g) To install a heat detector in an appropriate location within the kitchen.

(h) To install sufficient smoke detection devices within the property as required by current regulations and to ensure that all smoke detection devices are hard wired and interlinked.

To provide compliant and appropriately positioned carbon monoxide detector within the property which CO detector should be powered by a battery designed to operate for the working life of the detector which is usually between five and seven years. The detector should incorporate a warning device to alert the users when its working life is due to expire and should be replaced on or before the expiry date. A hard wired mains operated CO detector with fixed wiring (not plug in types) may be used as an alternative, provided they are fitted with a sensor failure warning device.

The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed within twenty one days of the date of the order.

Works required by the RSEO which have been undertaken:

A visual inspection of the property was undertaken, looking specifically at the items/areas which were subject of the application and the RSEO, as served on the Landlord.

At the time of the re-inspection the following items of work, required by the Repairing Standard Enforcement Order (RSEO) which had been undertaken were:

- Windows to the front of the flat had been entirely replaced in pvc framed double glazed type.
- The Gas boiler had been renewed.
- The Washing machine was removed.
- Electrical works had been undertaken, including replacement of the consumer unit.
- Adequate heat and smoke detectors had been installed throughout the property.
- Carbon monoxide detector fitted.

Requirements of the RSEO which had not been met at time of re-inspection:

Gas Safety Certificate, Electrical Installation Condition Report and Energy Performance Certificate have not been provided to the Tribunal at the time of this report. The washing machine requires replacement.

Based upon the findings of the re-inspection, the requirements of the RSEO had not been fully met at that date.

Kingsley K Bruce, MRICS
Surveyor Member
Private Rented Housing Panel

17 January 2017

PHOTOGRAPHS TAKEN AT TIME OF RE-INSPECTION:





