

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Sections 26 and 27

Chamber Ref: FTS/HPC/RT/22/1921

120 Green Road, Paisley, PA2 9AJ registered in the Land Register of Scotland under Title Number 12048 (“the Property”)

The Parties:-

Renfrewshire Council, Cotton House, Paisley, PA1 1BR (“the Third Party Applicant”)

Mr Paul Duffy, 120 Green Road, Paisley, PA2 9AJ (“the Tenant”)

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

Tribunal Members:

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

Decision

The tribunal determined:

(One) that the Landlord had failed to comply with a repairing standard enforcement order (RSEO) dated 16th September 2022 and that a notice of failure be served on the local authority (Section 26 of the Housing (Scotland) Act 2006;

(Two) that a rent relief order be made reducing the rent payable under the tenancy by 40% (Section 27 of the Housing (Scotland) Act 2006).

Background

1. By application dated 15th June 2022, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section

14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act ("the 2006 Act.")

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order, that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of suspected fire and that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the application states that the Landlord has failed to provide an electrical installation inspection report (EICR) or Gas Safety Certificate, that the central heating boiler is not working, there is no carbon monoxide detector, that the heat alarm in the kitchen was not functioning, that there was no smoke detector installed in the living room of the Property and the wash hand basin in the bathroom was loose.
3. On 6th July 2022, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.

Repairing Standard Enforcement Order

4. Following upon an inspection of the Property by the members and Hearing both held on 14th September 2022, a repairing standard enforcement order (RSEO) was made in the following terms:

The Landlord was required to:

- 4.1 Produce a current Electrical Installation Condition Report (EICR) for the Property and PAT testing certificates in respect of those electrical appliances provided by the landlord. The Reports require to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category.**
- 4.2 Install smoke detectors within the living room and hall and a heat detector in the kitchen, ensuring that they are all interconnected, fully functional and meet the requirements contained within the Housing (Scotland) Acts 1987 and 2006, as subsequently amended by the Modification of the Repairing Standard Regulations 2019.**

- 4.3 Produce a report from a suitably qualified Gas Safe Registered engineer, supported by a valid and satisfactory gas safety certificate, confirming that the boiler, providing hot water and heating to all relevant fittings in the property, is in proper working order. The report should also confirm if the existing carbon monoxide detector is fully functional and complies with all relevant statutory guidelines. In the event that the current detector is established to be defective it should be replaced with a new and fully compliant CO detector, appropriately located within the kitchen. Any other recommendations contained within the report should be addressed and repaired by an appropriate contractor.**

The Landlord was required to comply with the RSEO before 31st October 2022.

5. The members of the tribunal arranged to reinspect the Property on 29th March 2023.

The Inspection on 29th March 2023

6. The Legal and Ordinary attended at the Property. The Landlord and the Tenant were present.
7. The Landlord exhibited a Gas Safety Certificate supplied by GMG Services Ltd, a "Gas Safety" registered company, dated "24th March 2024." The tribunal noted that the terms of the certificate were satisfactory, including reference to a functioning carbon monoxide detector, notwithstanding the obvious error in the date.
8. It was noted that no EICR was available. The Landlord stated that the relevant certification was available and that he would send it to the Tribunal office.
9. It was noted that there was no smoke detector in the living room and the Landlord said that he would contact his electrical contractor on the matter.
10. A reinspection report prepared by the ordinary member is attached to this Decision and is referred to for its terms.
11. The reinspection report had been sent to parties who were given the opportunity to make representations. None had been made by the Third party Applicant or the Landlord.

Determination

12. The tribunal had regard to Section 26 (2) of the 2006 Act:

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.

13. The tribunal noted that, notwithstanding the Landlord's statement at the reinspection that he would submit an EICR, none had been produced.
14. Non- production of the E.I.C.R and the absence of the smoke detector in the living room was evidence that the Landlord had not complied with that part of the RSEO.
15. The necessity to ensure that a property complies with the repairing standard in relation to matters surrounding electrical safety and the detection of smoke and fire is important and a significant health and safety issue. The tribunal took this into account when exercising its discretion as to whether or not to make a rent relief order and to what percentage should be applied to the reduction of rent.
16. The tribunal determined to serve appropriate notice on the local authority that the RSEO had not been complied with.
17. The tribunal determined that it would be appropriate to make a rent relief order. The amount by which the rent due under the tenancy is reduced is a matter of discretion and the tribunal determined that a rent relief order of 40% be made to reflect the seriousness and significant health and safety considerations of the landlord's failure to comply with the RSEO. This reduces the rent payable under the tenancy by 40% of the rent which would, but for the 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.

Martin J. McAllister,
Solicitor, legal member of
Tribunal.
3rd May 2023