

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**NOTICE TO LOCAL AUTHORITY: Housing (Scotland) Act 2006 Section 26(2)**

**Chamber Ref: RP/16/0289**

**Title no: ARG5768**

**21C Main Street, Campbeltown PA28 6AD**

**("the property")**

**The Parties:-**

**John Gamble, residing formerly at the property**

**("the tenant")**

**Keith Arthur Raeburn, residing at 360 Windmill Road, Ealing, London W5 4UR**

**("the landlord")**

Notice is hereby given to Argyll & Bute Council, being the local authority in which the house is situated, that there has been a failure by the Landlord to comply with a Repairing Standard Enforcement Order in relation to the house in terms of Section 26(1) of the Housing (Scotland) Act 2006. The Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") under Section 26(1) of the said Act is attached hereto and referred to for its terms.

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the tenant then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the tribunal is granted, then the effect of the decision is suspended until the appeal is abandoned or finally determined. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. If an application for permission to appeal is received, then the tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

The date of service upon the parties of the decision under Section 26 of the Act is hereby certified to be 22 December 2016.

**D Preston**

**Chairman**

**25 April 2017**

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**STATEMENT OF DECISION TO ISSUE A NOTICE OF FAILURE UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006.**

**Chamber Ref: RP/16/0289**

**Title number: ARG5768**

**21C Main Street, Campbeltown PA28 6AD**

**("the property")**

### **THE PARTIES**

**John Gamble, residing at the property ("the applicant and former tenant")**

**and**

**Keith Arthur Raeburn, residing at 360 Windmill Road, Ealing, London W5 4UR  
("the landlord")**

### **THE TRIBUNAL**

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

**David M Preston, Legal Member and Mike Links, Ordinary Member**

### **Decision:**

**The Committee, having made such enquiries as are fit for the purposes of determining whether the landlord had complied with the terms of the Repairing Standard Enforcement Order (hereinafter referred to as the "RSEO") dated 16 December 2016 in terms of section 26(1) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") determined: that the landlord had failed to carry out the works specified in the RSEO; and that a Notice of Failure should be sent to the Local Authority in terms of section 26(2)(a) of the Act;**

### **Background:**

**1. Reference is made to: the Statement of Decision of the Committee dated 16**

December 2016 which decided that the landlord had failed to comply with the duty imposed by section 4(1)(b) of the Act; and the RSEO issued by the Committee on that date which required the landlord to carry out the works specified therein. The said works were to be carried out and completed within two months from the date of service of the RSEO on the parties, which was effected on 22 December 2016.

2. On 10 January 2017, Argyll & Bute Council advised that the tenant had removed from the property.
3. On 26 February 2017 the landlord was advised that a re-inspection of the property for the purpose of ascertaining whether the works specified in the RSEO had been satisfactorily completed would take place on 17 March 2017 at 11.00am. No response to that letter was received and a reminder letter was sent by first class recorded delivery mail on 8 March 2017 confirming that access to the property would be required at the specified time.
4. No response was received to the reminder letter dated 8 March 2017 until an email from the landlord dated 16 March 2017 timed at 15:37 which advised that the tenant had removed from the property on 16 January 2017 and neither the former tenant nor anyone else had rented the property since that date. The landlord advised that consequently the flat was no longer rented out privately and he had requested the Council to remove the property from his landlord registration. He said that he did not intend to rent it out to a tenant in the future. He stated his understanding that the property should no longer fall under the scope of the Tribunal and that any requirement for a re-inspection should no longer apply. He advised that he would not be able to facilitate the proposed inspection as scheduled. Accordingly the scheduled re-inspection was cancelled.
5. The tribunal considered the terms of the landlord's email and a response was sent on 20 March 2017 to inform him that the tribunal considered that his understanding was incorrect and that he should seek legal advice on the position. No response has been received to that email.
6. In view of the requirements imposed upon it by the Act the tribunal has resumed consideration of the application by the former tenant.
7. The RSEO required the landlord: within two months of the date of service of the RSEO:-
  - a) To carry out such repairs as are necessary to the roof and gutter of the property to eliminate the ingress of water to the northeastmost room at the front of the property.

- b) To repair the plasterwork of the living room ceiling and redecorate as necessary.
  - c) To replace the carpet in the living room as described in paragraph (a) above.
  - d) To produce and lodge with the First tier Tribunal (Housing and Property Chamber) a satisfactory Electrical Installation Condition Report provided by a suitably qualified electrician approved by NICEIC or SELECT.
8. As at the date of this Decision, the landlord has failed to produce and lodge with the First tier Tribunal (Housing and Property Chamber) a satisfactory Electrical Installation Condition Report as required.
9. Accordingly the landlord has failed to comply with the terms of the RSEO.
10. In view of the landlord's refusal to provide access to the property, the tribunal has been unable to ascertain whether the remaining works specified in the RSEO have been satisfactorily completed.
11. Having considered the representations by the landlord in his email dated 16 March 2017, the tribunal determines that: in terms of section 24 of the Act, as amended by the Tribunals (Scotland) Act 2014, a tribunal to which a tenant's application has been referred under section 22(1) must decide whether the landlord has complied with the duty imposed by section 14(1)(b). In terms of section 26, where the landlord has failed to comply with the RSEO the tribunal must serve notice of failure on the local authority.
12. In terms of paragraph 7 of Schedule 2 to the Act, a tenant may withdraw an application at any time and where a tenancy is lawfully terminated the application is deemed to be withdrawn. In such circumstances, the tribunal may either: abandon consideration of the application; or continue to determine the application.
13. In the present case, however, the tribunal had already determined the application and found that the landlord had failed to comply with the duty imposed by section 14(1)(b) before the time at which the tenancy was lawfully terminated. The tribunal had issued the RSEO which had been registered against the title of the property.
14. Section 25 of the Act only enables the tribunal to revoke a RSEO where it considers that the work required by the order is no longer necessary. The tribunal finds that the nature of the work required in the present case will continue to be necessary until it has been carried out, and until such time, the tribunal cannot revoke the order.
15. The purpose of the Act in terms of the preamble is, *inter alia* to make provision about housing standards. The fact that the landlord has stated an intention not to rent the property privately does not remove the property from the scope of the Act. If the landlord were to: change his mind; or decide to sell the property, any future owner may decide to rent the property privately. In order that the tribunal

can ensure that the property meets the repairing standard, insofar as identified at its inspection of the property, it has an obligation to ensure that the works required by a RSEO are satisfactorily completed.

**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 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

25 April 2017