

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION:** in terms of Section 26(1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1A) of the Act

**Chamber Reference number:** FTC/HPC/RT/18/3039

### **Parties:**

1. Dumfries and Galloway Council per its employee Mr. Robert Rome, HMO Licensing and Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street. Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act ("the Third -party Applicant") ;
2. Mr. Raymond Swan and Miss Marion Carruthers both residing at 7 Runic Place, Ruthwell, Dumfries, DG1 4NW ("the Tenants") per their nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Mr. Harry Dalziel residing at 6, Yarrow Court, Dumfries, DG2 9HG ("the Tenants' Representative") and
3. Mr. David Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN ("the Landlord"), together referred to as "the Parties".

**Property:** 7 Runic Place, Ruthwell, Dumfries, DG1 4NW being the subjects more particularly described in Disposition in favour of Albert Fergus Dodds and recorded in the Division of the General Register of Sasines for the County of Dumfries on 26 May 1986.

### **Tribunal Members**

Karen Moore (Chairperson)

Mike Links (Ordinary Member)

### **Decision**

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 20 March 2019 and the subsequent Decision and Variation of RSEO affecting the Property

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that it cannot be satisfied and so determines that the Landlord has failed to comply. In addition, the Tribunal imposes a Rent Relief Order of one-third being £150.00 and so reducing the monthly rent from £450.00 to

£300.00 from the date 30 days of the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

## **Background**

1. By application received on 9 November 2018 ("the Application"), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d), 13(1) (e), 13(1) (f) and 13(1) (g) of the Act. The Application was referred to the Tribunal, and an Inspection and Hearing were held on 6 March 2019 following which the Tribunal determined that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Act and imposed the RSEO as follows:-

*"The Landlord must on or before 6 May 2019:-*

1. *Instruct a Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection of the roughcasting and all external parts of the Property and (ii) to provide a fully documented report on the roughcasting, the living room window, the roof tiles, the external doors and the guttering ("the External Survey Report"), the purpose of which External Survey Report is to recommend works to all parts of the Property, including replacement if necessary, to ensure that the dampness in the Property is eradicated and that the Property is made wind and watertight and in a reasonable state of repair;*
2. *Submit the External Survey Report to the Tribunal and provide a copy to the Tenants;*
3. *Instruct a Scottish Building Federation registered building contractor capable of providing a 10- year guarantee repair to carry out the works recommended by the External Survey Report and confirm in writing to the Tribunal and the Tenants the identity of the building contractor, the date on which the works will commence and the estimated date for their completion;*
4. *Complete the installation of the kitchen to include the completion of the electrical installation and the relocation of the immerser switch to a location which is lower and so easier for the Tenants to access, the fitting of all kitchen unit doors, the repair or renewal of the hob control knob and the fitting of tiling or splash-backs at all kitchen work surfaces;*
5. *On completion of the kitchen installation, instruct a SELECT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord's appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) to ensure that the carbon monoxide detector in the Property is positioned to comply with current regulatory standards and*

6. *Make good any décor damaged as a result of these works.*"

#### **Further Procedure**

2. A Re-Inspection of the Property took place on 6 June 2019 at the Property and a Re-Inspection Report which showed that the works required by the RSEO had not been carried out was intimated to the Parties. The Landlord requested a Hearing and so a further Re-Inspection and Hearing were fixed for 28 August 2019. The further Re-Inspection and Hearing took place on 28 August 2019, following which the Tribunal determined to vary the RSEO to allow further time to comply until 18 October 2019.
3. A further Re-Inspection was fixed for 30 October 2019. The Landlord indicated that he required further time to comply and so that further Re-Inspection was postponed and re-arranged for 6 December 2019. A further Hearing was fixed for the same day.

#### **Documents lodged by the Parties**

4. Throughout the process, the Parties submitted email correspondence to the Tribunal which was exchanged to the other Party. In particular, the Landlord emailed on 11 and 24 November 2019 and on 4 December 2019 indicating that the works required by the RSEO would be completed by 6 December 2019.

#### **Re-Inspection and Hearing on 6 December 2019**

5. A further Re-Inspection took place at the Property on 6 December 2019. The Third -party Applicant was represented at the Inspection by Mr. Adam Black. Both Tenants were present along with the Tenants' Representative. The Landlord was not present, having advised the Tribunal that he would not be available to attend. The Tribunal inspected the parts of the Property and the works required by the RSEO, took dampness meter readings and digital photographs. With regard to the kitchen installation, it was noted that the cooker hood did not extract externally of the Property and that there was evidence of water on the surfaces of the kitchen walls and ceiling.
6. Thereafter, a Hearing was held at Lochvale House, Georgetown Road, Dumfries, DG1 4DF on the same day at 11.30 a.m. The Third -party Applicant was again represented at the Hearing by Mr. Adam Black. Miss Carruthers of the Tenants, the Tenants' Representative were present. The Landlord was not present.
7. The Tribunal noted that progress had been made in respect of some of the works required by the RSEO.
8. Mr. Black submitted to the Tribunal that whilst some work had been carried out, the External Survey Report required by the RSEO had not been obtained and submitted that the email lodged by the Landlord which contained an email from a surveyor was not adequate to comply with the RSEO. He submitted that the RSEO had not been complied with sufficiently and he asked the Tribunal to make a finding of failure to comply. The Tenants' Representative made the same submission.
9. Mr. Black further submitted that severe condensation was now apparent in the kitchen despite a cooker hood being installed.

### **Findings in Fact**

10. From the further Inspection and Hearing on 6 December 2019, the Tribunal found that paragraphs 1, 2, 3 and 6 of the RSEO had not been complied and that, from the evidence of severe condensation in the kitchen, paragraph 4 of the RSEO had been complied with in part only. In particular, the email submitted by the Landlord in satisfaction of paragraph 1 of the RSEO fell far short of the extent of the External Survey Report required as it did not recommend works to ensure that the dampness in the Property is eradicated and that the Property is made wind and watertight and in a reasonable state of repair.

### **Summary of the Issues**

11. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or if it should make a finding of failure to comply with the RSEO.

### **Decision of the Tribunal and Reasons for the Decision of the Tribunal**

12. The Tribunal's decision is based on all of the information before including the Application, the various inspections and hearings and all of the written submissions and correspondence, whether referred to specifically or not.
13. The Tribunal had regard to Section 25 (1) of the Act which states:-“(1) *The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.*”
14. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the terms of the RSEO which deal with health and safety. The Tribunal held the view that safeguarding the occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.
15. With regard to Section 25(1)(a), and whether it should vary the RSEO further, the Tribunal gave consideration to the submissions of the Parties, orally and in writing. The Tribunal had regard to the strength of the Third-party Applicant's position in respect of the Landlord's apparent disregard of the RSEO at the Hearings on 28 August 2019 and 6 December 2019. The Tribunal was mindful that the Landlord had not been present at the Hearing on 6 December 2019 and so specifically took into account his submissions in respect of his health and financial position made on 28 August 2019 and his various written submissions. The Tribunal then had regard to the serious consequences of a finding of failure to comply in terms of Section 26 of the Act. The Tribunal noted that at the Hearing on 28 August 2019 and in its Decision following that Hearing, the Tribunal had warned the Landlord of those consequences in the strongest of terms but he had not complied with the RSEO to an extent which assured the Tribunal he intended to comply in full. Accordingly, the Tribunal was not of a mind to vary the RSEO.

16. The Tribunal then had regard to Section 26 of the Act which states:-*"It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal."* The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO. The Tribunal, being satisfied that the Landlord had not complied with the RSEO as varied without reasonable excuse, therefore, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO as varied.

### **Rent Relief Order**

17. The Tribunal then had regard to Section 27 of the Act which allows the Tribunal, having made a finding of failure to comply, to make a Rent Relief Order (RRO) of up to 90% and took the view that, in the circumstances of the whole application and procedure to date, an RRO was appropriate. The Tribunal took into account that some works had been carried out by the Landlord and determined that an RRO of one-third being £150.00 per month be imposed from the date 30 days of the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

18. The decision of the Tribunal is unanimous.

### **Appeal of tribunal's decision**

19. 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.

Signed  
K Moore

Karen Moore, Chairperson

Date 18 December 2019