

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RP/21/1443

Re: 98 Main Street, East Kilbride G74 4JY (“the house”)

Land Register Title No: LAN189570

The Parties:-

Ms Yvonne Paterson, residing at the house (“the tenant”)

Mr Peter More, Bayview Hotel, 21/22 Mount Stuart Road, Rothesay PA20 9EB (“the landlord”)

Maitlands Solicitors, 6A Brougham Street, Greenock PA16 8AA (“the landlord’s solicitor”)

Tribunal Members:

Sarah O’Neill (Chairperson) and Mike Links (Ordinary (Surveyor) Member)

Decision

The tribunal determined that the landlord has failed to comply with the Repairing Standard Enforcement Order. The tribunal also made a Rent Relief Order.

The tribunal’s decision was unanimous.

Background

1. On 13 June 2022, the tribunal issued a determination that the landlord had failed to comply with his duties under Section 14(1) (b) of the Act. On the same date,

the tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the house.

2. The RSEO required the landlord to:

1. Install interconnected smoke alarms in the living room and hallway and a heat alarm in the kitchen in accordance with the statutory guidance, which can be found on the [Chamber's website](#).
2. Engage a suitably qualified plumber to examine the plumbing in the bathroom and carry out all works necessary to ensure that there are no further leaks from the toilet and that the toilet is in a reasonable state of repair and in proper working order.
3. Instruct a timber and damp specialist company which is registered with the Property Care Association to produce a report on dampness and possible timber decay in respect of the bathroom floor and sub-floor. Send a copy of the report to the tribunal for its approval. Once the report has been approved, carry out any remedial works recommended in that report, in order to ensure that the bathroom floor is wind and watertight and in all other respects reasonably fit for human habitation.
4. Once any works recommended in the report at item 3 above have been carried out, replace the missing bathroom tiles to match the rest of the bathroom tiles insofar as possible.
5. Repair or replace the rubber/plastic outlet on the kitchen sink tap to ensure that it is in a reasonable state of repair and in proper working order.
6. Replace the front door with a new door that is wind and watertight and is in a reasonable state of repair and in proper working order.
7. Having regard to the findings of the Eco Surveys report, and after obtaining any necessary consents, repair or replace the windows and window sills throughout the house as necessary to ensure that they are wind and watertight, and in a reasonable state of repair and in proper working order.
8. After obtaining any necessary consents, repair or replace the top step to ensure it is safe and is in a reasonable state of repair and in proper working order.
9. Engage a pest control company which is a member of the British Pest Control Association to investigate, control and prevent any potential points of entry for mice or other vermin. Obtain a report from that company and

send the report to the tribunal for approval. Subject to the tribunal's approval, follow any recommendations made with regard to rodent infestation.

10. Replace the toilet seat to ensure that it is in a reasonable state of repair and in proper working order.
11. Repair or replace the integrated dishwasher door to ensure that the dishwasher is in a reasonable state of repair and in proper working order.
12. Repair or replace the panel between the two window units in the kitchen to ensure that it is secured and is in a reasonable state of repair and in proper working order.
13. Replace the silicone sealant behind the kitchen sink to ensure that it is in a reasonable state of repair and in proper working order.
14. Provide to the tribunal an up to date Electrical Installation Condition Report (EICR) and PAT test certificate for the house, showing that all electrical installations, appliances and fixtures and fittings supplied by the landlord within the house have been checked and are working safely. The EICR and PAT test certificate must be produced by either:
 - a suitably qualified and registered SELECT or NICEIC contractor
 - a member of NAPIT, or
 - a contractor who is able to provide evidence that they are a 'competent person' i.e. a completed and signed checklist, as set out at Annex A on page 13 of the guidance by Scottish Ministers on Electrical Installations and Appliances in Private Rented Property, which can be found on the [Chamber's website](#).
15. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal ordered that all of the works specified in the RSEO must be carried out and completed within the period of 12 weeks from the date of service of the RSEO.

3. On 30 June 2022, an email was received from the landlord's solicitor seeking a variation of the RSEO to extend the time allowed for the works to be carried out. The tribunal wrote to the landlord's solicitor on 21 July 2022 refusing the variation request on the basis that it considered the request to be premature, given that the RSEO was only issued to the parties on 17 June 2022. The tribunal stated that it would generally expect any such request to be made at a later stage in the process, given that the timescale allowed was 12 weeks. It therefore suggested that the landlord may wish to request a variation of the RSEO at a later date, once

it was clearer how much longer was likely to be required for some of the works, and once it was possible to specify which works may take longer. The tribunal also stated that at that stage, it would expect to see evidence from the landlord that satisfactory progress had been made in relation to all or some of the works in the RSEO.

4. A further variation request seeking additional time to complete the works was received from the landlord's solicitor on 19 October 2022, less than a week before the scheduled re-inspection of the house. The tribunal administration contacted both parties informing them that it intended to proceed with the reinspection.
5. The tribunal carried out a re-inspection of the house on 25 October 2022. A copy of the tribunal's re-inspection report dated 27 October 2022 is attached to this decision.
6. On 28 October 2022, the tribunal wrote to the landlord's solicitor in response to the variation request of 19 October 2022. The tribunal noted that the landlord had now had a period of more than four months since the RSEO was issued to complete the works. During that time it appeared, as confirmed by the tribunal's re-inspection of 25 October 2022, that no attempt had been made to address any of the 15 items contained in the RSEO, some of which should have been relatively straightforward. The tribunal did not therefore consider that satisfactory progress (or indeed any progress) had been made in carrying out the work, in terms of section 25 (3) of the Act. The tribunal did not therefore consider that it would be reasonable to vary the order as requested to extend the time allowed for the repairs. The tribunal accordingly refused the request for a variation of the RSEO to extend the time for compliance.

Findings in fact

7. As a result of the re-inspection, the tribunal made the following findings in fact:
 - i. None of the works set out in the RSEO had been undertaken.
 - ii. All of the items numbered 1-15 in the RSEO therefore remained outstanding.

The landlord's request for a hearing

8. A copy of the re-inspection report was sent to the parties on 28 October 2022, together with a letter inviting them to send any written representations in response by 11 November 2022. A response was received from the tenant on 31 October 2022, and a response was received from Mr James Lamb, the landlord's solicitor on 3 November 2022. Mr Lamb requested that the tribunal hold a hearing to determine the matter. The tenant indicated that she was content for the tribunal to make a decision without a hearing.
9. The tribunal issued a direction to the landlord on 7 November 2022, pointing out that as the parties had been previously advised, it would only consider

convening a hearing if a party could show why a) the case could not be justly determined on the basis of written representations alone and b) not to hold a hearing would be contrary to the interests of the parties. It was not clear from the information provided on the completed forms received from Mr Lamb why the landlord considered that a hearing was necessary.

10. The direction therefore required the landlord to give detailed reasons in writing as to why he considered that: a) the matter could not be justly determined on the basis of written representations alone, and b) it would be contrary to the interests of the parties not to hold a hearing.
11. Two emails were received from Mr Lamb on 16 and 17 November 2022 respectively in response to the direction. Having considered all of the representations received from both parties following the issue of its re-inspection report and the responses from Mr Lamb to the tribunal's direction of 7 November 2022, the tribunal wrote to the parties on 21 November 2022 refusing the request for a hearing.
12. In its refusal email of 21 November 2022, the tribunal noted that the main reason put forward in the email of 16 November as to why a hearing was required related to the assessment of rent. It was stated that assessment of rent required evidence, and may require the examination and cross examination of expert witnesses. The tribunal noted that the present application is a repairing standard application, not a rent assessment application, and as such the tribunal had no power to make a rent assessment in this case. The issues before the tribunal at this stage of the process were 1) whether the landlord had complied with the RSEO and 2) should it decide that the landlord had failed to do so, whether to make a rent relief order (RRO).
13. The tribunal went on to note that, as the parties had previously been advised (in the email of 28 October 2022 sent with the re-inspection report), should the tribunal decide that the landlord has failed to comply with the RSEO, it could decide to make an RRO reducing the rent payable under the tenancy agreement by an amount of up to 90%, in terms of section 27 of the Act.
14. The tribunal had asked the parties for their views on the level of any rent reduction in its email of 28 October 2022. Completed forms were received from both parties regarding this. While the tenant stated her view that an RRO should be made and the landlord stated that an RRO should not be made, it is for the tribunal to make a decision on this matter. Any decision about whether to make an RRO would be based on whether the RSEO had been complied with, the extent to which it has been complied with and the impact of any failure to comply on the tenant and her enjoyment of the property. The level of rent which is currently paid and whether this is reasonable for the area had no relevance to that decision.

15. The tribunal also noted that in his email of 17 November, Mr Lamb stated that the landlord wished to raise allegations that the tenant had been subletting the property from time to time. This is not a matter which the tribunal can consider in relation to this application. This matter is not relevant to the application and is not something which the tribunal can consider in reaching its decision as to whether the landlord has complied with the RSEO and/or whether an RRO should be made.
16. The tribunal noted that the applicant had confirmed that she was content for the tribunal to make a decision based on written representations without the need for a hearing.
17. In light of all of the above, the tribunal considered that, having regard to such facts as are not disputed by the parties, it was able to make sufficient findings to determine whether the landlord has complied with the RSEO without a hearing and that to do so would not be contrary to the interests of the parties. The tribunal did not consider that the landlord had put forward any persuasive reasons as to why a) the case could not be justly determined on the basis of written representations alone and b) if the tribunal were not to hold a hearing, this would be contrary to the interests of the parties. It therefore did not consider that a hearing was necessary in the circumstances.

Reasons for decision

18. As notified to the parties on 21 November 2022, the tribunal decided for the reasons set out at paragraphs 12-17 above that it would proceed to make a decision on 1) whether the landlord has complied with the RSEO and 2) whether to make an RRO without a hearing, in terms of rule 18 of schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The tribunal's decision was made on the basis of all of the evidence before it, including its re-inspection report of 27 October 2022 and all of the written representations received from the parties.
19. The tribunal notes that as at the date of the tribunal's re-inspection, the landlord had had approximately four months to carry out the repairs. It was not disputed by the parties that the repairs required by the RSEO had not been carried out. Given this, and in light of the findings from its re-inspection, as set out in the re-inspection report and summarised at paragraph 7 above, the tribunal determines that the landlord has failed to comply with all of the items 1-15 set out in the RSEO within the timescale allowed.
20. As stated in its email of 21 July 2022, the tribunal accepts that some of the works may take longer than the 12 weeks allowed in the RSEO, particularly

those in relation to which listed building consent may be required. The email also stated that the tribunal would, when considering any extension request, expect to see evidence that satisfactory progress had been made in carrying out at least some of the works required, in terms of section 25 (3) of the Act. The tribunal also stated that it expected that some items in the RSEO should be capable of being addressed well within the 12-week period. These might include, for example, producing an up to date EICR, the installation of smoke alarms and some of the minor repairs required by the RSEO, such as those set out at items 5, 10, 12 and 13 of the RSEO.

21. As at the date of its re-inspection, however, the tribunal found that none of the repairs set out in the RSEO had been addressed. For reasons that are unclear to the tribunal, the landlord instructed his own surveyor to assess the repairs, but none of the repairs have actually been carried out. Mr Lamb stated in the response form of 3 November 2022 that the landlord is ready and able to carry out the required repairs. He also stated in the direction response of 16 November 2022 that the landlord accepts that he is obliged to do the repairs, and that the quantity surveyor who assessed the repairs has a contractor who is willing and able to go in and do the works quickly. The landlord has provided no explanation as to why the works have not been completed.
22. It was implied in the direction response of 16 November 2022 from Mr Lamb that the tenant has prevented access to the landlord's contractors, and that this was the reason for the delay in carrying out the repairs. The specific instances referred to, however, relate to a time before the RSEO was issued and/or to access being provided to carry out an Energy Performance Certificate, which is not relevant to the RSEO. The issue of access was discussed at the tribunal's hearing on 19 May 2022. The tenant admitted that she had failed to provide access on various occasions prior to the hearing, as discussed at paragraph 25 of the tribunal's decision of 13 June 2022:

“Access for repairs

25. Mr Lamb told the tribunal that there had been difficulties in obtaining access to the house to carry out repairs. As outlined in the note of the CMD, this was accepted by the tenant. The tenant has significant health issues and suffers from a serious lung condition. As a result, she had major concerns during the coronavirus pandemic about allowing anyone into the house. The tenant did appear to accept, however, that any works required to remedy the repairs issues she had raised would require her to provide access to contractors.”

23. The decision later records Mr Lamb as having said several times at the hearing that the landlord would attend to various repairs immediately if he were able to obtain access for this. During the four month period after the RSEO was issued, the tribunal did not receive any representations from the landlord to the effect that the tenant was refusing access for repairs. In fact, the tribunal formed the

distinct impression from the substantial correspondence received from the tenant during that period that she was keen to accommodate access for repairs but that no contractors had attempted to access the house to carry out works.

24. In terms of section 26 (3) (b) of the Act, the tribunal may not decide that a landlord has failed to comply with an RSEO if the tribunal is satisfied, on the submission of the landlord or otherwise-

- (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights, or
- (ii) that the work required by the order is likely to endanger any person.

25. The landlord in this case has not explicitly argued that he was unable to carry out the repairs due to a lack of access to the property in terms of section 26 (3) (b) above. Moreover, there is no persuasive evidence before the tribunal that the landlord has been denied access to carry out the repairs since the RSEO was issued. It appears to the tribunal that the tenant is very keen to have the works done as soon as possible. The landlord has not submitted any representations to suggest that a lack of access to the house is the reason why the works have not been done, other than the general allusions made to access issues in the direction response of 16 November 2022. Neither is the tribunal aware of any application having been made by the landlord or his solicitor to the tribunal to exercise their right of access to carry out repairs.

26. Having considered all of the evidence before it, the tribunal is not satisfied that the landlord has demonstrated that his failure to comply with the repairing standard duty occurred because he lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, in terms of section 26 (3) (b) (i) of the Act.

Decision

27. The tribunal, having made such enquiries as are necessary for the purposes of determining whether the landlord has complied with the RSEO, therefore determines that the landlord has failed to comply with the RSEO in terms of section 26(1) of the Act, and that a notice of this failure should be served on the local authority in whose area the property is situated.

Rent relief order

28. The tribunal considered whether a Rent Relief Order should be made in terms of section 27 of the Act. It determined that given the extent of the landlord's

failure to comply with the RSEO within the time allowed, such an order should be made.

29. The tribunal then considered the amount by which the rent payable under the tenancy should be reduced. The tribunal noted that none of the 15 items included in the RSEO have been addressed. It noted that there are a number of serious health and safety issues outstanding which have not been addressed. In particular, no interconnected smoke alarms have been installed and no EICR has been produced. The windows and front door have not been repaired or replaced. No action appears to have been taken in relation to the top step.
30. While individually, many of the other outstanding issues are relatively minor in nature, taken together they continue to have a negative impact on the tenant and on her enjoyment of the property on a daily basis.
31. Having weighed up these considerations, the tribunal determined that an appropriate reduction would be to reduce the rent payable under the tenancy by **60%** until the RSEO has been complied with. The Rent Relief Order will be effective from 28 days after the last date on which a request may be made for permission to appeal the decision to make the Rent Relief Order under section 64 of the Act.

Rights of Appeal

32. 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.
33. 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 will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed.....S.O'Neill..... **Date**..24 November
2022.....
Chairperson