

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/16/0360

**20 Gladstone Road, Dumfries, DG2 7HA
("The Property")**

The Parties:-

**Mr. Alan Glendinning, HMO and Landlord Registration Manager, Dumfries & Galloway Council, Council Offices, Buccleuch Street, Dumfries, DG1 2AD
("the Third Party")**

**Miss Lynne Robertson, residing at the property
("the Tenant")**

**Mrs. Lesley McCrone, Dee House, Main Street, Kirkconnel, DG4 6LU
("the Landlord")**

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

Patricia Anne Pryce	-	Chairing Legal Member
Donald Wooley	-	Ordinary Member (Surveyor)

Background

1. On 25 January 2017, the tribunal 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 tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property. The RSEO made by the tribunal required the Landlord:-
 - (a) To repair or replace the draught excluder surrounding the front door to ensure that it is in a reasonable state of repair and in proper working order.
 - (b) To replace the cracked pane of glass located adjacent to the front door with replacement glass which is in accordance with current building standards.
 - (c) To repair or make good the area of defective and missing sealant around the base of the living room window frame and its junction with the internal window

cill to ensure that that is in a reasonable state of repair and in proper working order.

- (d) To replace the thermostatic radiator valves on the radiators in the hallway and the living room so that they are in a reasonable state of repair and in proper working order.
- (e) To produce an Electrical Installation Condition Report by a suitably qualified and SELECT or NICEIC registered electrician.
- (f) 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 in the property.
- (g) To install hard-wired and interlinked smoke and heat detection devices in accordance with current regulations.
- (h) To install a carbon monoxide detector in accordance with current regulations.

The tribunal ordered that the works specified in the RSEO were to be carried out and completed within 28 days from the date of service of the RSEO, that is, by 3 March 2017.

- 2. A further inspection of the property was undertaken by the Ordinary Member (Surveyor) of the tribunal on 30 March 2017. A copy of his inspection report dated 30 March 2017 is attached. The Ordinary Member could not gain access to the property. The Landlord did not attend at the inspection nor did she provide an explanation to the tribunal as to why she did not attend nor provide access to the Ordinary Member for the purposes of re-inspection. The Landlord had been advised of the date of the re-inspection by way of a letter dated 17 March 2017. However, from an external visual inspection the Ordinary Member found that no repairs had been completed to the cracked reinforced glass panelling adjacent to the front entrance door, the radiator in the living room still had no thermostatic valve, no Electrical Installation Condition Report had been provided by the Landlord and no report by a suitably qualified Gas Safe registered engineer had been provided by the Landlord. Furthermore, the Ordinary Member noted that the front door appeared to be in a similar condition as to that which existed at the original inspection on 25 January 2017.
- 3. The Landlord was provided with a copy of the Ordinary Member's re-inspection report and given the opportunity to comment thereon. However, the Landlord did not respond.

Decision

- 4. On the balance of probabilities, the tribunal determined that it was likely that none of the works required by the RSEO had been undertaken by the Landlord.
- 5. The tribunal takes the view that the Landlord has had ample time to carry out the works. The tribunal noted that in terms of the application itself, the Third Party wrote to the Landlord about the present repairs issues in October 2016.

The Landlord was given the opportunity to comment on the Ordinary Member's re-inspection report but failed to respond. The Landlord failed to attend or provide access to the property for the purposes of re-inspection.

6. Accordingly, the tribunal takes the view that the Landlord's failure to implement 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 property was obviously vacant on 30 March 2017, the neighbour confirmed that the Tenant had vacated the property and the 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 three months. The Landlord had been made aware of the repairs issues by the Third Party in October 2016, over six 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 28 April 2017

Patricia Anne Pryce, Chairing Legal Member