



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

STATEMENT OF DECISION of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 24 (1) of the Housing (Scotland) Act 2006

Reference number: FTS/HPC/RT/20/0347

Re: Property at Flat 3/2, 3 Caledonia Street, Paisley, PA3 2JG (“the Property”)

The Parties:

Mr Jiri Ondo, Mrs Zuzana Ondora (“the former Tenants”)

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

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

James Bauld (Chairman) and Mike Links (Ordinary Member)

Background

1. This application was lodged on 4 February 2020 by the third-party applicant indicating that they believed that the landlord was failing to comply with the duties imposed upon him by section 14(1)(b) of the Housing (Scotland) Act 2006.
2. After sundry procedure and delays caused by the restrictions introduced to deal with the coronavirus pandemic, a case management discussion was eventually set to take place on 15 January 2021.
3. The landlord did not attend the case management discussion
4. The third party applicants were represented at the case management discussion.
5. After the case management discussion the tribunal issued a note arising from the issues discussed at the case management discussion and also issued a direction to the landlord requiring him to produce certain documents to the tribunal. The note and the direction are referred to for their terms and should be

read in conjunction with this decision.

6. In terms of the direction the landlord was required to provide:

1. Valid and up to date Gas Safety certificate in respect of the property as required by the Gas Safety (Installation and Use) Regulations 1998

2. Valid and up to date electrical inspection condition report (EICR) in respect of the property as required by sections 19A and 19B of the Housing (Scotland) Act 2006

3. Any invoices/reports in connection with boiler repairs at the property since November 2019

4. Evidence showing the installation of smoke detectors, heat detectors and carbon monoxide detectors within the property in compliance with the requirements set out in the Housing (Scotland) Act 2006

7. He was required to produce that documentation no later than 12 February 2021.

8. The landlord failed to produce the documentation. He has never produced the documentation required in terms of the direction.

9. The note issued after the case management discussion on 15 January 2021 also indicated that the application would be adjourned to a notional date of 24 February 2021. During this period it was not possible for the tribunal to arrange inspections owing to the ongoing restrictions dealing with the coronavirus pandemic.

Inspections and hearings

10. In or around May 2021 the tribunal was able to reschedule and rearrange inspections in respect of repairing standard applications under the 2006 Act.

11. The tribunal accordingly fixed a date for an inspection by the tribunal members on 3 September 2021 with a hearing to take place on 10 September 2021. Appropriate intimation of those dates was sent to the landlord and the third party applicant. .

12. By email dated 16 August 2021 the landlord wrote to the tribunal requesting that the inspection set for 3 September should be postponed. That request was opposed by the third party applicant. The tribunal refused the request for postponement and intimated that refusal to the landlord by letter dated 23

August 2021.

13. By email dated 24 August the landlord indicated that he would not be available to allow the tribunal access for the inspection on 3 September as he “would be up north visiting family members”.
14. On 2 September 2021 the tribunal administration team attempted to contact the landlord to carry out the appropriate pre-inspection checks required in terms of the ongoing coronavirus protocols. They were unable to contact the landlord and accordingly the tribunal was required to cancel the inspection set for 3 September and also to postpone the hearing set for 10 September.
15. The tribunal set fresh dates for the inspection and hearing for 22 October 2021 and 29 October 2021 respectively.
16. On 21 October, the tribunal administration team contacted the landlord to carry out the pre-inspection Covid protocol checks. The landlord advised the tribunal administration staff that he did not have keys to the property as he had passed them to a repairs contractor and that he would not be able to provide access to the tribunal on the date of the inspection. The tribunal was again required to cancel the planned inspection and hearing.
17. A third date was set for the inspection and hearing. The inspection was set to take place on 3 December 2021 with a hearing on 10 December 2021.
18. By email dated 21 October the landlord wrote to the tribunal indicating that he was clearly unwilling to cooperate with the tribunal. In that email he stated, inter alia, *“to undergo an inspection would be grossly unfair considering the circumstances and I’m certain there are far more properties to worry about than one which is vacant and holds no tenant... The behaviour to force an inspection and have me urgently carry out repairs (internally, and not affecting any other neighbours) and with no tenant renting, seems suspect to say the least”* ...
19. By further email dated 25 November 2021 the landlord again emailed the tribunal and again indicated his unwillingness to cooperate with the tribunal processes and procedures. In that email he stated (sic) ,

“Good Evening,

After numerous emails sent to you by me, I have yet again found myself emailing regarding the same issue. I have received another letter stating an inspection will commence on December 3rd 2021. I have explained several times I am currently dealing with insurance brokers as the cost for repairs is too high and isn't affordable on my own salary. I am not LAZY nor IGNORANT to the repairs and am very much making effort to have these issues solved at once! There is still NO tenant at this property, therefore I am receiving no money renting this property out, for that reason I can't understand why an inspection is still underway. The tribunal/ inspectors will tell me only the same thing I already am very much aware of, only they will demand a time period? why? I am not putting any persons at risk. Why should I have a deadline of one week? Is this so you can take matters further and cost me

more money by fining me for delayed repairs? This seems fair.

Please consider more serious reports.

***Regards,
Mr Ian Tennie”***

20. On 2 December 2021 the tribunal administration staff attempted to contact the landlord to carry out the pre-inspection Covid protocol checks. They could not contact the landlord. Again the inspection set for 3 December required to be cancelled. The hearing set for 10 December required to be cancelled.
21. The tribunal has noted that the landlord has continually refused to cooperate with the tribunal. He has failed to comply with the direction issued by the tribunal. He has on three separate occasions prevented the tribunal from obtaining access to carry out an inspection of the property. In his emails to the tribunal he states that he knows of his responsibilities and complains that the tribunal process is grossly unfair
22. The tribunal has noted that in a separate application (under tribunal reference FTS/HPC/RP/21/1609) the landlord appears to have behaved in an identical fashion in preventing a separate tribunal from carrying out their investigations into another complaint of disrepair at another of his properties. The tribunal in that case also had three attempted inspections in September, October and November 2021 cancelled. It is noted that in that case that the tribunal had also made a direction requiring this landlord to produce certain certificates which should be readily available. It is noted that he also failed to comply with the direction from that tribunal.

Decision

23. The tribunal now requires to determine what further steps it should make to determine this application.
24. The tribunal notes that on three occasions it has made arrangements to inspect the property and on each of these occasions it has been prevented from doing so by the landlord failing to cooperate with the tribunal. The tribunal takes a view that the landlord is not just failing to cooperate with the tribunal but is deliberately obstructing the tribunal process.
25. The tribunal note that the landlord has failed to comply with a direction issued on 15 January 2021. No explanation has been tendered by the landlord to explain his failure to comply with that direction. He has had over a year to produce the documents required in terms of the direction . Some of the documents are standard documents which should be readily available in respect of all properties which are leased in the private rented sector in Scotland

26. The tribunal notes the terms of Rule 18 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. That rule allows the tribunal to make a decision without a hearing if the tribunal considers that it is able to make sufficient findings to determine the cause and to do so will not be contrary to the interests of the parties
27. The tribunal has considered whether it should make a determination in this case without a hearing. The tribunal has not been able to inspect the property. The tribunal takes the view that even if an inspection had taken place such an inspection would not have enabled the tribunal to confirm whether the property meets the relevant parts of the repairing standard relating to the safety of the electrical and gas systems and appliances. The evidence to prove the property meets these required safety standards would be contained within the relevant certificates which the landlord has been directed by the tribunal to produce.
28. The tribunal takes the view that the failure to produce the certificates allows them to make an inference that the certificates do not exist and accordingly the property does not meet the required standard in respect of these items.
29. The failure by the landlord to produce evidence with regard to the installation of the required smoke detectors, heat detectors and carbon monoxide detectors also allows the tribunal to draw an inference that these items have not been installed. It would be a simple matter for the landlord to produce such evidence and he has had more than a year to do so.
30. The tribunal has determined that it can proceed to a final decision in this matter without a hearing. The tribunal has determined that it should make a Repairing Standard Enforcement Order
31. The decision of the tribunal is unanimous

J Bauld

Legal Member/Chair

4 February 2022
Date



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24)**

Reference number: FTS/HPC/RT/20/0347

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The Parties:

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

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

James Bauld (Chairman) and Mike Links (Ordinary Member)

NOTICE TO THE LANDLORD, Mr Ian Tennie, 63 Victoria Road, Paisley, PA2 9PT

Whereas in terms of their decision dated 25 January 2022, the First-tier tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The Act”) and in particular that the Landlord has failed to ensure that:-

(a) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order (as required by section 13(1)(c) of the Act;

(b) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire , as required by section 13(1)(f) of the Act (and

(c) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.(as required by section 13(1)(g)

of the Act

The tribunal now requires the Landlord to carry out such works as are necessary for the purposes of ensuring that the Property concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the Landlord to

1. To produce a valid and up to date Gas Safety certificate in respect of the property as required by the Gas Safety (Installation and Use) Regulations 1998 confirming that the property meets the requirements of those regulations
2. To produce a report from a registered Gas safe engineer confirming that the gas boiler within the property has been inspected within the last three months and that the said boiler is, in the professional opinion of the engineer, safe and fit to use and complies with all appropriate Gas Safety regulations
3. To produce a valid and up to date electrical inspection condition report (EICR) in respect of the property as required by sections 19A and 19B of the Housing (Scotland) Act 2006
4. To provide evidence showing the installation of smoke detectors, heat detectors and carbon monoxide detectors within the property in compliance with the requirements set out in the Housing (Scotland) Act 2006

The First-tier Tribunal order that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement

Order (“RSEO”) commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord’s successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act

J Bauld

Chairperson of the tribunal

Dated: 4 February 2022