

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Revocation of Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 25(1)(b)

Chamber Ref: FTS/HPC/RT/19/0770

Title no/Sasines Description: STG57339

8 Gateside Avenue, Bonnybridge, FK4 1AX ("the House")

The parties:-

Mr Syed Shah, 9 The Holding, Longcroft, FK4 1HD; Suite 4/1, 19 Waterloo Street, Glasgow, G2 6AY ("the Landlord")

Falkirk Council, Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 1XR ("the Third Party Applicant"), now treated as having withdrawn the application submitted on behalf of the former Tenant

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') having determined on 14 February 2022 that the works required by the **Repairing Standard Enforcement Order** relative to the House dated 6 November 2019 (as varied by Variation dated 26 March 2021) are no longer necessary and that said **Repairing Standard Enforcement Order** should accordingly be revoked, the said **Repairing Standard Enforcement Order** is hereby revoked with effect from the date of service of this Notice.

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.

In terms of Section 63 of the Act, 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 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 arrangement 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.

In witness whereof these presents typewritten on this and the preceding page are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 14 February 2022 in the presence of the undernoted witness:-

N Weir

**First-tier
Tribunal for
Scotland**

Housing and Property Chamber

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 25(1)(b) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/19/0770

Title no/Sasines Description: STG57339

8 Gateside Avenue, Bonnybridge, FK4 1AX (“the House”)

The parties:-

Mr Syed Shah, 9 The Holding, Longcroft, FK4 1HD; Suite 4/1, 19 Waterloo Street, Glasgow, G2 6AY (“the Landlord”)

Falkirk Council, Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”), now treated as having withdrawn the application submitted on behalf of the former Tenant

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit for the purposes of determining whether the Repairing Standard Enforcement Order (“RSEO”) relative to the House should be revoked in terms of Section 25(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the House, agreed that the RSEO should be revoked.

The Tribunal comprised:-

Nicola Weir, Legal Member

Andrew Taylor, Ordinary Member

Background

1. By Application submitted with supporting documentation received on 11 March 2019, the Third Party Applicant applied on behalf of the former Tenant to the

Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The Application stated that the applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the following parts of the repairing standard in terms of Section 13 of the Act, namely:-

- (c) the installations in the house 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;
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

In particular, the Application alleged no heat detection in the kitchen; kitchen wall coverings, plasterboard, base units, cupboards have been removed and the floor is uneven with damaged concrete; area of damaged plasterwork at top of living room wall (which adjoins the kitchen); no EICR and no EPC.

2. Further documentation/information was requested from and submitted by the Third Party Applicant.
3. On 10 May 2019, a Convener of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 12 June 2019, requested that any written representations should be lodged with the Tribunal by 12 June 2019. The Inspection and Hearing were set for 29 July 2019.
4. Following service of the Notice of Referral, the Third Party Applicant confirmed by email to the Tribunal dated 13 June 2019 that they wished to attend the Hearing and had no further written representations. By further email dated 26 June 2019, the Third Party Applicant advised that the former Tenant had now moved out of the House.
5. Having deemed the vacation of the House by the former Tenant as a withdrawal of the Application in terms of Schedule 2, paragraph 7(1A) of the Act, the Tribunal then considered whether the Application should continue to be determined or whether it should be abandoned in terms of Schedule 2, paragraph 7(3) of the Act. The Tribunal decided that the Application should continue to be determined as it contained matters which raise health and safety concerns for any future tenants of the House. Accordingly, the Tribunal issued a Minute of Continuation to a Determination dated 2 July 2019.

6. On 3 and 17 July 2019, the Landlord submitted written representations by email to the Tribunal confirming an intention to have the works required carried out in due course, that meantime the House would not be let out and requesting a postponement of the Inspection and Hearing set for 29 July 2019 for these reasons and also due to personal circumstances of the Landlord. The Tribunal decided that cause had been shown and that it was appropriate to postpone.
7. A fresh Inspection and Hearing were subsequently set for 7 October 2019. On 2 October 2019, the Landlord confirmed that access would be granted for the Inspection and the Third Party Applicant also confirmed that he had been in contact with the Landlord for an update and that the House appeared to remain untenanted.
8. The Tribunal inspected the House on the morning of 7 October 2019. In addition to the Members of the Tribunal, a Tribunal Venue Assistant was in attendance. The Landlord was present and provided access to the House and was accompanied by his father, Mr Syed Abbas, in the capacity of supporter.
9. Following the inspection of the house, the Tribunal held a Hearing at STEP Stirling. The same persons who had attended the Inspection attended the Hearing, other than that the Tribunal Venue Assistant was replaced by a Tribunal Clerk, Rebecca Forbes.
10. Following the Hearing, the Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") dated 6 November 2019 in relation to the House. In particular, the Tribunal required the Landlord:-
 - (1) *To repair or as necessary replace the kitchen floor and walls and install kitchen units, appliances and other fixtures and fittings to ensure that all are in a reasonable state of repair and in proper working order.*
 - (2) *To install a heat detector in the kitchen interlinked to the hard-wired smoke detectors in compliance with current Scottish Government Guidance on Smoke Alarms in Private Lets to ensure that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.*
 - (3) *To submit to the Tribunal an up to date, satisfactory and complete Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings, including the smoke and heat detectors, and a Portable Appliance Test (PAT) in respect of any portable electrical appliances from a suitably qualified and registered SELECT, NICEIC or NAPIT contractor to ensure that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order.*
 - (4) *To install a carbon monoxide detector in an appropriate location near the gas boiler in the kitchen to ensure that the house has satisfactory provision*

for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal ordered that the works specified in the RSEO were to be carried out and completed by 30 April 2020.

11. Under normal circumstances, the Tribunal would have arranged for the Ordinary Member to carry out a re-inspection of the property after 30 April 2020, to assist in the determination by the Tribunal as to the compliance of the Landlord with the RSEO. Unfortunately, this has not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a Case Management Discussion (“CMD”) was fixed to take place by telephone conference call on 22 March 2020 at 10am, in order to discuss further procedure in the case and to ascertain if a re-inspection was required or if other evidence was available or could be agreed.
12. The CMD was attended by Mr Shah, the Landlord Respondent and Mr Beatt of Falkirk Council, the Third Party Applicant. Mr Shah explained that the property remains empty and that the work required in terms of the RSEO has not been completed, partly due to the substantial costs involved and partly due to the pandemic. Although he had previously considered that there was a 50% chance that he would re-let the property, he has now decided that he will not. He may get the work done after the pandemic and live in the property himself. He had undertaken to contact Mr Beatt if he intended to let out the property again. He does not consider that the Tribunal should still be involved and has found the whole situation stressful. Mr Beatt advised that he did not really have anything further to add to what Mr Shah has said. He has spoken to Mr Shah once in the intervening period and understands that it is not his intention to let out the property again. He has checked the Council Tax records and Mr Shah is registered as solely responsible for that and the property has not otherwise been brought to the adverse attention of Falkirk Council.
13. The outcome of the CMD was that the Tribunal decided, in the circumstances, that it should continue to determine the case, given that the application and RSEO cover health and safety issues concerning the property. However, given the circumstances, the Tribunal was prepared to vary the RSEO to extend the period for compliance for a further period of 6 months. It was explained to Mr Shah that this meant he would not be found not to have complied with the RSEO and gave the Tribunal the opportunity to re-visit the matter in 6 months’ time, when circumstances concerning the property may have changed. A further CMD may take place at that stage and a re-inspection arranged thereafter, if appropriate.
14. Following the CMD, a Variation of the RSEO was issued dated 26 March 2021, extending the time for compliance with the RSEO for a further 6 months from the date of the CMD, until 22 September 2021.
15. Thereafter, the Tribunal sought to arrange re-inspection of the House on three separate occasions but each re-inspection required to be cancelled in advance due to issues arising with the Coronavirus risk assessments carried out by the

Tribunal Administration. Some mail to the Landlord was also returned to the Tribunal Administration during this period, indicating a potential problem with the Landlord's address, although email communications still appeared to be getting through.

16. The Tribunal Administration carried out an address check with Royal Mail and have updated their records. An up-to-date title check was carried out and it is noted that the House is still registered in the name of the Landlord. The Tribunal also issued a Direction to the Third Party Applicant, requesting updated information from their records concerning the House and the Landlord by 24 January 2022. The Direction was responded to timeously and the Third Party applicant confirmed the Landlord's contact details, that he still has a valid Landlord Registration and that, according to their records, the House appears to have been empty since May 2019.

Reasons for decision

17. The Tribunal, having considered carefully the background and up to date circumstances of the case, particularly that the House has been un-tenanted for a considerable period of time, still appears to be unoccupied and the Landlord's stated position that he does not intend to let out this House in the foreseeable future, now consider that the Tribunal's involvement in this case is no longer required and that the House should no longer be subject to the RSEO as the works detailed therein are no longer required.

Decision

18. The Tribunal accordingly determined that the RSEO should be revoked.
19. The decision of the Tribunal was unanimous .

Right of Appeal

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.

In terms of Section 63 of the Act, 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.

Signed. **N Weir**
Nicola Weir, Legal Member of the Tribunal

Date: 14 February 2022