

# 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 25 of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act

**Chamber Reference number: FTC/HPC/RP/18/3539**

### **Parties:**

1. Karen Macintyre and Allan Macintyre both residing at 11 Commonsides Street, Airdrie, ML6 6NQ ("the Tenants") and
2. Kenneth Davidson residing at 78, Breadie Drive, Milngavie, Glasgow G62 6LR ("the Landlord") per his nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Ms. Lorna Davidson residing at 6, Muirlees Crescent, Milngavie, Glasgow G62 7JA ("the Landlord's Representative"), the Landlord and the Tenants together referred to as "the Parties".

**Property:** 11 Commonsides Street, Airdrie, ML6 6NQ being the subjects registered in the Land Register for Scotland under Title Number LAN66485 ("the Property")

### **Tribunal Members**

Karen Moore (Chairperson)

Geraldine Wooley (Ordinary Member)

This Decision should be read in conjunction with (i) Decision and Repairing Standard Enforcement Order ("the RSEO") in respect of the Property both dated 8 April 2019 and (ii) Decision and Repairing Standard Enforcement Order ("the RSEO") in respect of the Property both dated 11 July 2019

### **Decision**

The Tribunal, having considered the representation made on behalf of the Landlord by the Landlord's Representative determines not to discharge the RSEO at this time but to vary it to allow the Landlord further time to comply.

### **Background**

1. By application received between 27 December 2018 and 29 January 2019 ("the Application"), the first-named tenant on behalf of both Tenants 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) (c) and 13(1) (f) of the Act. Following an Inspection and Hearing on 29 March 2019 the Tribunal imposed the RSEO which states:-

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

- i. Instruct a Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection of the Property and (ii) to provide a fully documented report on the Property which should include a report on the condition of the windows, the whole roof and its supports and trusses, the guttering and downpipes, the front door surround, the ceiling in the bedroom to the rear of the Property and the dampness in both bedrooms ("the Survey Report"), and (iii) to recommend works to all parts of the Property, including renewal or replacement, if necessary, to ensure that the dampness in the Property is eradicated and that the Property is made wind and watertight and is in a reasonable state of repair;*
  - ii. Submit the Survey Report to the Tribunal and provide a copy to the Tenants;*
  - iii. Instruct a Scottish Building Federation or Federation of Master Builders registered building contractor or contractors capable of providing a 10- year guarantee to carry out and complete all works recommended by the Survey Report and confirm in writing to the Tribunal and the Tenants the identity of the building contractor or contractors, the date on which the works will commence and the estimated date for their completion;*
  - iv. Repair or replace the ceiling in the bedroom to the rear of the Property;*
  - v. Repair or replace the glazing in the living room window;*
  - vi. Instruct a SELECT, NAPIT 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) thereafter to issue a complete and compliant electrical installation condition report ("EICR") and/or an Electrical Installation Certificate in accordance with the Scottish Government statutory guidance on electrical installations and appliances in private rented property and*
  - vii. Make good all décor damaged as a result of these works."*
2. Following the expiry of the time to comply of 6 July 2019 as set out in the RSEO, the Tribunal intimated to the Parties that it would carry out an Inspection of the Property 19 July 2019 at 10.30 a.m. By email dated 3 July 2019, the Landlord's Representative on behalf of the Landlord wrote to the Tribunal to request that the Inspection set for 19 July 2019 be postponed as the Landlord is on holiday and to request that a further three months be allowed to complete the works required by the RSEO. In that email, the Landlord's Representative explained that the Landlord had completed the works in part but is unable financially to complete the remaining works citing rent and mortgage payments as the reason. She explained further that the Landlord had served notice on the Tenants to quit the

Property as he intended to reside there himself. The email was accompanied by copies of an electrical installation condition report ("EICR") and a partial Gas Safety Certificate for the Property.

3. The Tribunal determined not to vary the RSEO at that time, determined to proceed with the Inspection on 19 July 2019 and directed the Parties as follows:- directs the Tenants to allow entry to the Property for the said inspection on 19 July 2019 and directs the Landlord to advise the Tribunal if Messrs Gilson Gray are appointed as his agents and to submit to it no later than 26 July 2019 (i) A copy of the full Gas Safety Certificate dated 21 May 2019 and (ii) a copy of his tenancy agreement for 78, Breadie Drive, Milngavie, Glasgow G62 6LR or evidence that he is paying £900.00 per month in rent for that property and evidence of his mortgage payments for the Property.
4. The Parties complied with the Direction.
5. The Tenants allowed the Ordinary Member of the Tribunal to inspect the Property on 19 July 2019, after which inspection the Ordinary Member's Report was issued to the Parties for comment. The Tenants did not comment. The Landlord's Representative wrote to the Tribunal to request a Hearing. In the circumstances, the Tribunal determined to hold a further Hearing to allow it consider matters fully. A further Hearing was fixed for 17 October 2019 at the said Glasgow Tribunal Centre and was intimated to the Parties.

#### **Further Hearing**

6. The further Hearing took place on 17 October 2019 at the said Glasgow Tribunal Centre. The Tenants were not present. The Landlord was not present and was represented by Landlord's Representative.
7. The Landlord's Representative acknowledged that the RSEO had not been complied with in full and advised the Tribunal that it was the Landlord's intention to reside in the Property himself as his current financial situation prohibited him from repairing the Property to a tenantable standard or comply with the RSEO.
8. The Landlord's Representative submitted that the status of the works required by the RSEO fell into three categories :i) works which had been carried out; ii) works which could not be carried out as access to carry out the works could not be gained and iii) works which the Landlord cannot carry out at present due to lack of finances.
9. With regard to works which have been carried out, the Tribunal noted that although some electrical works had been carried out and a gas inspection had been carried out neither a complete and compliant EICR nor Gas Safety Certificate are in place for the Property. The Landlord's Representative explained with reference to copy emails and copy prints of text messages, that access had not been possible for the engineers to call at the Property.

10. With regard to the repairs or replacement of the windows, again with reference to copy correspondence, the Landlord's Representative explained that no access had been gained to allow this part of the RSEO to be dealt with.
11. With regard to the survey, the roof repair and the internal ceiling repair work, the Landlord's Representative explained that a visual estimate from outside the Property had been given by a building contractor and the estimated cost is prohibitive. Again, access for the survey as required by the RSEO had not been possible.
12. The Landlord's Representative explained to the Tribunal that the Landlord has no income, that he pays a monthly mortgage on the Property and pays £900.00 per month rent on the Property in which he and his wife resides. She submitted that by recovering possession of the Property and residing there himself, the Landlord will release funds to enable him to carry out the repairs. She submitted that a Notice to Quit had been served on the Tenants bringing the tenancy to an end on 8 October 2019 and that an application is now being made to obtain an eviction order.
13. The Landlord's Representative requested that the Tribunal discharge the RSEO, but, if it was not prepared to do so, to refrain from making a finding of failure to comply as the Landlord had shown reasonable excuse for not complying.

#### **Summary of the Issues**

14. The issues to be determined by the Tribunal is whether or not to revoke and so discharge the RSEO, whether to issue a notice of failure to comply, or to vary the RSEO.

#### **Findings in Fact**

15. From the Inspection on 19 July 2019 and the further Hearing, the Tribunal found that the RSEO had not been complied with fully. From the said further Hearing, the Tribunal accepted that the Landlord had attempted to address the RSEO in part and accepted his financial position as submitted to it.

#### **Decision of the tribunal and reasons for the decision.**

16. The Tribunal had regard to its powers in terms of Section 25 of the Act which states:-
  - (1) *Where the First-tier Tribunal has made a repairing standard enforcement order, it may, at any time (a) vary the order in such manner as it considers reasonable, or, (b) where it considers that the work required by the order is no longer necessary, revoke it.*
  - (2) *Where subsection (3) applies, the First-tier Tribunal must vary the repairing standard enforcement order in question (a) so as to extend, or further extend, the period within which the work required by the order must be completed, and (b) in such other manner as it thinks fit.*
  - (3) *This subsection applies where (a) the First-tier Tribunal considers, on the submission of the landlord or otherwise, that the work required by a repairing standard enforcement order has not been, or will not be, completed during the*

*period within which the order requires the work to be completed, and (b) the First-tier Tribunal (i) considers that satisfactory progress has been made in carrying out the work required, or (ii) has received a written undertaking from the landlord stating that the work required will be completed by a later date which the First-tier Tribunal consider satisfactory.*

*(4) References in this Act (including this section) to a repairing standard enforcement order or to work required by such an order are, where the order has been varied under this section, to be treated as references to the order as so varied or, as the case may be, to work required by the order as so varied."*

17. The Tribunal had regard to Section 25(1)(b) of the Act and considered whether it should revoke and so discharge the RSEO. The Tribunal took the view that the most serious aspects of the RSEO which relate to the habitable condition of the Property and the health and safety of its occupants remain outstanding. The Tribunal had regard to the fact that the Tenants may still be residing the Property. Accordingly, the Tribunal determined not to revoke the RSEO.
18. The Tribunal had regard to the reasons given on behalf of the Landlord in respect of his financial circumstances and the efforts to which he had gone to attempt to comply further with RSEO and accepted that reasonable excuse had been shown. Therefore, the Tribunal determined not to make a finding of failure to comply and determined that it was appropriate to vary the RSEO in terms of Section 25(1)(a) of the Act. In the circumstances, the Tribunal considered that a year to comply in full is reasonable.

#### **Appeal**

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.

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

**K Moore**

Karen Moore, Chairperson

11 November 2019