

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 (“the Act”)

Reference number: FTS/HPC/RP/21/0233

Re: Property at Basement Left, 7 Niddrie Square, Glasgow, G42 8QX registered in the Land Register of Scotland under Title Number GLA106463 (“the Property”)

The Parties:

Mr Saif Monir (“the Applicant” and “the Tenant”)

Mrs Allison Hussain, 430 Shields Road, Glasgow, G41 1NS; 94 Ormonde Avenue, Glasgow G44 3SW (“the Landlord”)

Tribunal Members:

Susan Christie (Legal Member)

Nick Allan, Surveyor(Ordinary Member)

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 Landlord has complied with the Repairing Standard Enforcement Order (“RSEO”) dated 18 August 2021, in terms of Section 26(1) of the Act and taking account of all of the available evidence, determines that the Landlord has failed to comply with the RSEO. The Tribunal determined that a Notice of that failure should be served on the local authority in whose area the Property is situated in terms of Section 26(2)(a) of the Act. The Tribunal also determined that a Rent Relief Order under Section 27 should be made. The decision of the Tribunal is unanimous.

Background

1. The RSEO required the Landlord to undertake works as were necessary for the purposes of ensuring that the Property concerned met the repairing standard and is dated 18 August 2021. It was sent to the Landlord on 25 August 2021. The Landlord required to comply with the RSEO within five weeks of its service on her.
2. In terms of the RSEO, the Tribunal required the Landlord to: -
 - (1) The Landlord is required to produce a current Electrical Installation Condition Report for the House and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist (Section 13(1)(c) of the 2006 Act).
 - (2) The Landlord is required to produce a report from a suitably qualified heating engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property (Section 13 (1) (c) of the 2006 Act).
 - (3) The Landlord is required to replace or repair the dishwasher (Section 13 (1) (d) of the 2006 Act).
 - (4) The Landlord is required to produce a certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe (Section 13 (1) (c) of the Act).
 - (5) The Landlord is required to make effective repairs in the kitchen to combat access for rodents (Section 13 (1) (a) of the 2006 Act).

Re-Inspection

4. A re-inspection of the Property took place on 10 August 2021 attended by the Tribunal. During the visual re-inspection the Parties present sought to provide the Tribunal with information regarding recent events and issues. They were advised verbally that this was not the purpose of the re-inspection.
5. The Re-Inspection Report is produced along with this Decision.

6. A copy of the Re-Inspection Report was issued to the Parties on 23 November 2021 with responses required by 7 December 2021.
7. Neither the Landlord nor her agent responded.
8. The Tenant responded on 7 December 2021. He agreed with the findings of the Re-Inspection Report and asked the Tribunal to consider a Rent Relief Order.
9. The Tribunal issued a Direction, dated 10 November 2021, to the Parties on 23 November 2021. It directed that a Hearing be assigned to allow the Tribunal to hear from the Parties prior to deciding on whether the RSEO had been complied with, and to consider any other matters arising.

The Hearing- 2 March 2022- Conference call.

10. The Tenant participated and the Landlord was represented by Mr Deen, property agent ('the Landlord's Representative').
11. The Parties were taken through the terms of the RSEO. During the Hearing at different points further documents were submitted by the Landlord's Representative and discussed. Those were:
 - A Domestic Landlord Gas Safety Record by Heat It Up Ltd dated 10 November 2021.
This did not meet the requirements of Parts 2 & 4 of the RSEO, and it referred only to a visual inspection of the Vokera boiler.
 - A Domestic Electrical Installation Condition Report ('EICR') by AA Electrical Services dated 25 October 2021.
The extent of the installation and limitations of the inspection and testing at Parts 4 were blank.
 - A Qualification identification card for the tradesperson named on the EICR showing a recognised apprenticeship, an SVQ level 3 and an LCL Level 3 Award in the requirements for electrical installation approved health and safety.
This showed only the qualifications of the tradesperson and did not evidence that the electrician tradesperson was 'either employed by a firm that is a member of an accredited registration scheme operated by a registered body or self-employed member of an accredited registration scheme operated by a recognised body' nor was there submitted as *an alternative* the checklist at Annex A of the Scottish Government Statutory Guidance on electrical Installations and Appliances in Private Rented Property issued on 1 December 2016 nor copies of the documentary evidence that required to accompany the checklist.
12. The Landlord's Representative accepted that a Report as required in Part 2 of the RSEO had not been submitted due to his misunderstanding. A Report had not been commissioned.

13. The Landlord's Representative accepted that a PAT testing document had not been produced as required under Part 1 of the RSEO. There was discussion around whether there were such items provided by the Landlord within the Property. The Tenant referred to a kettle, washing machine and fridge. The Landlord's Representative did not have a copy of the Inventory Schedule for the tenancy and was unable to respond with certainty. In any event the Tribunal noted that there had been no evidence produced in response to the RSEO that negated the need for a PAT document.
14. Part 3 of the RSEO-it was now accepted that the second replacement dishwasher had been installed and was in working order.
15. Part 5 of the RSEO-it was not in dispute that some work had been carried out to the exterior of the building to seal a large hole there. However, as shown in photograph 9 of the re-inspection Report, there was still in the Ordinary Member's view the potential for an access point for rodents that had not been sealed. The Landlord had believed that it was not required or feasible to further seal around the pipework under the sink and that was why it was not sealed. The Tenant stated that he can still hear rodent activity under the floor and behind the walls and that in his view whilst he had not seen a rodent recently, he did not consider a comprehensive approach to this issue had been taken.
16. It was noted that membership of an accredited scheme of the electrician and/or the firm he was employed or worked for could not be independently verified.
17. The Parties were advised that a written decision would follow. It was noted, for the purposes of the rent relief consideration that the tenancy agreement provided for the Tenant to rent 'the flat' and there were 'shared areas' -to share the kitchen and shower room and that there were 'excluded areas' - locked rooms in the Property that the Landlord 'used as storage'. This did not exactly align with the Tenant's statement that at times there were 3 occupiers not of the same household in the Property occupying bedrooms. The rent is £500 per calendar month.

Observation

18. Whilst the RSEO did not make any requirement that related to the window in the bedroom occupied by the Tenant, it was nevertheless causing some friction in relation to security, a barrel bolt having been fitted where the sash windows met. This had been fitted to appease the Tenant. The iron grill that had been closed over the window from the outside and referred to in the application had since been unlocked and was left permanently in an open position by the Tenant. The reason being it was rusty and was slow to move.
19. It was observed by the Tenant and the tribunal that the aforementioned barrel bolt could be easily overcome and was not a specially designed safety clasp

for a sash window. The Landlord should consider investigating the efficacy of the bolt and take any remedial steps.

Finding in fact

20. The Landlord has failed to comply with the RSEO of 19 August 2021 with reference to Parts 1,2,4 and 5 of the said RSEO.

Reasons for Decision

21. The works required under Part 3 of the RSEO have been fully complied with. Part 3 of the RSEO had been met and the dishwasher supplied as a replacement was in working order. The remainder of the RSEO has not been complied with. A Domestic Landlord Gas Safety Record by Heat It Up Ltd dated 10 November 2021 did not meet the requirements of Parts 2 & 4 of the RSEO and it referred only to a visual inspection of the Vokera boiler saying it was safe to use. No Report as required and detailed in Part 2 of the RSEO from a suitably qualified heating engineer to confirm that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property had been produced. A Domestic Electrical Installation Condition Report ('EICR') by AA Electrical Services dated 25 October 2021 was incomplete as the 'extent of the installation covered by this report' and limitations of the inspection and testing at Parts 4 were left blank. A Qualification identification card for the tradesperson named on the EICR showing a recognised apprenticeship, an SVQ level 3 and an LCL Level 3 Award in the requirements for electrical installation approved health and safety highlights only the qualifications of the tradesperson and did not evidence that the electrician tradesperson was 'either employed by a firm that is a member of an accredited registration scheme operated by a registered body or self-employed member of an accredited registration scheme operated by a recognised body' nor was there submitted as *an alternative* the checklist at Annex A of the Scottish Government Statutory Guidance on electrical Installations and Appliances in Private Rented Property issued on 1 December 2016 nor copies of the documentary evidence that required to accompany the checklist. No accredited registration could be independently verified. The tribunal was not satisfied following on the re-inspection that all effective repairs had been carried out in the kitchen to satisfy Part 5 of the RSEO.
22. The period within which the RSEO required the work to be completed ended and despite the Landlord's Representative suggesting that he had documentation to produce that would satisfy some of the terms of the RSEO, it did not. This is despite there having been ample time to comply with the RSEO. Accordingly, the Tribunal determined that a failure to comply was

appropriate. The Tribunal determined that notice of that failure be served upon the local authority in whose area the Property is situated.

23. The Tribunal considers that a Rent Relief Order is appropriate as the Landlord's failure to comply with the RSEO is and is likely to have a direct impact upon the Tenant's safety. The Tribunal considers the safety of a tenant to be paramount. The Tenant's enjoyment of the Property has been diminished. Accordingly, the Tribunal considers the rent payable under the tenancy should be reduced by 40% and the Tribunal proceeded to make an Order to that effect.
24. The Tribunal proceeded to serve a Notice on the local authority.
25. The Tribunal draws the Landlord's attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence.

Right of Appeal

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

S Christie

Signed _____ Date 2 March 2022

Susan Christie, Legal Member

