

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Statement of Decision under section 26(1) of the Housing (Scotland) Act 2006  
as amended (“the Act”)**

**Chamber Ref: FTS/HPC/RT/16/1007**

**Title no: FFE84905**

**89 Kirkburn Drive, Cardenden, Lochgelly, Fife KY5 0LS (“The House”)**

**The Parties:-**

- **Fife Council (Private Housing Standards), Kingdom House, Kingdom Avenue, Glenrothes, Fife, KY7 5LY (represented by their agent (Mrs Christine Hay)) (“the Third Party Applicant”)**
- **Mr David Thomson, 88 Kirkburn Drive, Cardenden, Lochgelly, Fife KY5 0LS (“the Tenant”)**
- **Ms Farah Usman, 26/2 Avon Road, Edinburgh EH4 6RD (“the Landlord”)**

**The First-Tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)**

**Gabrielle Miller - Chair and Legal Member**

**Geraldine Wooley - Ordinary Member (Surveyor)**

1. **The First Tier Tribunal for Scotland (Housing & Property Chamber) (“the Tribunal”), having made such enquiries as was appropriate for determining whether the Landlord had complied with the Repairing Standard Enforcement Order (“RSEO”) in relation to the House concerned and taking account of the subsequent re-inspection of the House, determined that the Landlord had now complied with the terms of the RSEO and resolved to issue a Certificate of Completion in respect of the works required by the RSEO.**

## **Statement of Reasons**

2. Reference is made to the Determination of the Tribunal dated 4<sup>th</sup> April 2017 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act and to the RSEO made by the Tribunal which required the Landlord to carry out works to ensure that the House meets the Repairing Standard.
3. The Tribunal required the Landlord to carry out such work as is necessary for the purposed of ensuring that the House concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of the Order is made good.
4. In particular, the Tribunal required the Landlord: -
  - a. to provide a Gas Safety Certificate for the House from a Gas Safe Registered Engineer addressing the working order, condition and safety of the gas installation and the Boiler and issued within the last six months and should also address whether there is a carbon monoxide alarm which complies with the statutory guidance in the House.
  - b. to provide an Electrical Installation Condition Report (EICR) showing the electrical installation reaches a satisfactory standard with no C1 or C2 items reported.
  - c. to ensure that the front, rear and patio doors are draught proof.
5. The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within 28 days form the date of service of the RSEO, that is, by 16<sup>th</sup> June 2017. The RSEO was served on 19<sup>th</sup> May 2017.
6. A further inspection of the House was undertaken by the Ordinary Member (Surveyor) on 19<sup>th</sup> July 2017 (dated 19<sup>th</sup> April 2017 in error). It was noted at the inspection that works in the RSEO had been undertaken. This was namely:-
  - a. A Gas Safety certificate dated 13<sup>th</sup> January 2017 was produced but did not indicate whether a carbon monoxide alarm has been fitted.
  - b. A Domestic Electrical Installation Certificate dated 6<sup>th</sup> May 2017 was produced by the Landlord, showing that there has been major rewiring undertaken at the property, including the smoke detection system. This was issued by a NICEIC registered electrician but the serial number for the certificate is missing, which raised a query as to the validity of the certificate. If valid, this certificate would meet the requirements of Clause 22 of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property.

- c. No work had been carried out to the front, rear or patio doors. The condition of the front door had deteriorated from the initial inspection, making it very hard to close. No evidence of the carbon monoxide alarm had been supplied and that the serial number of the Domestic Electrical Installation Certificate should be confirmed.
7. On 27<sup>th</sup> July 2017, the Landlord's agent contacted the Housing and Property Chamber by email to advise that:
  - a. the front and rear patio doors were sealed and 12 tubes of sealant were used in the process and glaziers had been instructed to address this problem;
  - b. that damage to the door was caused by the Tenant and a glazier had been instructed to inspect it;
  - c. that a gas engineer had been instructed to carry out the works needed in order to comply with the regulations;
  - d. that the carbon monoxide alarm had been missed in the process but that the Landlord's agents had instructed for this to be fitted with immediate effect; and
  - e. that a copy of the Domestic Electrical Installation Certificate had been asked for from the previous person who had it and had instructed it.
8. On 26<sup>th</sup> July 2017, emails were received from the Landlord's previous agents (who were not specified as agents in the application process nor had been authorised at any further point) attaching the correct Domestic Electrical Installation Certificate and Gas Safety Certificate showing testing of carbon monoxide alarms. The Domestic Electrical Installation certificate was dated 6<sup>th</sup> May 2017 and the gas safety certificate was dated 13<sup>th</sup> January 2017.
9. On 20<sup>th</sup> October 2017 a variation of the RSEO was served upon the Landlord. This variation allowed a further 28 days from the date of service for the completion of the works required by the variation. This was namely:-
  - a. Main doors - the doors need to be rehung or replaced to fit the frame and eliminate draughts.
  - b. The central seal on the patio doors needs to be draught proofed.
10. A further inspection was undertaken by the Ordinary Member (Surveyor) on 11<sup>th</sup> December 2017. It was noted that works had been undertaken from the RSEO. This was namely:-
  - a. A Domestic Electrical Installation Certificate dated 6<sup>th</sup> May 2017 had been produced by the Landlord showing that there has been major rewiring undertaken at the House, including the smoke detection system. This was issued by a NICEIC registered electrician and meets the requirements of Clause 22 of the Scottish Government Statutory

Guidance on Electrical Installations and Appliances in Private Rented Property.

11. The inspection noted that there was work in the RSEO outstanding, namely:-

- a. The Gas Safety Certificate produced did not indicate whether a carbon monoxide alarm had been fitted which complies with statutory guidance. A carbon monoxide alarm had been fitted next to the gas cooker. This is not a legal requirement. The gas boiler is in the attic but there was no evidence of a carbon monoxide detector at the hatch to the loft.
- b. No work had been carried out the front, rear or patio doors. The remaining work outstanding consisted of –
  - i. The front door had been poorly fitted to the frame and needs to be replaced or rehung to make it wind-tight. It had deteriorated since the last inspection as the lock could not be operated and the door could not be opened. There is now an additional concern as the door is a means for escape in a fire.
  - ii. The back door had been poorly fitted and needs to be replaced or rehung to make it wind tight and secure.
  - iii. The patio door needs to be replaced or repaired to make the property secure and wind tight because the moving section of the door is poorly fitted and can be easily be removed from its frame making the House unsecure, the lock cannot be used and there are gaps between the moving and the fixed sections which admit draughts.

12. The third inspection report was sent to all parties on 21<sup>st</sup> December 2017. There was no response to the report from any party.

13. On 8<sup>th</sup> March 2018 the Tribunal issued a Failure to Comply notice and a Rent Relief Order.

14. On 21<sup>st</sup> March the Housing and Property Chamber received an email from the Landlord's solicitor asking for a review of the decision of the Rent Relief Order only. The application did not comply with the requirements of Rule 39(2)(c) of the Procedure Rules, as the application from the Landlord's solicitor does not set out the reason for the review being necessary. The Landlord's solicitor did not state the reason why the decision dated 8<sup>th</sup> March 2018 was erroneous in fact or law or contrary to the interests of justice. The review was refused.

15. In the letter from the solicitor it was noted that the work required had been completed. The Tribunal felt it fit an appropriate to proceed to an inspection to determine if the work stipulated in the varied RSEO has been completed.

16. On the 1<sup>st</sup> June 2018 the Housing and Property Chamber requested a copy of a current Gas Safety certificate. This was received by the Housing and Property Chamber on 1<sup>st</sup> June 2018. It was submitted by the Landlord's

solicitors. The Gas Safety certificate was dated 22<sup>nd</sup> May 2018 and the items on it were satisfactory.

17. On 4<sup>th</sup> June 2018, the Ordinary Member (Surveyor) of the Tribunal carried out an inspection of the House. The House was inspected externally only. Although the Tenant was in the house he was not available to attend the inspection. However, external access to both the front and rear of the property was available so the doors could be adequately inspected. The Tenant indicated in writing that the problems have been resolved. The Ordinary Member noted the front and rear main doors and the aluminium framed patio doors, had all been replaced by new PVC framed doors. It was observed at the start of the inspection that the front door opened and closed correctly. As far as could be determined from an external inspection, both the rear door and patio doors were correctly fitted and wind and watertight. The Ordinary Member's report was circulated to parties and comments were asked to be returned to the Housing and Property Chamber by 3<sup>rd</sup> July 2018. No comments were forthcoming.

### **Decision**

18. The Tribunal considers the works specified in the RSEO have been substantially completed and have decided that it is appropriate to issue a Certificate of Completion in terms of Section 60 of the Act. The Tribunal members were unanimous in their decision.

### **Rights of Appeal**

19. **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.**
20. **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.**

G Miller

Chairing Legal Member of the Tribunal

Dated:

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