

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Notice of Failure to Comply with a Repairing Standard Enforcement Order:
Housing (Scotland) Act 2006 ("the 2006 Act"), section 26

Chamber Ref: FTS/HPC/RT/21/1345

Title Number: STG13408

Property at Property at 8 Abbotsford Drive, Laurieston, Falkirk FK2 9LN

("The Property")

The Parties:-

Falkirk Council, Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk FK1 1XR

("the Third-Party")

Christopher Malone, 4 Abbotsford Drive, Laurieston, Falkirk FK2 9LN

("the Landlord")

Tribunal Members:

Rory Cowan (Legal Chair)

Sara Hesp (Ordinary Member)

Decision

The Tribunal, having carried out such enquiries as are appropriate, determined that the Landlord has **failed to comply** with the requirements of the Repairing Standard Enforcement Order ("RSEO") issued further to a decision of the Tribunal dated 19 August 2021. It further determined that notice of that failure should be served on the Local Authority in whose area the Property is situated. The Tribunal further determined to make a Rent Relief Order.

Background

- 1, The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") relative to the Property on 19 August 2021 following a decision that the Landlord had failed to comply with his duty under section 14(1)(b) of the 2006

Act. The RSEO required the Landlord to carry out the following works within 30 days of the date of the RSEO:

“To instruct an Electrical Installation Condition Report on the Property by an appropriately qualified electrician being a member of NICEIC, SELECT or NAPIT. To carry out all works identified as either category C1 or C2 in the said Electrical Installation Condition Report in order to ensure that the Property’s electrical installations are in a reasonable state of repair and in proper working order. The Electrical Installation Condition Report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.”

2. On further consideration, it was noted that the Landlord had not provided an EICR prepared by an appropriately qualified electrician as required by the RSEO. As the RSEO only required production of certificates and invoices, and these had not been produced, it was deemed unnecessary to inspect the Property.

Reasons for decision

3. In terms of section 28(1) of the Housing (Scotland) Act 2006, it is an offence not to comply with the terms of an RSEO. Section 28(2) allows a reasonable excuse defence where the Landlord is unable to comply with the order because of a lack of necessary rights despite having taken reasonable steps for the purposes of acquiring those rights.
4. The Landlord has failed to provide an EICR as directed by the RSEO. No explanation for his failure to comply with the RSEO has been given.
5. The original RSEO was issued following a decision of the Tribunal dated 19 August 2021. Accordingly, nearly 3 months have passed since service of the RSEO without the necessary works having been carried out and copies of certificates and/or invoices being sent to the Tribunal.
6. In terms of section 28(4) of the 2006 Act, the Tribunal decided on 30 November 2021 that the Landlord has failed to comply with the terms of the RSEO.
7. Therefore, in terms of section 26(2)(a) of the Act, the Tribunal determined to send a notice of that failure to the Local Authority in whose area the Property is situated.
8. The Tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. The Landlord has failed to engage with the Tribunal and has had plenty of time to carry out the required works. It appears to the Tribunal that the Landlord has simply chosen to ignore the RSEO. Further, in the purported EICR produced by the Landlord, identified potentially dangerous faults with the electrical installations within the Property.

Accordingly, the Tribunal decided to make a Rent Relief Order to the extent of ninety (90%) per cent of the rent payable in terms of the lease agreement between the parties.

9. The decision of the Tribunal was unanimous.

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 within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed:

Date: 30 November 2021

Rory Cowan

Chairman