

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Sections 25 and 27 of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act

Chamber reference: FTS/HPC/RP/16/1005

Parties :

Mr John Deans residing at 110 Helensburgh Drive, Glasgow G13 1RR ("the Landlord")

Property: 118 Kirkton Avenue, Glasgow G13 3AB registered in the Land Register for Scotland under Title Number GLA65336 ("the Property")

Tribunal Members

Karen Moore (Chairperson) Nick Allan (Surveyor Member)

Decision

This Decision should be read in conjunction with:

Decision dated 14 February 2017 and Repairing Standard Enforcement Order (RSEO) dated 27 March 2017

Decision of Failure to Comply and Rent Relief Order (RRO) affecting the Property both dated 22 January 2018

Decision of refusal to discharge the RSEO dated 18 March 2019

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the RSEO and the RSEO as varied, determined that the Landlord has not complied and so determines not to vary further or revoke the RSEO and determines not to revoke the RRO and that for the reasons set out below.

Background

1. By application dated 1 December 2016 (“the Application”), the then tenant 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) (b), 13(1) (c), 13(1) (d), 13(1) (f) and 13 (1)(g) of the Act. An Inspection and Hearing were held on 14 February 2017 following which the Tribunal determined that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Act and imposed the RSEO.

2. The RSEO stated “*The Landlord must on or before 30 April 2017:-*

1. *Instruct a gas safe engineer to carry out a full inspection of the gas central heating boiler and to repair or renew the gas central heating boiler so that the system provides heating to all radiators in the property and domestic hot water to all hot water taps;*

2. *Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards;*

3. *If required by the inspection specified at 2 above, replace the light fitting in the bathroom with a light fitting which meets current regulatory standards;*

4. *Instruct a Corgi registered plumber (i) to inspect the hot and cold water supply in the bathroom and (ii) to carry out such works as are necessary to ensure all taps are fully functioning with water pressure suitable for a domestic supply;*

5. *Provide and install sufficient hard wired smoke, heat and carbon monoxide detectors to comply with current regulations;*

6. *Instruct a gas safe engineer to carry out a full inspection of the gas installation in the Property and provide a gas safety certificate to the Tenant and tribunal;*

7. *Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus in the property and provide a EICR to the Tenant and tribunal and*

8. *Make good any decor damaged as a result of these works.”*

Failure to Comply

3. Following re-inspections of the Property, by Decision and Order dated 22 January 2018. the Tribunal made a finding of failure to comply with the RSEO and imposed the RRO reducing the rent by 75%.
4. The Landlord was referred for prosecution in respect of the finding of failure to comply with the RSEO.

Further Inspection

5. On 23 March 2022, the Tribunal received an email from the Landlord which stated *“Hi, Please arrange to have the repairing order lifted on this property. Thanks and regards John Deans”* Accordingly, an Inspection was fixed for 25 May 2022 at 10.30 and notified to the Landlord.
6. The Tribunal attended the Property on 25 May 2022 at 10.30 to inspect the Property. However, the Landlord did not attend and the Tribunal could not gain access to the Property.

Summary of the Issues

7. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part, if it should vary or revoke the RSEO, if it should make a finding of compliance with the RSEO and if it should vary or revoke the RRO.

Findings in Fact

8. As the Tribunal was unable to carry out the Inspection on 25 May 2022 at 10.30, the Tribunal was not able to determine that the RSEO has been complied with and that the Property meets the Repairing Standard.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

9. The Tribunal had regard to Section 25 (1) of the Act which states:- *“(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a)*

vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”

10. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The Tribunal had regard to the terms of the RSEO which deal with health and safety. The Tribunal held the view that safeguarding the occupants of the Property is of paramount importance and so the Tribunal was not of a mind to revoke the RSEO.
11. With regard to Section 25(1)(a), and whether it should vary the RSEO further, there has been no indication from the Landlord that the works have been completed and so the Tribunal was not of a mind to vary the RSEO.
12. The Tribunal then had regard to Section 27 of the Act which states: “*The First-tier Tribunal may decide to revoke a rent relief order at any time; and the First-tier Tribunal must decide to do so if (a) the repairing standard enforcement order to which the rent relief order relates is revoked, or (b) a certificate is granted under section 60 in relation to the work required by that repairing standard enforcement order.*” The Tribunal not having revoked the RSEO and not having granted a certificate under Section 60 of the Act, is not bound to revoke the RRO. The Tribunal, having regard to its findings determined not to revoke the RRO of its own accord, the RRO being redundant as there is no tenant of the Property
13. The decision is unanimous.

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.

Effect of Section 63

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.

K Moore

Signed

Karen Moore, Chairperson

Date 16 June 2022