

# **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: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: PRHP/RP/15/0098**

**Property at 221J Albert Street, Dundee, DD4 6QA ("the Property")**

**The Parties:-**

**MR PAUL SYME formerly residing at 221J Albert Street, Dundee, DD4 6QA ("the Tenant")**

**MR JOHN DICKSON c/o CGR Properties, DIA Business Properties, Meadowmill, West Henderson's Wynd, Dundee, DD1 5BY (represented by his agent Mr Ryan Monks, CGR Properties) ("the Landlord")**

### **Background**

1. This matter has previously been dealt with by the Private Rented Housing Committee (the PRHC). On 1<sup>st</sup> December 2016 the jurisdiction of the PHRC transferred to the First-tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal).
2. On 5 June 2015 the PRHC determined that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Act in that he had failed to ensure that the Property met the repairing standard. An RSEO was served on the Property on the same date. The works required by the RSEO were:-
  - (a) To carry out such works as are necessary to provide adequate ventilation within the Property.
  - (b) To obtain a roof report over the larger tenement subjects and to carry out any works required thereafter to ensure that the Property is properly wind and watertight and free from water penetration.
  - (c) To carry out such works of repair or replacement to the gutters, rhones and downpipes to ensure that they are in proper working order and meet the repairing standard.
  - (d) To carry out such works as are necessary to allow the issue of an electrical installation condition report over the Property containing no items marked "C1" or "C2".

3. The RSEO gave the Landlord 3 months to carry out the works.
4. On 25 November 2015, the PRHC determined to give the Landlord an additional period of 3 months to allow completion of the works and the RSEO was extended accordingly. This was due to the difficulties the Landlord was having in co-ordinating communal repairs amongst the various landlords in the tenement.
5. On 1 April 2016, the PRHC determined to give the Landlord an additional further period of 6 months to allow for completion of the works and the RSEO was again extended. Again this was primarily due to the difficulties the Landlord was having in co-ordinating communal repairs amongst the various landlords in the tenement.
6. In due course the Landlord and his agent were again contacted to determine whether the Property could be re-inspected. The Landlord and his agent intimated to the PRHC that the works were still not complete. The Property remained vacant.
7. The Tribunal determined, in light of the two extensions that had been given to allow the Landlord further time to achieve compliance, that it would be appropriate to re-inspect the Property. Accordingly, Mr David Godfrey (the Surveyor Member of the PRHC and now the Tribunal) re-inspected the Property on Monday 21 November 2016. The Tenant was neither present nor represented, given he no longer resided in the Property. The Landlord was represented by his agent Mr Monks.

The Surveyor Member had noted over the course of the two previous re-inspections, trickle vents had been fitted to the windows and some localised repairs had been carried out to the roof covering. The rear rhones had been replaced and an electrical installation condition report had been obtained.

However no mechanical ventilation had been installed in either the kitchen or the bathroom. No roof report was available at the date of the re-inspection and the gutters, rhones and downpipes were generally still in poor condition. There was still evidence of condensation and damp within the Property and this can be seen from the Schedule of Photographs taken during the course of the inspection (paragraphs 6, 7 and 8 in particular refer). Pictures 9 and 10 show the poor condition of the rhones and downpipes.

The Landlord's agent subsequently submitted documentation to the Tribunal on 16 December 2016 by way of an explanation. He explained that whilst carrying out the works the flat had been broken into. The agent again reiterated that they were trying to co-ordinate works to the building to make it secure.

8. The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr D Godfrey, Surveyor Member) considered the position. The Tribunal was aware that this was a problematic tenement and there were difficulties in getting the proprietors to liaise and engage together. The Tribunal was aware that there was a possibility of the local authority stepping in to try and resolve matters within the tenement. Nonetheless, despite these issues, the Tribunal, on balance, did not feel that sufficient effort had been made by the Landlord and his agent to push matters forward. Not all of the internal works had been carried out. In arranging re-inspections and liaising with the Tribunal, the Landlord and his agent had, on a number of occasions, been tardy in their response. The Tribunal had not had sight of any meaningful evidence as to the level of effort the Landlord and his agent had put in to try and co-ordinate with the other parties. The Tribunal did not feel that it could keep on extending the RSEO indefinitely. On that basis the Tribunal was satisfied that there had, on balance, been a failure to comply without reasonable excuse. The Tribunal was satisfied however that the seriousness of this matter was at the lower end of the scale given there were difficulties within the tenement. The Property remained vacant and the Landlord was therefore not receiving any benefit from the Property.
9. The Tribunal then considered what steps to take. In terms of Section 26(1) of the Act it was for the Tribunal to decide whether the Landlord had complied with the RSEO made by the Tribunal. In terms of sub-section (2) where the Tribunal decides that a Landlord has failed to comply with an RSEO the Tribunal must (a) serve notice of the failure on the Local Authority and (b) decide whether to make a Rent Relief Order.
10. The Tribunal, after discussion and as set out above, accepted that it was clear that given that the majority of works had not been undertaken and that no meaningful progress had been made, that the Landlord had failed to comply with the RSEO. Accordingly the Tribunal was obliged to serve notice of the failure on the Local Authority and resolved to do so.
11. The Tribunal determined that there was no benefit in making a Rent Relief Order (RRO) in this case. The Property was vacant and the Landlord could not re-let the Property until such time as the Property had been brought up to the required standard. Accordingly, given the tenancy was no longer in existence, an RRO was not appropriate.
12. The Committee also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a Landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. Whilst there were some mitigating factors as to why the Landlord had not yet complied with the RSEO, the Tribunal was of the view that they had given the Landlord enough time to organise a scheme of communal repairs. The Landlord could have carried out some of the works to the interior of the Property that were required but had not done this either. As an example the mechanical ventilation could have been installed in the bathroom and kitchen yet the Landlord had elected not to do so. There had been an

ongoing failure for a number of years to maintain the Property and the communal parts to an appropriate standard.

13. Accordingly in the circumstances, the Tribunal was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution. The Tribunal did, however, accept that there were some stronger mitigating factors in this case. However they felt unable to continue granting extensions to the Landlord indefinitely.

### **Decision**

14. The tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
15. The tribunal proceeded to serve notice upon Dundee City Council as required by section 24(6) and to report the matter to the Police for consideration for prosecution. No Rent Relief Order would be granted
16. The decision of the Tribunal was unanimous.

### **Right of Appeal**

17. **A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

18. Where such an appeal is made, the effect of the decision and of the 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 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.

In witness whereof these presents typewritten on this and the preceding page(s) are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, chairperson of the tribunal at Dundee on the 22 February 2017 before this witness:-

**L Johnston**

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**E K Miller**

Chairperson