



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 26(1) and 28(5) of the Housing (Scotland) Act 2006**

**Chamber Ref: PRHP/RP/16/0197**

**Re: Property at 9/4 Northfield Grove, Edinburgh EH8 7RN (“the Property”)**

**The Parties:-**

**Miss Brigette Sally Harrison, residing sometime at 9/4 Northfield Grove, Edinburgh EH8 7RN (“the Tenant”)**

**Kenneth Eadie, residing at 11 Hosie Rigg, Edinburgh EH15 3RX (“the Landlord”)**

**Tribunal Members: George Clark (Legal Member) and David Godfrey (Ordinary/surveyor) Member**

**Decision**

The Tribunal decided that the Landlord has not complied with the Repairing Standard Enforcement Order made on 13 July 2016. The Tribunal was, however, unable to make a Rent Relief Order. The Tribunal decided to report to Police Scotland a possible offence committed under Section 28(5) of the Housing (Scotland) Act 2006.

**Background**

Following an inspection and Hearing on 13 July 2016, the Tribunal (then the Private Rented Housing Panel) issued a Repairing Standard Enforcement Order (“RSEO”) in respect of the Property. The RSEO required the Landlord to repair or replace all the kitchen cupboards and units, including cupboard doors, so that they are in a reasonable state of repair and in proper working order.

A reinspection of the Property was carried out by the Ordinary Member of the Tribunal on 31 October 2016. By this time, the Tenant had vacated the Property, so was no longer a Party in the case. The Ordinary Member reported that, whilst various repair works had been carried out to the kitchen cupboards and units, a number of the fittings were showing signs of deterioration, a number of door handles were loose, a number of drawers did not run freely, and parts of the fittings were missing.

On 16 April 2018, the Tribunal attempted to reinspect the Property, but the Landlord was not present or represented and the Tribunal was unable to gain entry. Accordingly, the RSEO remained in place.

### **First Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the morning of 13 January 2021. The Landlord did not participate in the conference call and was not represented. The present owner, identified by the Tribunal as Mr Nadim Younas, did not participate either.

The Tribunal decided that, being unable to inspect the Property, it was prepared to accept photographic evidence of the current condition of the kitchen units and that the present owner should be sent a copy of the Reinspection Report of 31 July 2016, with the photographs incorporated therein. If the present owner provided the Tribunal with dated photographs, taken from as near as may be the same positions as the photographs in the Reinspection Report, the Tribunal would determine whether these were sufficient to enable it to conclude that the work required by the RSEO has been satisfactorily carried out.

Copies of the Case Management Discussion Note and Reinspection Report were sent to the present owner by recorded delivery on 21 January 2021 and the Tribunal, on 9 February, sent him details of the date and time of the further Case Management Discussion, which had been rescheduled to 1 March.

### **Second Case Management Discussion**

The second Case Management Discussion was held by means of a telephone conference call on the morning of 1 March 2021. The Landlord and the present owner did not participate and neither was represented.

The Tribunal noted that the present owner had not provided the photographic evidence which might have enabled the Tribunal to discharge the RSEO.

The Tribunal instructed that a copy of the Case Management Note be sent to the present owner, as it was very much in his interests to provide the photographic evidence of the current condition of the kitchen units.

The Tribunal continued consideration of the case to a Reinspection to take place on 26 August 2021, to be followed by a Hearing on 8 September.

### **The Reinspection**

The Tribunal reinspected the Property on the morning of 26 August 2021 and the Tribunal Members were admitted by Ms Manoma Puddu, who advised that she was the tenant of the Property, paying rent of £850 per month. Neither the Landlord nor the present owner was present or represented. A copy of the Reinspection Report is attached to and forms part of this Decision.

### **The Hearing**

The Hearing took place by means of a telephone conference call on the morning of 8 September 2021. Neither the Landlord nor the present owner was present or represented. The Tribunal considered the findings of its Reinspection of 26 August.

### **Reasons for Decision**

The view of the Tribunal was that the work required by the RSEO of 13 July 2016 had not been carried out and that the condition of the kitchen cupboards and units had deteriorated even further since the date of the Reinspection of 31 October 2016. Accordingly, the RSEO must remain in place.

As the Landlord was no longer the owner of the Property, the Tribunal was unable to make a Rent Relief Order.

The Tribunal noted with concern that there was a tenant living in the Property and that it appeared that an offence may have been committed by the present owner under Section 28(5) of the Housing (Scotland) Act 2006, which states that a landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house. A landlord who is guilty of an offence under Section 28(5) of the Act is liable on summary conviction to a fine not exceeding level 3 on the standard scale, currently £1,000. Accordingly, believing an offence may have been committed, the Tribunal decided to report the matter to Police Scotland for possible prosecution.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

# G Clark

Legal Member

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**8 September 2021**  
Date