

# Housing and Property Chamber First-tier Tribunal for Scotland

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**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"), Sections 26**

**Chamber Ref: FTS/HPC/RT/19/1744**

**Re: Property at Flat 0/1. 221 Langside Road, Glasgow G42 8XY ("the Property")**

**The Parties:**

**Glasgow City Council DRS, Private Housing, 2<sup>nd</sup> Floor, 231 George Street, Glasgow G1 1RX (the Third Party Applicant") and**

**Mr Florin Teglas, Flat 0/1. 221 Langside Road, Glasgow G42 8XY ("the Tenant"), and**

**Mrs Rukhsana Ahmed, 25 Hillside Road, Glasgow G43 1DB ("the Landlord")**

**Tribunal Members:**

**G McWilliams- Legal Member**

**A McFarlane- Ordinary Member**

**Decision**

1. 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 12<sup>th</sup> August 2019 and varied by the Tribunal in their decision dated 6<sup>th</sup>

January 2020. It further determined that notice of that failure should be served on the Local Authority in whose area the Property is situated.

## Background

2. The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property on 12<sup>th</sup> August 2019, and varied this on 6<sup>th</sup> January 2020, following inspections and decisions that the Landlord had failed to comply with her duty under section 14(1)(b) of the 2006 Act. The Variation of the RSEO required the Landlord to carry out the following works within 42 days of the date of issue of the varied RSEO:
  - (i) Install an operational fire detection and warning system including at least: one functioning smoke alarm in the room which is frequently used for general day time living purposes (in this case the living-room); one functioning smoke alarm in every circulation space (in this case the entrance hall); one heat alarm in the kitchen. All alarms should be ceiling mounted and interlinked. The system should comprise either mains operated alarms or tamper proof long life lithium battery alarms and comply with the Scottish Government current Guidance for Private Landlords on satisfactory provision for detecting and warning of the fires;
  - (ii) Install one Carbon Monoxide Detector in every space containing a fixed combustion appliance (in this case the kitchen). The location and type of detector should comply with the Scottish Government statutory Guidance for the provision of Carbon Monoxide alarms in Private Rented Housing.

all in terms of Section 13(1)c of the Housing (Scotland) Act 2006.
3. A re-inspection, to be carried out by the Surveyor Ordinary Member of the Tribunal, was scheduled to take place on 6<sup>th</sup> March 2020. The Ordinary Member did not gain access to the Property on that date.
4. A Case Management Discussion ("CMD") was scheduled for 28<sup>th</sup> January 2021. The Tribunal had noted, at a previous inspection, that the Tenant had left the Property and was no longer a party to the Application. Neither the Third Party Applicant nor the Landlord attended at the CMD. On that date the Tribunal issued a Notice of Directions requiring the remaining parties to do the following:
  - i) The Landlord is to submit written representations, with any relevant documentation, including reports, certificates, invoices and photographs, in respect of the works required in terms of the Tribunal's Decision to vary the Repairing Standard Enforcement Order, dated 6<sup>th</sup> January 2020, and issued to the parties on 7<sup>th</sup> January 2020, to the Tribunal's Office by 18<sup>th</sup> February 2021; and
  - ii) The Third Party Applicant is to lodge any further written representations, which they consider to be relevant to the Application, with the Tribunal's Office, by 4<sup>th</sup> March 2021.
5. Neither of the remaining parties contacted the Tribunal in response to the Notice of

Directions.

6. A further CMD was scheduled to take place today, 16<sup>th</sup> March 2021. Neither the Third Party Applicant nor the Landlord attended at the CMD.

### **Reasons for decision**

7. Section 26(2) of the Housing (Scotland) Act 2006 (“the 2006 Act”), provides:

26(2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal] must—

(a) serve notice of the failure on the local authority, and

(b) decide whether to make a rent relief order.

8. In terms of section 28(1) of the 2006 Act, 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.
9. The Landlord has failed to engage with the Tribunal in relation to this Application, has not attended at two CMD’s, on 28<sup>th</sup> January 2021 and 16<sup>th</sup> March 2021, and has not complied with the Tribunal’s Direction dated 28<sup>th</sup> January 2021. She has not provided any evidence regarding the carrying out of the remaining works, specified in the varied RSEO. The Tribunal has not been provided with any information in respect of the Landlord’s compliance, or non-compliance, with the varied RSEO, which was issued over 14 months ago.
10. Accordingly, having not received any representations from the Landlord since the issue of the varied RSEO, the Tribunal has no information that would establish any such defence on the part of the Landlord nor any evidence that the Landlord has complied with the varied RSEO and carried out the specified, remaining works.
11. In all the circumstances the Tribunal have determined Landlord has failed to comply with the terms of the varied RSEO, In terms of section 28(4) of the 2006 Act.
12. The Tribunal have also determined to send a notice of the Landlord’s said failure to the Local Authority in whose area the Property is situated, in terms of section 26(2)(a) of the 2006 Act.
13. As the Tenant has left the Property and the Tribunal have not received an application for rent relief, the Tribunal have also decided not to make a rent relief order.
14. The decision of the Tribunal is 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 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 any Order/s is/are 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 any Order/s will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**G McWilliams**

**G McWilliams Legal Member**

**16<sup>th</sup> March 2021**