

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 (“the 2006 Act”),
Section 26(1)**

Chamber Ref: FTS/HPC/RP/19/2899

**29/2 Rannoch Place, Edinburgh, EH4 7HH (Title number MID92623) (“The
Property”)**

The Parties:-

**Mrs Pauline Winafred Gillies, 1 Corstorphine House Terrace, Edinburgh, EH12
7AE, and 132 St John’s Road Edinburgh, EH12 8AX, formerly residing at 19
Gordon Road, Edinburgh (“the Landlord”)**

**Gilson Gray Lettings, Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW
 (“the Landlord’s Representative”)**

Tribunal members

Ms Susanne L. M. Tanner Q.C., Legal Member and Chair

Mr Andrew Taylor, Ordinary Member

DECISION

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having taken account of all information available to it, as at 15 April 2021, determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order dated 9 March 2020, as varied, in terms of Section 26(1) of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”).
2. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.

3. The tribunal determined that since the former tenant's tenancy has ended, it will not make a Rent Relief Order in terms of section 26(2)(b) of the 2006 Act.
4. The decision of the tribunal was unanimous.

Reasons

1. Following an inspection of the Property and a hearing the tribunal made a decision dated 9 March 2020 that the Property did not meet the repairing standard and made a Repairing Standard Enforcement Order ("RSEO") on the same date, ordering that the works specified therein had to be completed within 6 weeks days of the date of service of the notice. The RSEO was served on 11 March 2020. The original date for compliance with the RSEO was 22 April 2020. The RSEO was varied twice to extend the period for compliance to 28 February 2021.
2. The RSEO as varied required the Landlord by 28 February 2021:
 - 1 *(i) to engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and written report on the gas boiler, heating and hot water supply installation, including all flues, radiators, pipework, valves, thermostats, programmers, etc;*
(ii) to follow the recommendations of that report to repair or replace the installations in the House for the supply of gas and for space heating and heating water to ensure that they are in a reasonable state of repair and in proper working order and that the House meets the tolerable standard and is in all other respects reasonably fit for human habitation; and
(iii) on completion of the works provide a copy of the written report to the Tenant and Tribunal, exhibiting that the installations in the House for the supply of gas and for space heating and hot water are in a reasonable state of repair and in proper working order, the House meets the tolerable standard and is in all other respects reasonably fit for human habitation.
 2. *To produce a valid CP12 Gas Safety Certificate which post-dates any such repair or replacement, carried out in terms of order 1.*
 3. *To repair or replace the kitchen base units and doors so that they are in a reasonable state of repair and in proper working order, if necessary repairing or replacing worktops and sink top, including making good any tiles, décor etc which are damaged during the repair or replacement.*
5. In September 2020, the Landlord's Representative submitted documentation including quotations for works which were intended to be carried out at the Property.

6. The former tenant submitted representations in which he indicated that no works had been carried out to make good the Property following installation of a new boiler and that there was pipework in the bedroom which had not been boxed in and a hole in the bedroom wall which required to be filled. Photographs were produced.
7. On 18 January 2021, the Landlord's Representative informed the tribunal's administration that the former tenant had vacated the Property on 18 December 2020 and that the tenancy had ended.
8. On 21 January 2021, the Landlord's Representative submitted a further copy of documentation already provided to the tribunal in September 2020, together with a copy of a gas safety certificate and an invoice for works to the kitchen units in the Property.
9. Having received written notice from the Landlord's Representative on 18 January 2021 that the tenancy of the Property had terminated on 21 December 2020, the former tenant's application to the tribunal ("the Application") was deemed to be withdrawn in terms of Schedule 2, paragraph 7 of the 2006 Act; the tribunal considered whether it should continue to determine the Application or whether it should abandon its consideration of the Application in terms of Schedule 2, Paragraph 7 of the 2006 Act, and decided to continue to determine the Application. Reference is made to the tribunal's decision dated 1 February 2021.
10. On 1 February 2021, the tribunal issued Directions the Landlord and Landlord's Representative to further investigate compliance with the terms of the RSEO (as varied). The Landlord / Landlord's Representative was required to provide no later than 1 March 2021:
 - a. *Any documentary evidence to confirm that the works to make good the Property following the installation of the boiler have been completed; in particular documentary evidence / images that the pipework in the bedroom has been boxed in and the hole in the bedroom wall has been filled.*
 - b. *A report in relation to the heating system by a suitably qualified and Gas Safe registered heating engineer, exhibiting that the installations in the House for the supply of gas and for space heating and hot water are in a reasonable state of repair and in proper working order, the Property meets the tolerable standard and is in all other respects reasonably fit for human habitation, as specified in the Repairing Standard Enforcement Order ("RSEO"), order number 1.*

c. *Any additional documents or photographs she / he wishes to provide in relation to compliance with the RSEO.*

3. The Landlord and Landlord's Representative did not comply with the terms of the tribunal's Directions or make any further contact with the tribunal's administration.
4. On 15 April 2021, after the date (as varied) for compliance had passed, and a Case Management Discussion teleconference had taken place at 1000h, of which the Landlord and Landlord's Representative were notified and failed to attend, the tribunal proceeded to determine the question of compliance or otherwise with the terms of the RSEO on the basis of the written submissions and evidence submitted by the Landlord's Representative and the former tenant. Reference is made to the Notes on the Case Management Discussion dated 15 April 2021.
5. The 2006 Act, Section 26 provides that:

“(1) It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal .

(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.

(3) The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—

(a) unless the period within which the order requires the work to be completed has ended, or

(b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—

(i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or

(ii) that the work required by the order is likely to endanger any person. ...”

6. The tribunal is not satisfied on the basis of the evidence and parties' submissions that the Landlord has complied with the RSEO, in the following respects:

6.1. In relation to Order number 1 in the RSEO, no report has been produced in relation to the heating system by a suitably qualified and Gas Safe registered heating engineer, exhibiting that the installations in the House for the supply of gas and for space heating and hot water are in a reasonable state of repair and in proper working order, the Property meets the tolerable standard and is in all other respects reasonably fit for human habitation, as specified in the Repairing Standard Enforcement Order (“RSEO”), order number 1; and

- 6.2. No documentary evidence or photographs have been produced to confirm that the works to make good the Property following the installation of the boiler have been completed; in particular documentary evidence / images that the pipework in the bedroom has been boxed in and the hole in the bedroom wall has been filled.
 - 6.3. Due to the lack of evidence in relation to compliance with Order number 1, including making good the Property following installation of the boiler and pipework, the tribunal is not satisfied on the balance of probabilities that there has been compliance with Order number 1.
 - 6.4. The tribunal is not satisfied that the Property meets the repairing standard in this regard.
- 7. The tribunal is satisfied on the basis of the evidence and parties' submissions that there has been compliance with Order numbers 2 and 3 in the RSEO.
 - 8. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.
 - 9. The tribunal also considered whether to make a Rent Relief Order ("RRO") in terms of Section 26(2)(b) of the 2006 Act. As the former tenant moved out of the Property in December 2020 and is no longer a party to proceedings, the tribunal decided not to make a RRO.

Right of Appeal

10. A landlord or tenant 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

11. 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, 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.

S Tanner

Signed

Ms. Susanne L. M. Tanner Q.C.

Legal Member / Chairperson of the tribunal

Date 15 April 2021