

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Sections 26 and 27

Chamber Ref: FTS/HPC/RP/22/0875

83 Ferguson Way, Airdrie, Lanarkshire, ML6 6EX registered in the Land Register of Scotland under Title Reference LAN165295 (“the Property”)

The Parties:-

Mrs Donna-Leona O’Donnell, 83 Ferguson Way, Airdrie, Lanarkshire, ML6 6EX (“the Tenant” and “the Applicant”)

Citizens Advice Bureau, 61A Stirling Street, Airdrie, Lanarkshire, ML6 60A (“the Applicant’s Representatives”)

Mr Fergus McCrossan, 93 Drumlegagh Road South, Omagh, Northern Ireland, BT78 4TW (“the Landlord” and “the Respondent”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Nick Allan, Chartered Surveyor (Ordinary Member)

Decision

The tribunal determined:

(One) that the Landlord had failed to comply with a repairing standard enforcement order (RSEO) dated 7th June 2022 and that a notice of failure be served on the local authority (Section 26 of the Housing (Scotland) Act 2006;

(Two) that a rent relief order be made reducing the rent payable under the tenancy by 50%. (Section 27 of the Housing (Scotland) Act 2006).

Background

1. By application dated 24th March 2022, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act ("the 2006 Act.")
2. The Applicant and Respondent are parties to a short assured tenancy in respect of the Property. It is dated 26th October 2016. The term of the tenancy was for a period of six months commencing on 26th November 2016 and thereafter on a month to month basis until terminated by either party.
3. The application stated that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of suspected fire, that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and that the Property does not meet the tolerable standard. Specifically, the application states that the Landlord has failed to repair kitchen units, that bathroom floor tiles have come loose and are dangerous because of a trip hazard, that the kitchen ceiling has a hole in it and that there are no smoke and heat detectors.

Repairing Standard Enforcement Order

4. Following upon an inspection of the Property by the members on 1st June 2022 and a Hearing on 7th June 2022, a repairing standard enforcement order (RSEO) was made in the following terms:

The Landlord was required to:

- 4.1 **produce to the Tribunal a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT, or other suitable accredited registered scheme, who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category. PAT testing documentation for any portable appliances supplied by the Landlord should also be produced which has been prepared by a similarly qualified and accredited electrician.**
- 4.2 **produce to the Tribunal a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.**

- 4.3 to repair the hole in the kitchen ceiling and make good the décor as required.
 - 4.4 to repair or replace the units and worktop in the kitchen including replacement of inadequate sealant.
 - 4.5 to install interlinked heat and smoke detectors to comply with current standards.
 - 4.6 to provide a carbon monoxide detector.
 - 4.7 to repair the floor tiles and the threshold plate in the bathroom so as to eradicate a trip hazard, and to allow the bathroom door to open and close correctly.
5. The Landlord was required to complete the works required by the RSEO and to produce to the Tribunal the gas safety certificate and electrical installation condition report before 22nd July 2022.
6. The members of the tribunal reinspected the Property on 5th September 2022.
7. It was noted that neither a Gas Safety Certificate nor an EICR had been submitted to the Tribunal.

The Inspection on 5th September 2022

- 8. The Legal and Ordinary member arrived at the Property at 11.30 am. The Applicant was present and allowed access.
- 9. A copy of the re-inspection report and photographic schedule prepared by the ordinary member is attached to this decision.
- 10. The re-inspection report sets out the works which have been done. It was noted that items 4.1, 4.2 and 4.4 of the RSEO have not been complied with.

Determination

- 11. The tribunal had regard to Section 26 (2) of the 2006 Act:

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.

12. Non- production of the E.I.C.R and the gas safety certificate was evidence that the Landlord had not complied with that part of the RSEO. The findings at the re-inspection with regard to the kitchen units is evidence that the Landlord has not complied with that part of the RSEO. It was noted that the Landlord had not submitted a request to be allowed additional time to comply with the RSEO. It was also noted that a copy of the re-inspection report had been sent to the Landlord on 20th September 2022 and that no representations had been submitted by him. The tribunal determined to serve notice of the failure to comply on the local authority.
13. The necessity to ensure that a property complies with the repairing standard in relation to matters surrounding gas and electrical safety is important and a significant health and safety issue. The tribunal took this into account when exercising its discretion as to whether or not to make a rent relief order and to what percentage should be applied to the reduction of rent.
14. The tribunal determined that it would be appropriate to make a rent relief order. The amount by which the rent due under the tenancy is reduced is a matter of discretion and the tribunal determined that a rent relief order of 50% be made to reflect the seriousness and significant health and safety considerations of the landlord's failure to comply with the RSEO. This reduces the rent payable under the tenancy by 50% of the rent which would, but for the order, be payable.

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.

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.

Solicitor, legal member of
Tribunal.
18th October 2022

Housing and Property Chamber

First-tier Tribunal for Scotland



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

RENT RELIEF ORDER under Section 27 of the Housing (Scotland) Act 2006 as amended (“the Act”)

Chamber Ref: FTS/HPC/RP/0875

83 Ferguson Way, Airdrie, Lanarkshire, ML6 6EX registered in the Land Register of Scotland under Title Number LAN165295 (“the Property”)

The Parties:-

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Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Nick Allan, Chartered Surveyor (Ordinary Member)

NOTICE TO the Landlord

WHEREAS in terms of its decision dated 18th October 2022, the First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), having determined in terms of Section 26(2) of the Housing (Scotland) Act 2006 (the “said Act”) that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Tribunal and allowing parties an opportunity to make representations now THEREFORE the Tribunal determined on 18th October 2022 to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the Property by an amount of 50 % of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be

appealed under section 64 of the said Act. To ascertain the last date on which the decision can be appealed, please refer to the information note on appeals and reviews, a copy of which is attached.

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 First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

In terms of Section 63 of the Act, 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.

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

Martin J. McAllister
Solicitor
Legal Member
18th October 2022