

Housing and Property Chamber First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order

Housing (Scotland) Act 2006: Section 24

Chamber Ref: FTS/HPC/RP/20/0875

253 Corkerhill Road, Glasgow, G52 1QR (“the Property”)

The Parties:-

Ms Kirsty Ann Stevenson (“the Tenant”) and (“the Applicant”)

Mrs Kiranjit Nijjar (“the Landlord”) and (“the Respondent”)

Tribunal Members:

Mr Martin McAllister (Chairman) and Mrs Sara Hesp (Ordinary Member)

NOTICE TO

Mrs Kiranjit Nijjar

Whereas in terms of their decision dated 23rd August 2021, the First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 the tribunal now makes a repairing standard enforcement order (RSEO) in the following terms and requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of Section 13 of the said Act and that any damage caused by the carrying out of any work in terms of this Order is made good.

The tribunal determined to make a repairing standard enforcement order in the following terms:

1. The Landlord is required to produce a report from a suitably qualified Gas Safe Registered engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property and an appropriate supply of hot water. (Section 13 (1) (c) of the 2006 Act)
2. The Landlord is required to produce a certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe. (Section 13 (1) (c) of the Act).
3. The Landlord is required to make effective repairs to the kitchen ceiling. (Section 13 (1) (a) of the 2006 Act).
4. The Landlord is required to remove any polystyrene ceiling tiles from the Property. (Section 13 (1) (a) of the 2006 Act).
5. The Landlord is required to investigate the cause of water ingress to the kitchen and carry out any remedial work required. (Section 13 (1) (a) of the 2006 Act).
6. The Landlord is required to ensure that the Property meets current standards for detecting fires and for giving warning in the event of fire or suspected fire. (Section 13 (1) (f) of the 2006 Act).
7. The Landlord is required to ensure that the Property meets current standards for giving warning if carbon monoxide is present in a concentration that is hazardous to health. (Section 13 (1) (g) of the 2006 Act).

The Landlord requires to comply with the repairing standard order by 30th November 2021.

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.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents typewritten on this and the two preceding pages are executed by Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland at Saltcoats on 26th August 2021 before Stephen Cavani, 68 Hamilton Street, Saltcoats.

M McAllister

S Cavani

Housing and Property Chamber First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Chamber Ref: FTS/HPC/RP/20/0875

253 Corkerhill Road, Glasgow, G52 1QR (“the Property”)

The Parties:-

Ms Kirsty Ann Stevenson (“the Tenant”) and (“the Applicant”)

Mrs Kiranjit Nijjar (“the Landlord”) and (“the Respondent”)

Tribunal Members:

Mr Martin McAllister (Chairman) and Mrs Sara Hesp (Ordinary Member)

Background

1. By application dated 11th March 2020, 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 of the 2006 Act.
2. The application states that the Property does not meet the repairing standard set out Section 13 (1) (a), (c) and (g) of the 2006 Act in the following respects: The house is not reasonably fit for human habitation, the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, the Property has not got satisfactory provision for detecting fires and for giving warning if carbon monoxide is present in a concentration that is hazardous to health and that the house does not meet the tolerable standard.

3. The application gave detail on why the applicant considered that the Property did not meet the repairing standard:
 - 3.1 Kitchen ceiling requiring repair.
 - 3.2 Water ingress at the kitchen ceiling.
 - 3.3 The central heating boiler and heating system is not working effectively.
 - 3.4 Suspected burst pipe under the floorboards.
 - 3.5 No carbon monoxide detector.
 - 3.6 Unsuitable foam ceiling tiles.
4. On 8th February 2021, a legal member of the Tribunal, acting under delegated powers, referred the application to a tribunal for determination. Parties were notified of this. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.
5. Progress to determine the application was delayed as a consequence of the coronavirus pandemic.
6. Case management discussions were held on 19th January and 22nd April 2021.

Inspection

7. Mr McAllister, legal member and Mrs Hesp surveyor, ordinary member inspected the Property on 6th August 2021. A copy of the pre-hearing inspection summary and schedule of photographs is attached to this Decision. The Respondent and her husband were present at the inspection. Prior to the inspection, the Applicants advised the Tribunal administration that they had no access to the Property. They were advised of the date and time of the inspection.

The Hearing

8. A Hearing was held by video conference on 23rd August 2021. Ms Stevenson was present. The Respondent was present and was represented by Mr Jwad Hanif, Solicitor.

Preliminary Matters

9. Mr Hanif asked the Tribunal to consider that the tenancy has been terminated because the Applicants had abandoned the Property. He said that the application should not proceed if the tenancy has been terminated. He said that, at a Hearing which the Tribunal had held on 22nd April 2021 to determine an application for payment of a sum of money as a consequence of rent arrears, the Tribunal had been advised that the Respondent considered that the Property had been abandoned. He said that a contact telephone number provided by the applicants to facilitate access had not worked and that, despite efforts, no contact had been made. He said that three recorded delivery letters had been sent to the Applicants at the Property prior to the end of May 2021 and that they had not been able to be delivered. He said that the Landlord had decided to make the Property secure by changing the locks and that this had been done at the end of May 2021.

10. Ms Stevenson said that she had been denied access to the Property after the locks had been changed. She said that she was not prepared to disclose where she was now living and that neither she nor her fellow tenant had been contacted by anyone about the Property. She said that the contact telephone number provided at the Tribunal Hearing is the correct one.

11. There was an adjournment to allow the members of the Tribunal to consider the position advanced by Mr Hanif. The Tribunal determined that it had insufficient evidence to decide that the tenancy had been terminated even if, in fact, it had been. It considered the matter to be somewhat academic because, if the tenancy had been terminated, the provisions of Section 3(b) (i) of Paragraph 7 (3) of Schedule 2 of the 2006 Act would allow the Tribunal the option of continuing to determine such an application. In the particular circumstances of this application, the Tribunal would do so because of health and safety issues.

12. The Tribunal went through the matters detailed in the application:

12.1 The kitchen ceiling

It was evident from the inspection that there is a hole in the ceiling of the kitchen.

12.2 Water ingress at kitchen ceiling

Ms Stevenson said that water came through the kitchen ceiling when the shower in the bathroom was used. She said that this stopped when she and the other tenant stopped using the shower.

12.3 Central Heating

Ms Stevenson said that the central heating system in the Property did not function properly. She said that the boiler sometimes had to be topped up with water even after a tap had been run.

12.4 Suspected burst pipe

The application stated that the reason for the poorly functioning boiler was thought to be as a result of a burst pipe under the floor.

12.5 Carbon monoxide detector

Ms Stevenson said that when a representative of Scottish Fire and Rescue had inspected the Property, it had been found that there was no carbon monoxide detector. Mr Hanif said that smoke alarms had been removed by tenants and that he believed that a carbon monoxide detector had been in the Property at the commencement of the tenancy.

12.6 Ceiling tiles

Ms Stevenson said that the representative of the fire service had alerted the tenants to the existence of polystyrene ceiling tiles and that they were told that these were a fire hazard.

13. The Issues

Sections 13(1) (a), (c) and (g) of The 2006 Act provide that the house has to be reasonably fit for human habitation, the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order and that the Property has to have satisfactory provision for detecting fires and for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The specific issues which the tribunal required to address were those detailed in the application and referred to in this Decision.

14. Findings

The Tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the House fails to meet it.

14.1 The tribunal had concerns about the gas safety of the Property.

14.2 It is not certain that the heating system provided by the Landlord is functioning properly and the Tribunal requires to be satisfied in this regard.

14.3 The kitchen ceiling requires to be repaired.

14.4 There has been water ingress at the kitchen ceiling which may not have been resolved.

14.5 There is inadequate provision of smoke detectors and there is no evidence of a carbon monoxide detector.

14.6 There are polystyrene ceiling tiles in the property.

15. Reasons

The tribunal had regard to what it had found at the inspection which had been difficult because of the number of belongings in the Property which is evidenced by the photographs. The existence of the polystyrene ceiling tiles and the condition of the kitchen ceiling was evident at the inspection. It was also clear from the inspection that the smoke detector in the hall was not in a functioning condition. The Tribunal accepted the evidence of Ms Stevenson in relation to the inadequacies in the central heating system which may or may not be as a result of a burst pipe. It also accepted her evidence that there had been water ingress through the kitchen ceiling. Further investigation is required as to its cause. It also accepted her evidence that there had been water ingress through the kitchen ceiling.

16. Mr Hanif said that, if the Tribunal was minded to grant a repairing standard enforcement order, there would be difficulties in compliance because of the amount of goods within the Property which belong to the Applicants. Ms Stevenson said that she and her fellow tenant had been unable to remove their goods and had been hampered by the Respondent who had not contacted them. She said that the telephone number which had been provided by them had been the correct one. She said that she wanted to take belongings from the Property and would hire a van to do so once she got paid. When questioned, she said that she would ensure that the Property was cleared of all items. She said that this could be done by 30th September. The Tribunal made clear

to Ms Stevenson that the Property would have to be cleared before any work could be done to it and said that the onus was on the Applicants to arrange for this to be done. Mr Hanif said that he was happy that his contact details be given to the Applicants so that they can make contact and he was also content that they be contained within this Decision: jwad@mmjsolicitors.co.uk, 0141 204 2833 and Miller Becket and Jackson, solicitors, 190 St Vincent Street, Glasgow, G2 5SP.

The Tribunal explained to Ms Stevenson that, if the Property were not cleared by 30th September, she would be impeding the work of the Landlord to carry out repairs.

17. Determination

The tribunal determined to make a repairing standard enforcement order in the following terms:

- 1. The Landlord is required to produce a report from a suitably qualified Gas Safe registered engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property and an appropriate supply of hot water.
(Section 13 (1) (c) of the 2006 Act)**
- 2. The Landlord is required to produce a certificate from a suitable qualified Gas Safe Registered Engineer confirming that the gas installation and associated appliances are safe.
(Section 13 (1) (c) of the Act).**
- 3. The Landlord is required to make effective repairs to the kitchen ceiling.
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- 7. The Landlord is required to ensure that the Property meets current standards for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
(Section 13 (1) (g) of the 2006 Act).**

The Landlord requires to comply with the repairing standard order by 30th November 2021.

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.

M McAllister

Martin J. McAllister,
Solicitor, legal member of the First-Tier Tribunal for Scotland
Tribunal.
23rd August 2021