

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**Chamber Ref: FTS/HPC/RT/21/2965**

**32 Barclay Avenue, Elderslie, PA5 9HF registered in the Land Register of Scotland under Title Number REN56900 (“the Property”)**

**The Parties:-**

**Renfrewshire Council, Cotton House, Paisley, PA1 1BR (“the Third Party Applicant”)**

**Mrs Nicola Donald, 32 Barclay Avenue, Elderslie, PA5 9HF (“the Tenant”)**

**Mr Ian Tennie, 63 Victoria Road, Paisley, PA2 9PT (“the Landlord”)**

**Tribunal Members:**

**Mr Martin McAllister, Solicitor (Legal Member) and Mr Donald Wooley, Chartered Surveyor (Ordinary Member) (“the tribunal”)**

**Decision**

**The tribunal determined:**

**(One) that the Landlord had failed to comply with a repairing standard enforcement order (RSEO) dated 23rd March 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 60% (Section 27 of the Housing (Scotland) Act 2006).**

**Background**

1. By application dated 30<sup>th</sup> November 2021, 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 (1A) of the 2006 Act.

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that 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 and that the Property does not have satisfactory provision for detecting fires and for giving warning in the event of suspected fire. Specifically, the application states that the Landlord has failed to provide a gas safety certificate or an electrical installation inspection report (EICR) and that there were insufficient smoke/ heat detectors installed in the Property.
3. On 20<sup>th</sup> December 2021, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.
4. On 14<sup>th</sup> February 2022, the Tribunal issued a Direction under Regulation 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") requiring the Landlord to produce a gas safety certificate and an EICR (including PAT testing).
5. Neither a gas safety certificate or an EICR was submitted in response to the said Direction.

#### Property Inspection

6. The members of the tribunal inspected the Property on 15<sup>th</sup> March 2022.

#### The Hearing on 22<sup>nd</sup> March 2022

7. A Hearing was held by audioconference on 22<sup>nd</sup> March 2022. The Applicant was not represented and the Landlord was neither in attendance nor represented. The Tenant was present and was accompanied by her partner, Mr Stuart Rankin.

#### Repairing Standard Enforcement Order

8. The tribunal determined on 22<sup>nd</sup> March 2022 that a Repairing Standard Enforcement Order ("RSEO") be made in the following terms;

The Landlord is required to:

1. **produce 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.**

- 2. produce a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.**

**The Landlord is required to submit to the Tribunal the documents required by the RSEO before 2<sup>ND</sup> May 2022.**

Hearing 17<sup>th</sup> May 2022

9. It was noted by the tribunal that the RSEO had been served on the Landlord on 25<sup>th</sup> March 2022 and it had sight of the Sheriff Officer's certificate of service.
10. It was noted by the tribunal that intimation of the Hearing had been made on the Landlord by sheriff officers and a certificate of service disclosed that such service had been effected on 3<sup>rd</sup> May 2022. The tribunal was satisfied that the Landlord had received intimation of the Hearing and had therefore been afforded an opportunity to make representations.
11. Commencement of the Hearing was postponed to 10.10 am to allow parties an opportunity to participate. There was no appearance by any party.
12. The tribunal noted that neither an EICR or a gas safety certificate had been produced by the Landlord.

Determination

13. 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.*

14. Non- production of the E.I.C.R and the gas safety certificate was evidence that the Landlord had not complied with the RSEO. The tribunal determined to serve notice of the failure to comply on the local authority.
15. The necessity to ensure that a property complies with the repairing standard in relation to matters surrounding gas and electrical safety is important and the tribunal therefore 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 60% 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 60% 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.**

# M McAllister

Martin J. McAllister,  
Solicitor, legal member of  
Tribunal.  
17<sup>th</sup> May 2022