

# 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"), section 26

Chamber Ref: FTS/HPC/RP/19/2312

Property known as ALL and WHOLE the subjects known as and forming 14 Stoneybank Crescent, Musselburgh being the southwestmost house on the ground floor of the block 10, 12, 14 and 16 Stoneybank Crescent, Musselburgh and being part of the subjects referred to in Feu Charter by the Trustees of The Earl of Wemyss and March with consent thereinmentioned in favour of the Provost, Magistrates and Councillors of the Burgh of Musselburgh dated Second February and subsequent dates and recorded in the Division of the General Register of Sasines applicable to County of Edinburgh (now Midlothian) on First March all in the year Nineteen Hundred and Twenty Eight.

("The Property")

The Parties:-

Jeanann Jordan, 14 Stoneybank Crescent, Musselburgh East Lothian EH21 6HP

("the Tenant")

And

June Beddard, 259 Ryfields Village, Arena Gardens, Warrington WA2 7GA

("the Landlord")

Tribunal Members:

Rory Cowan (Legal Chair)

Andrew McFarlane (Ordinary Member)

Decision

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 11 November 2019. It further determined that notice of that failure should be served on

the Local Authority in whose area the Property is situated. The Tribunal further determined to make a Rent Relief Order.

## **Background**

1. The Tribunal issued a Repairing Standard Enforcement Order (“RSEO”) relative to the Property on 22 November 2019 following an inspection and a decision that the Landlord had failed to comply with her duty under section 14(1)(b) of the 2006 Act. The RSEO required the Landlord to carry out the following works within 4 weeks of the date of service of the RSEO:
  - a) To repair or replace the current battery powered Fire Detection system with one that meets current legislative requirements.
  - b) To ensure that a Carbon monoxide detector is fitted to the Property that meets current legislative requirements.

## **Reasons for decision**

2. In terms of section 28(1) of the Housing (Scotland) Act 2006, 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.
3. Whilst certain works have been carried out to the Property, it was noted at reinspection on 10 March 2020 that the works do not meet the required standard in that:
  - a) The Fire Detection System does not meet current legislative requirements in that there was no heat alarm in the kitchen, the alarms in the room used for daytime living purposes and the hallway were not interlinked, nor were they ceiling mounted and battery powered alarms had no visible expiry dates; and
  - b) Whilst a Carbon monoxide detector had now been supplied, it was placed on the boiler casing and was not wall or ceiling mounted between 1 and 3 metres from the boiler.
4. The Landlord has largely failed to engage with the Tribunal in relation to this application and the repairs she has carried out since the RSEO was granted. She has therefore provided no explanation for her failure to comply with the RSEO. As such, the Tribunal has nothing in front of it which would suggest that any defence may apply and it would appear that the Landlord has simply failed to comply with the RSEO completely.
5. The original RSEO was issued following a decision of the Tribunal dated 22 November 2019. Accordingly, more than 5 months have passed since service of the RSEO without all the necessary works having been carried out.

6. In terms of section 28(4) of the 2006 Act, the Tribunal decided on 1 May 2020 that the Landlord has failed to comply with the terms of the RSEO.
7. Therefore, in terms of section 26(2)(a) of the Act, the Tribunal determined to send a notice of that failure to the Local Authority in whose area the Property is situated.
8. The Tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. The Landlord has failed to engage fully with the Tribunal and has had plenty of time to carry out all the required works. It appears to the Tribunal that the Landlord has simply chosen to ignore the full extent of the RSEO. Accordingly, the Tribunal decided to make a Rent Relief Order to the extent of **fifty** (50%) per cent of the rent payable in terms of the lease agreement between the parties.
9. The decision of the Tribunal was 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 First-tier 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 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.

Rory Cowan

Signed:  
Chairman

Date: 26 May 2020