

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

Statement of Decision: Housing (Scotland) Act 2006, Sections 26, 27 and 28

Chamber Ref: PRHP/RP/16/0083

**Sasine Description:** ALL and WHOLE the Eastmost flat on first floor of Tenement 5, 7 and 7A Tanfield Walk described in Disposition to William Williamson Clark recorded GRS (Aberdeen) 31 January 1951

Property at 7A Tanfield Walk, Aberdeen, AB24 4AN  
("the Property")

**The Parties:-**

**Mr GEORGE WATT, 7A Tanfield Walk, Aberdeen, AB24 4AN**  
(represented by his agent, Mr Hamish Mackenzie, Shelter Scotland, Aberdeen Hub, 36 Upperkirkgate, Aberdeen, AB10 1BA  
("the Tenant")

**MR STANLEY YOUNGSON 17 Prospect Terrace, Aberdeen, AB11 7TB**  
("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, and taking account of the evidence led on behalf of the Tenant at the hearing, determined that (i) the Landlord had failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, (iii) a Rent Relief Order should be made under Section 27 of the said Act and (iv) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

### Background

1. By a determination dated 16 May 2016 the Private Rented Housing Committee determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that he had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
  - a. To repair the hot water system to ensure that it is in a reasonable state of repair and in proper working order to include the replacement of the hot water tank, the electric immersion heater, the cold water tank and associated plumbing as necessary.
  - b. To repair or replace the cistern and the pipework adjacent to the toilet to ensure that it is in a reasonable state or repair and in proper working order.

- c. To install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation and to produce a clear Electrical Installation Condition Report from a suitably qualified electrician confirming that the smoke alarms and heat detectors within the property are in proper working order and comply with the relevant regulations with no items marked as Category 1 or Category 2. The Landlord is to exhibit such clear Electrical Installation Condition Report to the Committee.

The RSEO gave the Landlord 28 days to carry out the works.

2. On 4 July 2016 the Surveyor Member of the Committee, Mr David Godfrey, re-inspected the Property on behalf of the Committee. The Tenant was present and represented by his agent, Mr Hamish McKenzie of Shelter Scotland. The Tenant gave access to the Property. The Landlord was neither present nor represented.

It was readily apparent to the Surveyor Member that no works had been carried out since the original inspection and issuing of the RSEO.

3. On 31 August 2016 the Committee (comprising Ms G C Buchanan, Chairperson and Legal Member and Mr David Godfrey, Surveyor Member) held a hearing at Credo Centre, 14-20 John Street, Aberdeen and heard from the Landlord and the Tenant's representative, Mr Hamish McKenzie. The Tenant did not attend.
4. Having considered the parties' representations and submissions the Committee resolved to give the Landlord an extension of the period allowed to complete the works required by the RSEO and on 2 September 2016 issued a Notice of a Decision to Vary the RSEO by 21 days.
5. On 25 October 2016 the Surveyor Member of the Committee, Mr David Godfrey, re-inspected the Property on behalf of the Committee. The Tenant was present and gave access to the Property. The Landlord was neither present nor represented.
6. The Surveyor Member noted that the following works had been undertaken:-
  - a. Although the hot water tank had not been replaced, the tank had been insulated and new wiring fitted to the electric immersion heater. Hot water was drawn from the hot tap at the Kitchen sink and the flow was found to be adequate.
  - b. The supply pipe to the cistern to the W.C. had been replaced and is now water tight.
  - c. A hard wired smoke alarm had been installed in the Kitchen.
  - d. A hard wired smoke alarm had been installed in the Lounge.
7. The Surveyor Member noted that the following works remained outstanding:-
  - a. The cold water tank and associated plumbing had not been replaced. The mechanism/valve remained defective and running water was apparent.
  - b. The battery powered smoke alarm in Hall had not been upgraded.
  - c. The smoke alarm in the Kitchen did not appear to incorporate a heat detector.

- d. A clear Electrical Installation Condition Report from a suitably qualified electrician had not been produced.
8. On 12 January 2017 the tribunal re-inspected the Property. The Tenant was present and represented by his agent, Mr Hamish McKenzie of Shelter Scotland. The Tenant gave access to the Property. The Landlord was neither present nor represented.

It was readily apparent to the tribunal that no further works had been carried out since the inspection on 25 October 2016. The Surveyor Member's Re-inspection Report dated 12 January 2017 is attached.

9. Thereafter on 12 January 2017 the tribunal held a hearing at Credo Centre, 14-20 John Street, Aberdeen and heard from the Tenant's representative, Mr Hamish McKenzie. The Tenant did not attend. The Landlord did not attend.
10. At the hearing the Tenant's representative made the following representations:-
- a. That the Landlord had made no further attempt to contact the Tenant to arrange for any further works required by the RSEO to be undertaken.
  - b. That the Tenant felt strongly that consideration should be given by the tribunal to the imposition of a rent relief order.
11. The tribunal then considered what steps to take. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
12. The tribunal, after discussion, accepted that it was clear that the Landlord had failed to fully comply with the RSEO. In particular the outstanding works are significant and involve serious risks to the Tenant's safety. Accordingly the tribunal was obliged to serve notice of the failure on the local authority and resolved to do so.
13. The tribunal then decided whether or not to make an RRO. The tribunal had no explanation from the Landlord as to why the outstanding works required in terms of the RSEO had not been undertaken. The tribunal determined that the outstanding works are significant and involve the Tenant's safety. There is no heat detector in the kitchen. There is no hardwired smoke detector in the hall. No EICR has been produced. The Landlord had continued to collect rent in respect of the Property.

The tribunal was of the view that a 90% RRO was appropriate. The Tenant continues to endure serious health and safety risks. The Landlord had not shown any indication of addressing the outstanding works despite having had considerable opportunity to do so. Accordingly the tribunal was satisfied that a 90% RRO was the appropriate measure to take.

14. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a Landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord had offered no excuse as to his failure to complete the outstanding works nor any indication that he would complete the outstanding works. The Landlord had continued to collect rent but had failed to maintain the Property to the appropriate standard. The outstanding works are significant and put the Tenant at risk. Accordingly, in the circumstances, the tribunal

was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

### Decision

15. The tribunal determined that in terms of the Act the Landlord had failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution. The tribunal was also satisfied that it was appropriate to grant an RRO at 90% in terms of the Act.

16. The decision of the tribunal was unanimous.

**A landlord, tenant or third party 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.**

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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Gillian Buchanan, Solicitor, First Tier Tribunal for Scotland (Housing and Property Chamber), Scottish Courts and Tribunal Service, 4th Floor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, chairperson of the tribunal at Dundee on 12 January 2017 before this witness:-

\_\_\_\_\_ witness **G Buchanan** \_\_\_\_\_ Chairperson  
 Jennifer Lynch name in full  
 c/o Thorntons Law LLP, \_\_\_\_\_ Address  
 Whitehall House, 33 Yeaman Shore  
 Dundee, DD1 4BJ

# Housing and Property Chamber First-tier Tribunal for Scotland



## RE-INSPECTION REPORT

**Property: 7A TANFIELD WALK, ABERDEEN AB24 4AN**



**Ref no:** PRHP/RP/16/0083

**Surveyor:** David Godfrey

**Inspection:** The property was inspected at 10.00 am Thursday 12th January 2017.

**Access:** Mr George Watt (Tenant) was present and provided access to the property.

Mr Stanley Youngson (Landlord) was neither present nor represented.

### **Repairing Standard Enforcement Order:**

*In particular the Private Rented Housing Committee requires the landlord:-*

- a. *To repair the hot water system to ensure that it is in a reasonable state of repair and in proper working order to include the replacement of the hot water tank, the electric immersion heater, the cold water tank and associated plumbing as necessary.*
- b. *To repair or replace the cistern and the pipework adjacent to the toilet to ensure that it is in a reasonable state or repair and in proper working order.*
- c. *To install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation and to produce a clear Electrical Installation Condition Report from a*



Hot water tank



Toilet cistern



Battery powered smoke alarm in Hall

David Godfrey, MRICS

12th January 2017

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**RENT RELIEF ORDER: Housing (Scotland) Act 2006, Section 27**

**Chamber Ref: PRHP/RP/16/0083**

**Property at 7A Tanfield Walk, Aberdeen, AB24 4AN  
("The Property")**

**The Parties:-**

**Mr GEORGE WATT, 7A Tanfield Walk, Aberdeen, AB24 4AN  
(represented by his agent, Mr Hamish Mackenzie, Shelter Scotland, Aberdeen Hub,  
36 Upperkirkgate, Aberdeen, AB10 1BA)  
("the Tenant")**

**MR STANLEY YOUNGSON 17 Prospect Terrace, Aberdeen, AB11 7TB  
("the Landlord")**

## **NOTICE TO MR STANLEY YOUNGSON ("the Landlord")**

Whereas in terms of its decision dated 12 January 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined in terms of Section 26(1) 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 Private Rented Housing Panel the tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 90% 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.

**A landlord, tenant or third party 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.**

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the tribunal is granted, then the effect of the decision and the Rent Relief Order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the



decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date 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.

Signed **G Buchanan** .....

Date **12 January 2017**

Chairperson