

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 & 28

Chamber Ref: FTS/HPC/RT/17/0385

**Property at 27 Ardinn Road, Turriff, AB53 4PG
("the Property")**

The Parties:-

**MS CATHERINE COSGROVE, 27 Ardinn Road, Turriff, AB53 4PG
("the Tenant")**

**MR DAVID MCLEOD AND MS CAROLYN MCQUAT, The Glass House, Back Street,
Fordyce, Banff, AB45 2SU
("the Landlords")**

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie,
Aberdeenshire, AB51 3WA
("the Third Party Applicant")**

Decision

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 Landlords have complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that (i) the Landlords 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, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. Reference is made to the determination of the tribunal dated 5 February 2018 which determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that they had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - (a) Repair or replace the exterior front door and the glass side panel adjacent thereto to ensure that the door and the glass panel are wind and watertight, in a reasonable state of repair and in proper working order and to provide keys to the front door to the Tenant;

- (b) Repair or replace the wash hand basin and the pipework therefrom in the first floor bathroom to ensure that it is in a reasonable state of repair and in proper working order and redecorate the ceiling below in the ground floor hallway to eliminate water damage thereto;
- (c) Repair or replace the shower in the first floor bathroom to ensure that it is in a reasonable state of repair and in proper working order and to submit to the tribunal evidence detailing and vouching the remedial works effected.
- (d) 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 submit to the tribunal certification therefore from a suitable qualified electrician.

The RSEO gave the Landlords 2 months to carry out the works.

2. On 17 May 2018 the Ordinary (Surveyor) Member of the tribunal, Mr Angus Anderson, re-inspected the Property on behalf of the tribunal. The Third Party was neither present nor represented. The Tenant was present. The Landlords were neither present nor represented.
3. The re-inspection revealed that none of the works required in terms of the RSEO had been carried out. All works remained outstanding.
4. 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").
5. The tribunal determined that the Landlords had failed to comply with the RSEO. All works required in terms of the RSEO were outstanding. No works of any description whatsoever had been carried out. Accordingly the tribunal was obliged to serve notice of the failure on the local authority and resolved to do so.
6. The tribunal then decided whether or not to make an RRO. Subsequent to the re-inspection and on a date unknown to the tribunal the Tenant had vacated the Property. The tribunal therefore determined that it had no jurisdiction to make a rent relief order.
7. 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 Landlords had offered no excuse as to their failure to complete the outstanding works nor any indication that they would complete the outstanding works. 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

8. The tribunal determined that in terms of the Act the Landlords 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.
9. 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 pages are executed by Gillian Buchanan, Solicitor, First-tier Tribunal for Scotland (Housing and Property Chamber), 3rd Floor, Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT, Chairperson of the tribunal at Dundee on 4 July 2018 before this witness:-

____ Witness

G Buchanan

Legal Member
& Chairperson

Jenni Lynch name in full

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