

Housing and Property Chamber First-tier Tribunal for Scotland



Notice of a decision to Revoke

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference: PRHP/RT/16/0167

Re: Property situated at and known as Flat 0/2, 299 Allison Street, Glasgow, G42 8HH, being the subjects registered in the Land Register of Scotland under Title Number GLA171863 ("The property")

The Parties:-

Mr Ashwini Joshi, formerly residing at 2/1, 122 Berkeley Street, Glasgow, G3 7HU and now residing at 16/2 Hillside Crescent, Edinburgh, EH7 5EB ("The Landlord")

And

Glasgow City Council, having a place of business at 79 Coplaw Street, Govanhill, Glasgow, G42 7JG ("The Third Party Applicant")

NOTICE TO Glasgow City Council, having a place of business at 79 Coplaw Street, Govanhill, Glasgow, G42 7JG ("The Third Party Applicant").

The First-tier Tribunal have determined on **27 June 2017** that the work required by the **Repairing Standard Enforcement Order ("RSEO")** relative to the Property dated 6 July 2017 shall be **revoked** with effect from the date of service of this Notice.

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.

In witness whereof these presents type written on this page only are executed by Andrew Cowan, solicitor of 7 West George Street, Glasgow, G2 1BA, and chairperson of the First-tier Tribunal at Glasgow on ~~27~~ June 2017 before this witness:-

Signed ..
Andrew Cowan, Chairperson

.....Witness
Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

Housing and Property Chamber First-tier Tribunal for Scotland



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

Rule 7A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 (Schedule 1 of the Housing and Property (Procedure) Regulations 2016 (SSI No. 2016/339) ("the Procedure Rules"); tribunals (Scotland) Act 2014, section 43

Reference: PRHP/RT/16/0167

Re: Property situated at and known as Flat 0/2, 299 Allison Street, Glasgow, G42 8HH, being the subjects registered in the Land Register of Scotland under Title Number GLA171863 ("The property")

The Parties:-

Mr Ashwini Joshi, formerly residing at 2/1, 122 Berkeley Street, Glasgow, G3 7HU and now residing at 16/2 Hillside Crescent, Edinburgh, EH7 5EB ("The Landlord")

And

Glasgow City Council, having a place of business at 79 Coplaw Street, Govanhill, Glasgow, G42 7JG ("The Third Party Applicant")

The Tribunal consisted of:-

Mr Andrew Cowan – Chairperson
Ms Carol Jones – Surveyor Member

Decision

The Tribunal, having reviewed their decision to grant a RSEO in respect of the property dated 6th July 2016 ("the RSEO") determined, in all the circumstances of the case, to revoke that RSEO.

Background

1. In terms of a determination dated 16th May 2017 the Tribunal considered that there may be grounds for review of the Tribunal's earlier decision to grant the RSEO. Agents on behalf of the Landlord submitted a request that the Tribunal review their own decision to grant the RSEO. The Tribunal held a hearing on 16 June 2017 to review the decision to grant the RSEO.

2. The hearing on 16 June 2017 was attended by Mr Ashwini Joshi, the Landlord. He was accompanied and represented at the hearing by Mr Euan Bruce, Trainee Solicitor, Messrs Thorley Stephenson, Edinburgh.
3. The Third Party Applicant did not attend the hearing. The Third Party Applicant had made representations in relation to the matter by email dated 23 May 2017.
4. In advance of the hearing, the Landlord lodged with the Tribunal further documentation which the Tribunal considered in the course of their review of the decision to grant the RSEO.
5. The documents produced by the Landlord in advance of the hearing were as follows:-
 1. Land Register search for GLA171863 dated 13 June 2017.
 2. Missives of let between Ashwari Joshi and Muntean Daniela Sorina.
 3. Letter from TMB Mortgage to Ashwini Joshi's agents dated 1 February 2017.
 4. Email from TMB Mortgage's agents to Ashwini Joshi's agents dated 12 June 2017.
 5. Search by Llewellyn & Co dated 19 December 2016.
 6. Forensic Science Report of Dr Evelyn A Fillies dated 25 January 2017.
 7. Notice of date of removal and charge in respect of 299 Allison Street, Glasgow, G42 8HH dated 21 August 2014.
 8. Email from Citizen's Advice Bureau to the Tribunal dated 23 August 2016.
 9. Missives of let between Dixon Property and Emil Tancos.
 10. Emails between agents for the Mortgage Business and Ashwini Joshi's agents dated 12 and 14 June 2017.
6. Findings in fact

Having considered the evidence presented by Mr Joshi, and taking account of the representations made on behalf of the Third Party, the Tribunal determined the following findings in fact:-

 - (a) Mr Ashwini Joshi continues to be the registered proprietor of the property in the Land Registers of Scotland under title number GLA171863.
 - (b) On 27 June 2014 the heritable creditors of Mr Ashwini Joshi obtained a Decree for repossession of the property from Mr Joshi.
 - (c) Since the date of Decree for repossession Mr Ashwini Joshi has not entered into the property and has not engaged in any letting business in respect of the property.

(d) The purported missive of let between Mr Ashwini Joshi and Ms Muntean Daniella Sorina from the 1 March 2016 was not executed by Mr Joshi.

(e) Mr Ashwini Joshi is not and never has been the Landlord of Ms Sorina.

7. Reasons for the Tribunals decision

The Tribunal reviewed their decision of 6 July 2016. At the time of that decision, and based on the information and evidence before the Tribunal, the Tribunal had determined that Mr Ashwini Joshi was both the registered owner of the property and the Landlord of the tenant who was in occupation of the property at that time. At the time of that decision, the Tribunal had noted that Mr Joshi's position was that the property had been repossessed by his heritable creditor and that the current tenancy had been entered into fraudulently. The Tribunal were not however satisfied at that time that there was a sufficiency of evidence to satisfy the Tribunal of Mr Joshi's averment in that respect. Mr Joshi had not attended the hearing upon which the Tribunals decision was based. Mr Joshi had made written representations by email.

8. At the hearing to review the Tribunal decision, the Tribunal were able to consider further substantial evidence which had now been made available by Mr Joshi.

9. While the position is complicated, the Tribunal were satisfied that there was a sufficiency of evidence upon which it was reasonable, and on a balance of probabilities, to conclude that Mr Joshi was not, and has never been, the Landlord of the tenants currently occupying the property.

10. The Third Party Applicant had drawn the Tribunals attention to the fact that the title deeds to the property confirm that Mr Ashwini Joshi remained the legal owner of the property. This was not disputed by Mr Joshi. Mr Joshi's position was that the property had been repossessed by his heritable creditors. Written evidence from the Solicitor's acting for the heritable creditors confirms that a Decree of repossession had been granted against Mr Joshi in 2014. Although the registered owner of the property remains Mr Joshi in terms of the Land Register, the Tribunal accepted Mr Joshi's position that since the date of Decree against him he had not sought to let the property to any party.

11. The Tribunal were able to consider the evidence which suggested that the current lease of the property had not been executed by Mr Joshi as the purported Landlord. In particular, the

Tribunal were able to consider the evidence contained in the forensic science report prepared by Dr Evelyn Gilles dated 25 January 2017. The conclusions of that report were that the signatures in question within the lease (the lease granted to the current tenants of the property) are not genuine examples of Mr Joshi's signature. The Tribunal had no difficulty in accepting the evidence that the signatures on the current lease of the property were not those of Mr Joshi's.

12. The Third Party Applicant had highlighted that letters which had previously been issued by Mr Joshi regarding repairs that required to be completed at the property resulted in various repairs being carried out. The Third Party suggested that these actions suggested that (as Mr Joshi had received the letters), he had been responsible for repairs which had been carried out. The inference, therefore, was that he had acted as if he was the Landlord of the property. The Tribunal were not satisfied in all the current circumstances that the fact certain repairs were carried out to the property in itself was conclusive evidence that Mr Joshi had acted as a Landlord for the property. Mr Joshi gave credible evidence to the Tribunal that he had not entered into the property since the Decree of repossession had been granted in 2014. He had not entered into a lease for the current occupant of the property. He had not carried out any repairs to the property since the date of repossession. The Tribunal accepted the evidence of Mr Joshi in this respect.

13. The overriding objective of the First-tier Tribunal is to deal with proceedings justly. In all the circumstances, and having regard to all of the evidence which has now been made available to the Tribunal, the Tribunal determined that Mr Ashwini Joshi is not and never has been the Landlord of the property in respect of the current occupants of the property.

In all the circumstances the Tribunal has no difficulty in determining that it is just and appropriate to review their decision dated 6th July 2016 and to revoke the RSEO previously granted in relation to the property concern.

14. Observation

The Tribunal observe that it is not clear who has granted the current tenancy of the property nor is there any evidence as to who the current tenants are paying rent to. There are still significant issues and concerns regarding the safety of the tenants within the property as the property does not meet the repairing standard. Notwithstanding this, the Tribunal are not able

to take forward the current application as the true Landlord of the property has not been correctly identified. The Third Party Applicants and Mr Joshi, together with the current Tenants of the property, are encouraged to continue to pursue this matter through the Police and other authorities to ensure the safety of the current Tenants.

Signed
Andrew Cowan, Chairperson

Date 27 June 2017

