

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



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/RT/ RT/23/0758

Title Number: ANG50841 in the Land Register of Scotland

Property known as 23A Court Street, Dundee DD3 7QS

("The Property")

The Parties:-

Dundee City Council, Private Sector Services Unit, 5 City Square, Dundee DD1  
3BA  
("the Third-Party")

Christopher Airlie, 8/9 Balfield House, Osprey View, Piperdam, Dundee DD2  
5LZ  
("the Landlord")

Tribunal Members:

Rory Cowan (Legal Chair)

Robert Buchan (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 July 2023. 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 11 July 2023 following an inspection and a decision that the Landlord had failed to comply with his duty under section 14(1)(b) of the 2006 Act. The RSEO required the Landlord to carry out the following works within 30 days of the date of the RSEO was sent to him:
  - 1) *To instruct an Electrical Installation Condition Report on the Property by an appropriately qualified electrician being a member of NICEIC, SELECT or NAPIT. To carry out all works identified as either category C1 or C2 in the said Electrical Installation Condition Report in order to ensure that the Property’s electrical installations are in a reasonable state of repair and in proper working order. The Electrical Installation Condition Report and all invoices for any work that may be required to be carried out (along with any further certification of same) to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.*
  - 2) *To instruct and obtain a Gas Safety Certificate for the Property prepared by an appropriately qualified Gas Safe engineer in order to ensure that the Property’s installations for the supply of gas are in a reasonable state of repair and in proper working order. A copy of the Gas Safety Certificate and all invoices for work that may be required to be carried out (along with further certification of same) to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.*
  - 3) *To instruct a qualified chartered building surveyor to investigate the source of dampness and mould within the Property (including in the living room and the shower room) and to prepare a report recommending remedial works to eradicate the dampness and mould in order to ensure the Property meets the Repairing and Tolerable standards and to submit the report to the Tribunal for further consideration.*
  - 4) *To install a Fire Detection system that meets current legislative requirements.*
  - 5) *To repair or replace the collapsed ceiling within the living room for the Property to ensure it is in a reasonable state of repair.*
2. A reinspection was carried out by the Tribunal after the expiry of the deadline. Their report dated 4 October 2023 indicated that none of the required work had been completed.
3. The re-inspection report was issued to all parties for comment with a deadline for such responses on 16 November 2023. A response was received on behalf of the Third Party indicating that no works had been carried out and no

contact had been made by the Landlord, but no response has been received from the Landlord.

### **Reasons for decision**

4. 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 because of a lack of necessary rights despite having taken reasonable steps for the purposes of acquiring those rights.
5. The Landlord has failed to engage with the Tribunal in relation to this application and has provided no explanation for his failure to comply with the RSEO. As such, the Tribunal has nothing in front of it which would suggest that any such a defence may apply and it would appear that the Landlord has simply ignored the RSEO completely.
6. The original RSEO was issued following a decision of the Tribunal dated 11 July 2023. Accordingly, approximately 5 months have passed since service of the RSEO without the necessary works having been carried out.
7. In terms of section 28(4) of the 2006 Act, the Tribunal decided on 12 January 2024 that the Landlord has failed to comply with the terms of the RSEO.
8. 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.
9. The Tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. Despite the seriousness of the issues of disrepair, the Landlord has failed to engage with the Tribunal and has had plenty of time to carry out the required works. It appears to the Tribunal that the Landlord has simply chosen to ignore the RSEO. Accordingly, due to the extent of the dampness and the possible impact on the health of any occupants, the Tribunal decided to make a Rent Relief Order to the extent of ninety (90%) per cent of the rent payable in terms of the lease agreement between the parties.
10. The decision of the Tribunal was unanimous.

### **Appeal**

**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.**

R Cowan

Signed:

Date: 15 January 2024

Chairman