

# 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/RT/19/1022**

**Title Number: STG67046**

**Property at 17 The Hedges, Falkirk, Camelon FK1 4DZ**

**("The Property")**

**The Parties:-**

**Falkirk Council, Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk FK1 1XR**

**("the Third-Party")**

**Mohammed Javed, 19 Cobden Road, Leytonstone, London E11 3PH**

**("the Landlord")**

**Tribunal Members:**

**Rory Cowan (Legal Chair)**

**Andrew Murray (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 19 June 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 19 June 2019 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 6 weeks of the date of the RSEO:

- 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 work carried out 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 carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.
  - 3) To instruct specialist heating contractors to inspect the installations for space heating within the Property, in particular in the kitchen, hallway and livingroom and identify any works required to remediate same. To carry out all works identified in the specialist report in order to ensure that such installations for space heating are in a reasonable state of repair and in proper working order. The specialist contractor's report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.
  - 4) To repair or replace the current battery powered Fire Detection system with one that meets current legislative requirements.
  - 5) To ensure that a Carbon monoxide detector is fitted to the Property that meets current legislative requirements.
  - 6) To repair or replace the broken door to the wall mounted unit nearest the window in the kitchen of the Property to ensure it is in a reasonable state of repair and in proper working order.
  - 7) To repair or replace the broken kitchen unit to the right-hand side of the cooker within the kitchen of the Property to ensure it is in a reasonable state of repair and in proper working order.
2. A reinspection was carried out by the surveyor ordinary member of the Tribunal after the expiry of the deadline. His report dated 28 August 2019 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 24 October 2019. A response was received on behalf of the Third Party, 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 19 June 2019. Accordingly, 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 22 November 2019 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. 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, 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**

**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.

Signed:  
R Cowan

Date: 22 November 2019

Chairman



# Housing and Property Chamber First-tier Tribunal for Scotland

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

**RENT RELIEF ORDER under Section 27 of the Housing (Scotland) Act 2006 as amended ("the Act")**

**Chamber Ref: FTS/HPC/RT/19/1022**

**Property at 17 The Hedges, Falkirk, Camelon FK1 4DZ  
("The House")**

**The Parties:-**

**Falkirk Council, Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk FK1 1XR**

**("the Third-Party")**

**Mohammed Javed, 19 Cobden Road, Leytonstone, London E11 3PH**

**("the Landlord")**

## **NOTICE TO ("the Landlord")**

Whereas in terms of its decision dated 19 June 2019, 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 Tribunal.

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. To ascertain the last date on which the decision can be appealed, please refer to the information note on appeals and reviews, a copy of which is attached.

**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 to appeal within 30 days of the date the decision was sent to them.**

In terms of Section 63 of the Act, 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.

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.

R Cowan

Signed .....

Legal Member and Chair

Date .....22 November 2019.....