

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**Statement of decision of the First-tier Tribunal: Housing (Scotland) Act 2006  
Section 26 (1)**

**Chamber Ref: PRHP/RP/16/0217**

**Title number: GLA194202**

**Property at 34 Hamilton Avenue, Glasgow, G41 4JD  
("The House")**

**The Parties:-**

**Ms. Vanessa Walsh  
("the Tenant")**

**Mr Rashid Ali, 32 Hamilton Avenue, Glasgow, G41 4JD  
("the Landlord")**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal')  
comprised:-

<b>Patricia Anne Pryce</b>	-	<b>Chairing Member</b>
<b>Lorraine Charles</b>	-	<b>Ordinary Member</b>

## **Background**

1. On 9 August 2016, the tribunal issued a determination which stated that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). On the same date, the tribunal issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property.
2. The RSEO made by the tribunal required the Landlord to:-  
  
    "(a) To reinstate the fence in the rear garden."
3. The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within 28 days of the date of service of the Notice, that is, by 16 September 2016.

4. On 29 September 2016, the surveyor member of the Tribunal which issued the RSEO attended at the property for the purpose of ascertaining whether the said repairs required by the RSEO had been completed. He found that not all of the works specified in the RSEO had been carried out and that the said specified works had not been completed in that: although a fence had been erected using materials provided by the Tenant, the installation did not appear to be professional nor satisfactory with the remains of the defective timber posts not having been removed but instead incorporated into the erection of the fence, metal posts not having been adequately hammered into the ground being consequently loose and providing inadequate support to the mesh. Furthermore, the posts were unevenly spaced resulting in the mesh not being supported and not fulfilling its intended purpose. The mesh had not been tensioned and was loose. In summary, he was of the opinion that the fence was not considered satisfactory to meet the repairing standard as it was insufficiently stable, or secure, and insufficient to be considered child or pet proof.
5. A copy of the re-inspection report of the surveyor member was sent to the Landlord and to the Tenant. The parties both replied stating that they wished to attend another hearing. The Tenant replied that she considered that a Rent Relief Order ("RRO") of 15% would be appropriate to take account of the Landlord's failure to comply with the RSEO.

## Hearing

6. A hearing was set down for 2 December 2016 but the Tenant requested that this be adjourned as she would not be in Scotland on that date. The Landlord did not object. The tribunal allowed an adjournment and another hearing was arranged for 9 December 2016 at 10 am within Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. The parties were advised of this hearing by letter dated 26 October 2016.

The Tenant was present at the hearing. The Landlord was represented at the hearing by his brother, Mr. Asif Ali who confirmed that he resided with the Landlord at 32 Hamilton Avenue. He explained that he and his brother and their families lived there in an extended family home and that this was next door to the house. He confirmed that he was representing his brother as his brother had been sectioned under the Mental Health Act. He advised that his brother was bi-polar and suffered other psychological problems. He confirmed that his brother had capacity and was at home.

Mr. Ali confirmed that he himself owned around ten properties which he rents out.

Mr. Ali advised that he thought that the Landlord's agents, KPM Residential, were due to attend the hearing. The tribunal offered Mr. Ali a short adjournment to telephone the agent to see if the agent was going to attend. Mr. Ali accepted this offer. The hearing was adjourned for a few

minutes. When the hearing recommenced, Mr. Ali confirmed that the agent was not going to attend.

It was of great help to the tribunal that both parties confirmed that they accepted the terms of the re-inspection report of the previous surveyor member in the tribunal. Both parties agreed that the fence did not meet the repairing standard.

Mr. Ali confirmed that he had instructed the agent, KPM Residential, to carry out a proper repair to the fence about eight weeks prior to the hearing. He confirmed that this had not been done and that he did not know why.

When questioned by the tribunal, Mr. Ali confirmed that he could see easily from his own home that the fence had not been fixed in the last eight weeks. He was asked why he had not simply instructed his own contractor and Mr. Ali advised that he did not have a contractor to instruct directly.

He further advised that the agent had confirmed that the work had been booked in for Monday 12 December 2016. Given this, he asked for an adjournment of the hearing.

The Tenant advised that she was opposed to an adjournment as she felt that the Landlord had had plenty of time to carry out the repair. She advised that the fence had been in a poor state of repair since she moved into the house in August 2015 and that the repair had been outstanding for around 18 months.

The tribunal had a short adjournment to consider the request for an adjournment.

The hearing recommenced. The tribunal issued its decision that it was refusing the request of Mr. Ali to adjourn the hearing on the basis that the RSEO was dated 9 August 2016 and contained the time limit that the work should have been completed within 28 days of the date of service of the RSEO, that is, by 16 September 2016. Furthermore, the tribunal was of the view that the house had failed to meet the repairing standard from the start of the tenancy in August 2015, which was a matter of admission by both parties. By his own admission, Mr. Ali confirmed that he was aware of the requirement for the works as he had instructed these eight weeks previously. Despite being aware that these works had remained outstanding, Mr. Ali had done nothing further to have the works completed. The tribunal simply did not accept his explanation that he could not instruct his own contractor.

The tribunal is grateful to both parties as both parties accepted that the fence did not meet the repairing standard and that the RSEO had not been complied with. The tribunal asked the parties to address them on the issue of an RRO.

The Tenant advised that she had not been able to fully enjoy the garden of the house, especially over the summer months, due to the insecure nature of the fence. She was of the view that 15% for the RRO would be reasonable.

Mr. Ali advised that he did not think that an RRO would be appropriate as the work was going to be carried out on 12 December and that there was a large mortgage over the house.

## Decision

7. The Tribunal notes that a half-hearted attempt was made at replacing the fence but that this was done using materials which the Tenant had purchased at her own expense. However, the workmanship simply was not good enough and the issue remains outstanding in terms of the RSEO.
8. The Tribunal takes the view that the Landlord has had ample time to carry out the remaining works. In accordance with the relevant provisions of Section 26 of the 2006 Act, the Tribunal required to determine whether an RRO should be made.
9. The Tribunal took the view that the works required by the RSEO had been outstanding for four months. The Tribunal took the view that these works could have easily been completed in that period of time. The Tribunal took the view that the failure to carry out the works was having an impact on the Tenant's ability to fully enjoy the property. The Tribunal took the view that the state of repair of the fence presented a potential danger to the Tenant and her family and was a health and safety concern as the garden was not secure.
10. In all the circumstances, the Tribunal determined that they would make a Rent Relief Order (RRO). The Tribunal took the view that the appropriate proportion of rent which should be subject to the RRO was 20% of the monthly rent of £795, namely £159 per month. The Tribunal accordingly determined to make an RRO in those terms.
11. The decision of the Tribunal is unanimous.

## Rights of Appeal

**12.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.**

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.

13. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed  
Patricia Anne Pryce, Chairperson

Date 9 December 2016