

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision regarding a failure to comply with the Repairing Standard Enforcement Order (“RSEO”): Housing (Scotland) Act 2006 (“the Act”) Section 26**

**Chamber Ref: FTS/HPC/RT/18/1357**

**Flat 1/R, 39 Provost Road, Dundee, DD3 8AF (“The Property”)**

**The Parties:-**

**FINDLAY CONNOR** formerly residing at Flat 1/R, 39 Provost Road, Dundee, DD3 8AF (represented by Dundee City Council (“the Applicant”))

**MAMUN HOSSAIN** and **MANIR HOSSAIN** both residing at 2/L, 25 Caird Avenue, Dundee, DD3 8AS (“the Landlords”)

**Tribunal Members: Mr E K Miller (Legal Member) and Ms G Wooley (Ordinary Member)**

**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 had complied with the RSEO previously imposed by the Tribunal, determined that the Landlords had failed to comply with the RSEO. The Tribunal further determined that a Notice of Failure to Comply with the RSEO should be served on the relevant Local Authority.

**Background**

1. The Tribunal had previously issued an RSEO against the Property dated 16 May 2019 which had determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (“the Act”). The RSEO required the Landlord to:-
  - (a) to obtain a specialist report from a timber specialist expert on the presence or otherwise of any dry rot or any other timber infestation within the Property.
  - (b) to provide a copy of the report to the Tribunal immediately upon receipt.

- (c) to implement any works recommended in that report to eradicate dry rot within the Property.
- (d) to make good any damage occasioned in carrying out those works and to redecorate where necessary.
- (e) to liaise with the proprietor of the upper floor flat to carry out the necessary repair works to the communal joists and to eradicate the dry rot contained therein.

The RSEO specified that these works were to be carried out within two months of the service of the RSEO.

2. Once the period specified in the RSEO had passed, the Tribunal arranged for Ms Wooley, the Ordinary Member and a Qualified Surveyor to reinspect the Property to see what, if any, progress had been made. Mrs Wooley attended the Property on 30 November 2018. Although a smoke detection system had been installed at the Property no substantive progress had been made with the works required by the RSEO. A further reinspection was carried out in 16 August 2019, again by Ms Wooley. Again, the position remained that the works were outstanding. The Tribunal did appreciate that the Landlords faced some difficulties in relation to complying with the RSEO. The Landlord had produced two Peter Cox Reports relating to the Property dated 10 January 2018 and 24 September 2018. These reports identified that there was dry rot in the Property that affected the floor and ceiling joists of the Property in the kitchen area and would require mutual repair works to be organised and paid for with neighbouring flats. Communal repairs can be a time consuming process for an owner, particularly where funds need to be ingathered from other owners before works can start. The Tribunal did receive some updates from the local authority in relation to the progress of works. It appeared there were some difficulties in having all funds paid between the various parties to allow the works to commence.
3. In due course the Tribunal felt that notwithstanding the difficulties in organising communal progress that there had been insufficient progress. The Tribunal therefore resolved to carry out a further inspection and hearing of the full Tribunal to try and resolve matters. A further inspection and hearing took place on 22 January 2020. The Tribunal on that day again comprised Mr E K Miller, Chairman and Legal Member and Ms G Wooley, Ordinary Member. The Landlord's son was present and provided access to the Property. A subsequent hearing was held on the same day at Caledonian House, Greenmarket, Dundee. No parties attended at the hearing.
4. It was apparent at the inspection of 22 January 2020 that substantive works were ongoing in the Property. The Property was undergoing a general refurbishment. The kitchen had been completely stripped out and new plasterboard walls and ceilings had been installed. The Landlord's

son confirmed that the recommended works in the Peter Cox reports had been carried out. From a visual inspection it was not possible for the Tribunal to confirm this was the case but it did appear likely that the works had been carried out. The Tribunal were keen to draw this matter to a conclusion and for the RSEO to be discharged. However the Tribunal could not see from the inspection that all works had been carried out by Peter Cox. The Tribunal indicated at the inspection to the Landlord's son that if confirmation could be provided from Peter Cox that all works had been carried out and if a Guarantee could be provided from a Timber Specialist the Tribunal could consider removing the RSEO without the need for a further inspection. Photographic evidence showing the redecoration and reinstatement of the kitchen units could be provided. The Landlord's son agreed to do this. On 12 February the Landlords provided an email from the Peter Cox stating that all that was remained was for the kitchen ceiling to be plastered. This would then allow the Timber Specialist to issue the appropriate Guarantee upon payment of the invoice. This would then simply leave the Landlords requiring to redecorate to ensure compliance with the RSEO. Evidence of the redecoration could be provided by photographs to the Tribunal to avoid a further reinspection.

The Tribunal responded to the email of 12 February 2020 and highlighted to the Landlords that these final pieces of evidence (namely confirmation that the plastering had been carried out, that the Guarantee had been obtained and that the redecoration had occurred) were still required to allow the RSEO to be lifted. No response was received from the Landlords. A reminder email was sent to the Landlords on 12 March 2020 and no response was received.

5. The Tribunal then considered what further steps should be taken. The Tribunal was of the view that it needed to determine, following the last inspection and hearing, whether there was still an ongoing failure to comply with the RSEO. The Tribunal had been willing to deal with matters on a slightly more informal basis with the Landlord to allow the RSEO to be lifted.

However, despite being told at the inspection of the Tribunal's requirements and being chased by the Tribunal to provide the information the Landlords had not done what had been asked of them. The Tribunal had no evidence before it that the plasterworks to the ceiling had been completed, that a Guarantee was in force that protected the works that had been carried out or that the redecoration works had been completed in line with the RSEO. In the absence of this confirmation the Tribunal reluctantly felt that it had no option but to determine that the Landlords continued to fail to comply with the terms of the RSEO without reasonable excuse. Whilst the Tribunal appreciated that the Landlords had made some strides in addressing the works he had failed to engage with the Tribunal in terms of its requirements since the final inspection in January 2020. In the circumstances the Tribunal had no option but to conclude that the Landlords had failed to comply with the RSEO without reasonable

excuse and the Tribunal resolved to issue this decision noting the failure to comply.

6. In light of the Landlord's failure to comply the Tribunal are obliged in terms of Section 26(2) (a) of the Act to serve a notice on the Local Authority confirming the failure to them. The Tribunal resolved to do so.
7. The Tribunal would encourage the Landlord to provide evidence of the plasterworks to the ceiling and subsequent redecoration works along with a complete Guarantee. This would allow the removal of the RSEO and this long running matter to be brought to an end. The Tribunal would remind the Landlord that it is a criminal offence to re-let the Property for so long as the RSEO is still in place.
8. A copy of the photographs taken at the final reinspection of 22 January 2020 are attached for information.

### **Decision**

9. The Tribunal accordingly determined that the Landlords had continued to fail to comply with the RSEO without reasonable excuse.
10. The decision of the Tribunal was unanimous.

### **Right of Appeal**

11. 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.

Legal Member: **Ewan Miller**

Date .....27 July 2020.....