

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **Notice of a Decision to Vary a Repairing Standard Enforcement Order**

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

(Hereinafter referred to as “the tribunal”)

**Case Reference Number: FTS/HPC/RP/19/2089**

**Re: Flat 0/2, 36 Garturk Street, Glasgow G42 8JF (“the house”)**

**Land Register Title No: GLA125116**

**The Parties:-**

**Mr Atif Aziz Khawaja, residing at the house (“the tenant”)**

**Mr Mohammed Arshad, c/o AQA Property Ltd, 584 Cathcart Road, Glasgow G42 8AB (“the landlord”)**

**Tribunal Members – Sarah O'Neill (Legal Member) and Sara Hesp (Ordinary Member, Surveyor)**

**Repairing Standard Enforcement Order Against:**

**Mr Mohammed Arshad (the landlord)**

The tribunal, having determined on 29 September 2020 that the Repairing Standard Enforcement Order relative to the house dated 9 October 2019 and varied on 5 April 2020 should again be varied, the tribunal hereby varies the Repairing Standard Enforcement Order to the effect that the period allowed for the completion of the works required by the Repairing Standard Enforcement Order is extended for a further twelve weeks until **31 December 2020**.

### **Rights of 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.

Signed..... **S O'Neill** .....Date..... 29/9/20.....

Sarah O'Neill, Chairperson

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

(Hereinafter referred to as “the tribunal”)

### Statement of decision of the Tribunal under Section 25 of the Housing (Scotland) Act 2006

Case Reference Number: FTS/HPC/RP/19/2089

Re: Flat 0/2, 36 Garturk Street, Glasgow G42 8JF (“the house”)

Land Register Title No: GLA125116

#### The Parties:-

Mr Atif Aziz Khawaja, residing at the house (“the tenant”)

Mr Mohammed Arshad, c/o AQA Property Ltd, 584 Cathcart Road, Glasgow G42 8AB (“the landlord”)

Tribunal Members – Sarah O'Neill (Legal Member) and Sara Hesp (Ordinary Member, Surveyor)

#### Repairing Standard Enforcement Order Against:

Mr Mohammed Arshad (the landlord)

#### Background

1. The tribunal issued a decision on 9 October 2019 requiring the landlord to comply with the Repairing Standard Enforcement Order (RSEO) relative to the property issued by the tribunal on the same date.
2. The RSEO required the landlord to:
  - 1) Instruct an appropriate contractor to carry out the replacement or repair as necessary of all areas of defective pointing to the front and rear elevation of the building.

- 2) Instruct a suitably qualified specialist contractor to make good or repair or replace the defective damp-proof course to the rear elevation of the building, and to provide evidence of that contractor's qualifications to the tribunal.
- 3) Deliver to the tribunal, for approval, a specialist report from a suitably qualified building surveyor, who is a professional member or fellow of the Royal Institution of Chartered Surveyors, to address the requirements for a property of this form of construction to make the property wind and watertight and substantially free from rising or penetrating damp, and to comply with the Repairing Standard. This report should include investigation of any issues contributing to the rising and /or penetrating damp which may have originated from the flat above or elsewhere within the tenement building.
- 4) Once a satisfactory report has been approved by the tribunal, to carry out such work as is recommended in terms of the report, provided that the tribunal confirms its approval of the works specified in the report.
- 5) Instruct a suitably qualified contractor to check whether the extractor fans within the house are in a reasonable state of repair and in proper working order. If any of these are found not to be operating satisfactorily, repair or upgrade the relevant fan/s, to ensure that they are in a reasonable state of repair and in proper working order.
- 6) Once item 5 above has been completed, provide an up to date Electrical Installation Condition Report (EICR) in respect of the house, showing that all electrical installations, appliances and fixtures and fittings, and in particular the extractor fans, have been checked and are working safely. The EICR must be produced by either:
  - a suitably qualified and registered SELECT or NICEIC contractor
  - a member of NAPIT, or
  - a contractor who is able to provide evidence that they are a 'competent person' i.e. a completed and signed checklist, as set out at Annex A on page 13 of the guidance by Scottish Ministers on Electrical Installations and Appliances in Private Rented Property, which can be found on the [Chamber's website](#).
- 7) Provide an up to date gas safety certificate in respect of the house by a Gas Safe registered engineer, showing that all gas installations and appliances, and in particular the boiler and radiators, have been checked and are in a reasonable state of repair and in proper working order.

- 8) On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The tribunal ordered that the works must be carried out and completed within the period of six months from the date of service of the RSEO.

3. On 18 March 2020, an email was received from AQA Property on behalf of the landlord, requesting further time to complete the repairs. There was attached another email of 13 March 2020 to AQA Property from the landlord's insurer, confirming that his claim had been settled in full. AQA Property stated that, as the insurance claim had just been processed, more time was required to complete the works. They also indicated that due to the current coronavirus outbreak, their contractors were presently unable to carry out the required works.
4. The tribunal considers that, given the extensive nature of the repairs required, and in light of the current restrictions which are in place due to the coronavirus outbreak, and which are likely to continue for some months, it would be reasonable to vary the RSEO to allow the landlord further time to comply with the RSEO. The tribunal therefore varied the RSEO to extend the period for the completion of the works for a further six months until 9 October 2020.
5. On 15 September 2020, an email was received from AQA Property on behalf of the landlord, together with numerous photographs of the property. The email stated that some of the repairs had been completed and requested further time to complete the remaining works. These remaining works were listed in the email as: 1) all bathroom work; 2) electrical work in relation to EICR report; and 3) dampness report. The email stated that further time was required as due to renewed covid-19 restrictions, the firm's contractors were not going into properties to carry out work.
6. The tribunal is concerned that it appears from the email of 15 September 2020 that the works which have been carried out to date appear to be primarily of a decorative/cosmetic nature. Where work has been carried out, the tribunal is as yet unable to assess whether it has been completed to the required standard. The works carried out to date do not appear to have addressed the primary issues identified by the tribunal, namely those arising from the dampness within the house. It does not appear that items 2, 3, 4, 6 or 7 of the RSEO have yet been addressed. While the tribunal accepts that it has been difficult to arrange repairs due to the current pandemic, the landlord has now had almost a year to address these issues and does not appear to have done so.

7. As the tribunal noted in its original decision of 9 October 2019, the house would need to be empty and to be stripped out in order to investigate and identify the underlying causes of the dampness within the house. It would therefore be necessary for the tenant to move out of the house in order for the work to be carried out. The tribunal is therefore concerned that it appears from the photographs that the house is currently inhabited. The landlord is reminded that it is a criminal offence to enter into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Housing (Scotland) Act 2006.
8. Having considered the landlord's request for more time, the tribunal agrees in the circumstances to extend the period for the completion of the works for a further twelve weeks until **31 December 2020**. If the remaining works have not been completed by that date, the tribunal is likely to issue a failure to comply decision.

### Rights of Appeal

9. 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.
10. 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.

Signed..... **S O'Neill** .....Date..... 29/4/20.....

Sarah O'Neill, Chairperson