

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Determination: Housing (Scotland) Act 2006: Sections 26 and 27**

**Chamber Ref: FTS/HPC/RP/23/3783**

**3 Hill Place, Ardrossan, KA22 8HX, registered in the land Register of Scotland under Title Number AYR6528 (“the Property”)**

**The Parties:-**

**Mrs Nichola Milligan, 3 Hill Place, Ardrossan, KA22 8HX (“the Tenant” and “the Applicant”)**

**Mr Anthony Morrow, 11 Brisbane Street, Largs, North Ayrshire, KA30 8QW (“the Landlord” and “the Respondent”)**

**Tribunal Members:**

**Martin McAllister, Solicitor (Legal Member) and Sara Hesp, Chartered Surveyor (Ordinary Member) (“the tribunal”)**

**Decision**

**The tribunal determined:**

**(One) that the Landlord had failed to comply with a repairing standard enforcement order (RSEO) dated 14 February 2024 and that a notice of failure be served on the local authority (Section 26 of the Housing (Scotland) Act 2006;**

**(Two) that a rent relief order be made reducing the rent payable under the tenancy by 20% (Section 27 of the Housing (Scotland) Act 2006).**

**Background**

1. By application dated 26 October 2023, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act. The application is in terms of Section 22 (1) of the 2006 Act.

2. The Applicant and Respondent are parties to a short assured tenancy agreement in respect of the Property.
3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act. It states that the house does not meet the tolerable standard and that the Tenant believes that the Property has rising damp.

### **Inspection and Hearing 7 February 2024**

4. The tribunal inspected the Property on 7 February 2024 and a Hearing was held on the same day. A repairing standard enforcement order ("RSEO") was made in the following terms:
  - 4.1 **Investigate and remedy the damp evident to the inside front elevation of the Property**
  - 4.2 **Make any repairs to the décor necessitated by the work to remedy the damp.**

The Respondent was required to comply with the RSEO by 15 May 2024.

### **Inspection on 5 July 2024**

5. The Legal Member and the Ordinary Member inspected the Property on 5 July 2024. A copy of a schedule of photographs prepared by the Ordinary Member is attached to this Decision.
6. The Applicant was present at the inspection and stated that no work had been done to investigate the damp.
7. Readings taken with a moisture meter show moisture levels significantly above normal in the living room external wall and hallway internal walls on both the living room and spare room sides.

### **Hearing on 5 July 2024**

8. A Hearing was conducted by teleconference. Mr Alister Meek represented the Applicant who was not in attendance.
9. The Ordinary Member set out the findings from the inspection: that there is evidence of damp in the living room and hallway.

10. Mr Meek said that the Respondent's letting agent had intimated that no works in respect of the RSEO would be carried out by the Respondent who intended to sell the Property.
11. Mr Meek said that the Applicant had been served with a Notice to Quit but that it was his view that the terms of it are invalid.

#### Determination

12. The tribunal had regard to Section 26 (2) of the 2006 Act:

*Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must-*  
*(a) serve notice of the failure on the local authority, and*  
*(b) decide whether to make a rent relief order.*

13. The tribunal noted that, at no time, had the Respondent participated in the Tribunal process despite appropriate notifications having been served on him.
14. The tribunal determined that, from the findings from the inspection, the Respondent has not complied with the RSEO and it determined to serve notice of the failure to comply on the local authority.
15. The necessity to ensure that a property complies with the repairing standard is important and the existence of dampness in the Property is a departure from that obligation. The tribunal took this into account when exercising its discretion as to whether or not to make a rent relief order and to what percentage should be applied to the reduction of rent.
16. The tribunal determined that it would be appropriate to make a rent relief order. The amount by which the rent due under the tenancy is reduced is a matter of discretion and the tribunal determined that a rent relief order of 20% be made to reflect the effect on the Applicant of the landlord's failure to comply with the RSEO. This reduces the rent payable under the tenancy by 20% of the rent which would, but for the order, be payable.

**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.**

# M McAllister

M J. McAllister,  
Solicitor, legal member of  
Tribunal.  
8 July 2024