



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 25(1)(a) of the Housing
(Scotland) Act 2006 (“the Act”)**

Chamber Ref: FTS/HPC/RP/24/3702

**Re: Property at Flat 18, Albert Den, Albert Lane, Aberdeen, AB25 1SY (“the
Property”)**

Parties:

**Aberdeen Leasing Investments Ltd, 162 Anderson Drive, Aberdeen, AB15 6FR
 (“the Landlord”)**

**CW Property Leasing Ltd, 100 Forest Avenue, Aberdeen, AB15 4TL (“the
Landlord’s representative”)**

**Mr Michael McLeod, Ms Ailsa Fyfe, Flat 18, Albert Den, Albert Lane, Aberdeen,
AB25 1SY (“the Tenants”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and David Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined to vary the Repairing Standard Enforcement Order (“RSEO”) made on 23 January 2025 under section 25(1)(a) of the Housing (Scotland) Act 2006 (“the 2006 Act”) to extend the period for completion of the works by six weeks.

Background

- 1 By decision dated 23 January 2025, the Tribunal determined that the Landlord had failed to comply with the duties imposed by section 14(b) of the 2006 Act and made a RSEO in respect of the property requiring the Landlord to:-
 - (i) Instruct a damp and condensation specialist to inspect the ensuite shower room, submit the specialist’s report to the Tribunal for further consideration, and thereafter carry out any necessary works as directed by the Tribunal; and

(ii) Repair the fridge door so that it is in proper working order.

The RSEO required the Landlord to carry out the works within a period of one month.

- 2 On 6 February 2025 the Landlord submitted a damp survey report from KESR Developments and confirmed that a provisional date of 17 February 2025 had been scheduled for the fridge freezer to be replaced.
- 3 The Tribunal proceeded to schedule a re-inspection of the property and gave notification to the parties. On 7 March 2025 the Tribunal received written representations from the Landlord. On 11 March 2025 the Tribunal received written representations from the Tenants.

The re-inspection

- 4 The re-inspection took place on 18 March 2025 at 10am. The Tenants provided access to the property. Miss Fyfe's mother, Mrs Fiona Fyfe, was also present. Mr George Yule and Mrs Alison Yule attended on behalf of the Landlord. They were represented by Ms Caroline Walker and Ms Katie Hutcheon of Caroline Walker Property Leasing.
- 5 The Tribunal found that the fridge freezer had been replaced, albeit the replacement appliance was damaged in places. The Tribunal also noted that a report from KERS Developments had been provided by the Landlord's agent. The Tribunal highlighted however that the report was not in satisfactory terms, in that it did not identify the source of the condensation and damp within the property, nor provide any recommendations regarding a solution. The Tribunal advised both parties that they may wish to consider obtaining further reports.
- 6 The re-inspection report was issued to the parties for comment. The Tribunal subsequently received a number of written representations from both the Landlord and the Tenants. Both requested a hearing on the application. The Landlord's representative, Ms Hutcheon, also outlined difficulties in obtaining access to the property to carry out a further damp and condensation report.
- 7 On 15 April 2024 the Tribunal notified the parties that a hearing would take place by teleconference on 8 May 2025. The Tribunal issued a Direction requiring any further documents that parties wished the Tribunal to consider be submitted no later than three days prior to the hearing. The Tribunal also reminded the Tenants of their ongoing obligations to provide access to the Landlord to enable the works to be carried out, failing which the Landlord would require to submit a right of entry application to the Tribunal.
- 8 The Tribunal subsequently received further written representations from Ms Hutcheon explaining that the Landlord had been unable to gain access to the property and would be submitting a right of entry application to the Tribunal. On 5 May 2025 the Tribunal received further written representations from the Tenants in response to the Direction.

The hearing

- 9 The hearing took place on 8 May 2025 by teleconference. Mr and Mrs Yule joined the call on behalf of the Landlord. The Landlord was represented by Ms Walker and Ms Hutcheon. The Tenants were both in attendance.
- 10 The Tribunal explained the purpose of the hearing and asked parties for their submissions on the Landlord's compliance with the RSEO. For the avoidance of doubt the following is a summary of the key elements of the evidence and does not constitute a verbatim account of the submissions from the parties.
- 11 As a preliminary matter, the Tenants confirmed that they had been temporarily residing elsewhere due to the condition of the property. They had not however taken any formal steps to terminate the tenancy. Ms Hutcheon confirmed that a notice to leave had been given to the Tenants on the grounds of rent arrears.
- 12 With regard to the damp and condensation report, Ms Hutcheon acknowledged that the Landlord had provided a report that was, in the view of the Tribunal, inconclusive. The Landlord had subsequently made various attempts to carry out a further survey report but the Tenants had refused access. The contractor had been scheduled to attend on 24th March, 3rd or 4th April, and 16th April. The Tenants had in fact suggested the 16th April as a suitable date. However, they had failed to allow access. The Landlord had since submitted a right of entry application to the Tribunal.
- 13 Ms Fyfe spoke on behalf of the Tenants. She explained that the Landlord's representative had not given sufficient notice that they required access for the first appointment, and the Tenants had been unavailable on the 3rd and 4th April. Ms Fyfe confirmed that the Tenants had suggested the 16th April as a suitable date. However, the Tenants had concerns regarding what they considered to be fraudulent claims in correspondence from Ms Hutcheon and ultimately decided not to allow access on that date. The Tenants felt that the communications from the Landlord's representative were intimidating. They were also unclear as to whether the Landlord could take action after the RSEO period had expired. They did not object to a second survey report and understood it was required. Ms Fyfe explained that she had noted the mould appeared to be getting worse during a recent visit to the property. The Tenants both wanted to be present when the survey was carried out.
- 14 With regard to the fridge freezer, Ms Hutcheon confirmed that this had been replaced and the Tenants had not mentioned any further issues. Ms Fyfe agreed that the fridge freezer had been replaced, but the replacement appliance had dents and scuffs. The Tenants had not been using it due to concerns regarding its condition.
- 15 The Tribunal heard closing submissions from the parties before concluding the hearing. The Tribunal determined to issue its decision in writing.

Reasons for decision

16 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, the submissions at the hearing and the findings of the Tribunal's re-inspection. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.

17 The Tribunal therefore had regard to Section 25 of the Act which states:-

“(1) Where the First-tier Tribunal has made a repairing standard enforcement order, it may, at any time—

(a) vary the order in such manner as it considers reasonable, or

(b) where it considers that the work required by the order is no longer necessary, revoke it.

(2) Where subsection (3) applies, the First-tier Tribunal must vary the repairing standard enforcement order in question—

(a) so as to extend, or further extend, the period within which the work required by the order must be completed, and

(b) in such other manner as it thinks fit.

(3) This subsection applies where—

(a) the First-tier Tribunal considers, on the submission of the landlord or otherwise, that the work required by a repairing standard enforcement order has not been, or will not be, completed during the period within which the order requires the work to be completed, and

(b) the First-tier Tribunal —

(i) considers that satisfactory progress has been made in carrying out the work required, or

(ii) has received a written undertaking from the landlord stating that the work required will be completed by a later date which the First-tier Tribunal consider satisfactory.

(4) References in this Act (including this section) to a repairing standard enforcement order or to work required by such an order are, where the order has been varied under this section, to be treated as references to the order as so varied or, as the case may be, to work required by the order as so varied.”

18 The Tribunal was satisfied based on the evidence before it that the Landlord had made satisfactory progress on carrying out the works required by the RSEO. Whilst the fridge freezer was a used appliance, with some damage apparent, the Tribunal accepted that it was in proper working order based on its assessment of the appliance at the re-inspection. The damage did not therefore render it non-compliant with the Repairing Standard. On that basis, the Tribunal found the Landlord to have complied with part (ii) of the RSEO.

19 With regard to part (i) of the RSEO, the Tribunal was satisfied that the Landlord had made reasonable efforts to investigate the source of the damp

and condensation by instructing the first survey report. The Tribunal therefore concluded it would be reasonable to vary the RSEO to allow the Landlord a further opportunity to produce a report in satisfactory terms. For the avoidance of doubt the report should highlight the probable cause of the damp and condensation, as well as any recommendations for actions to address the issues.

- 20 The Tribunal would again reiterate the importance of the Tenants allowing access to the Landlord for the survey report to be carried out. The Tribunal would expect full cooperation from the Tenants in this regard.
- 21 The Tribunal therefore varied the RSEO to extend the period for completion of the works by a period of six weeks.
- 22 The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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 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 determined.

13 May 2025

Ruth O'Hare- Legal Member/Chair Date