

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

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

**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25 of the Housing (Scotland) Act 2006**

**Re: 43 Buchan Road, Troon, KA10 7BT (“the House”)**

**Title number: AYR 15272**

**Chamber Ref: FTS/HPC/RP/23/4027**

**Miss Vikki Malcolm and Mr Robert Ward, residing at the House (“the Tenant”)**

**Ms Kathryn Lydon, 18 Benton Street, Hadleigh, IP7 5AT (“the Landlord”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Donald 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 Repairing Standard Enforcement Order (“RSEO”) relative to the House should be varied in terms of Section 25 of the Housing (Scotland) Act 2006 (“the Act”), determined that the RSEO should be varied.**

**Background**

1. By application received on 14 November 2023, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House. The repairs issues identified in the application and

which had been notified by the Tenant to the Landlord by email in advance of submitting the application to the Tribunal, were as follows:-

- The flat is not wind and watertight due to the front door seal being broken so it does not fully close which creates a whistling noise and a draft
- All of the windows with the exception of the living room have broken catches (one window is completely broken) so if opened they will not close properly again which mean the wind and rain get in
- A hole in the roof at the back bedroom/bathroom which is creating black mould on the ceiling and throughout the bathroom
- There is inadequate ventilation in the property as the extractor fan is clogged so is ineffective and also because the windows cannot be opened
- The guttering at the front of the property is also broken
- The shower is leaking
- Gas Safety Check will need done after 14 November 2023.

The application paperwork advised that these repairs were outstanding, despite having been notified to the Landlord's letting agent and, following their withdrawal from acting for the Landlord, to the Landlord herself. Supporting documentation was submitted with the application, including a copy of the tenancy agreement (Private Residential Tenancy commencing 29 July 2022), some photographs of the property and some copy email correspondence with the Landlord's former letting agent, The Property Box, and with the Landlord herself.

The Tribunal obtained a copy of the title deed and Landlord Registration details in respect of the House and it was noted that both are in the name of the Landlord and appeared to be in order.

2. On 14 December 2023, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 29 January 2024, requesting that any written representations should be lodged with the Tribunal by 19 February 2024. Notification to the Landlord was by the Royal Mail Recorded Delivery/'signed for' service. A 'track and trace' delivery receipt (reference KD130567910GB) was obtained by the Tribunal Administration from Royal Mail indicating that delivery was made on 1 February 2024 and signed for.
3. No written representations were lodged by or on behalf of the Landlord. On 6 February 2024, the Tenant lodged some further documentation, being copy email correspondence between herself and the Landlord's former letting agent November 2023, spanning the period 26 September 2022 to 28 June 2023. Some of the later emails had also been copied to

the Landlord direct and to the local authority, South Ayrshire Council (Environmental Health and Landlord Registration).

### **Inspection and Hearing**

4. The Tribunal Members inspected the House on 15 March 2024 at 10am. The Tenant, Miss Vikki Malcolm, was in attendance. Following the Inspection of the House, the Tribunal held an in-person Hearing at 12.15pm at Russell House, King Street, Ayr, KA8 0BQ. The Tenant, Miss Vikki Malcolm, was in attendance. The commencement of the Hearing was delayed by 5 minutes to give the Landlord an opportunity to attend late but she did not do so.
5. Following the Inspection and Hearing, the Tribunal determined that the Landlord had failed to comply with duties imposed by Section 14(1)(a)(c) and (d) of the 2006 Act to ensure that the House meets the Repairing Standard. The Tribunal thereafter proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(1) of the 2006 Act. A detailed Statement of Reasons Decision dated 26 March 2024, together with the Schedule of Photographs taken during the Inspection by the Ordinary (Surveyor) Member and the RSEO dated 2 April 2024 were issued to parties.
6. The RSEO required the Landlord, within a period of 12 weeks, to:-

*"1) Repair or as necessary replace all the single glazed windows within the House to ensure that they provide adequate ventilation, can be opened and closed properly, are in a reasonable state of repair, in proper working order and that the House is wind and watertight and in all other respects reasonably fit for human habitation; and to make good the surrounding decoration.*

*2) Instruct a suitably qualified specialist to undertake a detailed survey of the House to identify the cause(s) and full extent of the condensation, damp, damp staining and mould throughout and any necessary remedial action. Any reports, quotations or receipts in respect of the repairs should, when available, be submitted to the Tribunal for consideration. Thereafter all necessary repairs to remedy these defects should be completed, and any resultant decoration made good to ensure that the House is in a reasonable state of repair, wind and watertight and in all other respects reasonably fit for human habitation.*

*3) Repair or as necessary replace the extractor fan in the bathroom to clear the debris gathered with the fan and to ensure that it is fully functional, in a reasonable state of repair and in proper working order.*

*4) Instruct a suitably qualified contractor to renew or replace the defective or missing roof tiles and the broken and missing sections of fascia and soffit boards above the House to ensure that the roof is in*

*a reasonable state of repair, fully wind and watertight, free of nesting birds and that the House is reasonably fit for human habitation.*

- 5) *Repair or as necessary renew the defective eaves guttering above the living room window to ensure that it is in a reasonable state of repair and in proper working order.*
- 6) *Repair or as necessary renew the leaking electric shower fitting in the bathroom to ensure that it is in a reasonable state of repair and in proper working order.*
- 7) *To submit to the Tribunal an up to date and satisfactory Gas Safety Record from a Gas Safe registered engineer in relation to the House.*
- 8) *To submit to the Tribunal an up to date, satisfactory and complete Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings, including the smoke and heat detectors, and a Portable Appliance Test (PAT) in respect of any portable electrical appliances supplied by the Landlord from a suitably qualified and registered SELECT, NICEIC or NAPIT contractor to ensure that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order.”*

#### **Further procedure**

7. Following the issuing of the RSEO and related documentation referred to above, there was a considerable volume of correspondence between the parties and the Tribunal and also between the parties and the local authority, South Ayrshire Council, which was copied to the Tribunal.
8. Following the expiry of the 12 weeks' compliance period specified in the RSEO, the parties were asked by the Tribunal if they considered the RSEO had been complied with and also if it should be varied or revoked.
9. The Tenant responded on 13 August 2024 and the Landlord responded on 9 September 2024. In view of these responses, the Tribunal decided to proceed with the Re-inspection of the property which had been scheduled to take place on 1 October 2024.

#### **Re-inspection – 1 October 2024**

10. The Re-inspection took place on 1 October 2024 at 10am. The Tenant was in attendance. The Tribunal found that some of the works required by the RSEO had been completed, but others remained outstanding, namely items numbered 1,2,3,7 and 8 detailed in paragraph 6 above. These related to the windows; specialist damp survey report re condensation and mould; bathroom extractor fan; Gas Safety Certificate; and EICR (Electrical Installation Condition Report).

11. The re-inspection Report was issued to parties on 3 October 2024, requesting any comments within 14 days. Nothing further was received from the Tenant and neither party requested a further Hearing. The Landlord emailed the Tribunal with her written representations on 28 October 2024. The Tribunal responded on 6 November 2024. On the same date, the Landlord further responded by email and attached a copy of a Gas Safety Certificate (unsatisfactory) relating to the property dated 22 February 2024.
12. The Tribunal thereafter determined that the Landlord had failed to comply with the RSEO and that a notice of this failure should be served on the local authority in whose area the house is situated. The Tribunal also considered it appropriate to make a Rent Relief Order (RRO). The Tribunal determined that the appropriate reduction in terms of a Rent Relief Order was to reduce the rent payable under the tenancy by 30% until the outstanding repairs had been carried out. The Non-Compliance Decision under Section 26 of the 2006 Act and the RRO under Section 27, both dated 22 November 2024 were thereafter issued to parties. The Notice to the local authority was issued on 30 December 2024.

### **Further procedure**

13. Further written representations were lodged by both parties between February and June 2025, advising of updates regarding the repairs issues. The Landlord requested a reduction in the RRO in view of the fact that two windows had now been replaced and a further two windows had been ordered. The Tribunal advised that the matter would be considered following a further Re-inspection of the House by the Tribunal in due course.
14. A further Re-inspection and Hearing were scheduled to take place on 18 September 2025, details being notified to the parties by email on 5 August 2025. The Tribunal had decided that the Hearing would take place by telephone-conference call to easier facilitate attendance by the Landlord who is understood to reside in England. No further representations were received from either party, following their notification of the Re-inspection and Hearing details.

### **Re-inspection and Hearing – 18 September 2025**

15. The Re-inspection took place on 18 September 2025 at 10am. The Tenant was in attendance. The Tribunal found that, although four new windows had now been installed, were fully functional and appeared to have addressed the condensation issues in the relevant rooms (the kitchen and bedrooms 1 and 2), the other windows had not yet been replaced (bedroom 3 and the bathroom) and the other issues outstanding as at 1 October 2024, in terms of the RSEO, were still outstanding. These related to the windows; specialist damp survey report re condensation and mould; bathroom extractor fan; Gas Safety Certificate; and EICR (Electrical Installation Condition Report).

16. The Hearing thereafter took place by telephone conference call at 2pm on 18 September 2025. The Tenant was in attendance. Although the Tribunal delayed commencement of the hearing for over 5 minutes, to allow for late attendance by the Landlord, she did not attend. The Hearing proceeded in the absence of the Landlord.

17. The outcome of the Re-inspection and Hearing was that the Tribunal was disappointed at the lack of recent engagement from the Landlord with the Tribunal and her failure to attend the Hearing. The Tribunal was concerned to note the lack of further progress as to compliance with the RSEO and that there had been no indication or further proposals/timescale from the Landlord as to the outstanding matters being attended to. It was of particular concern to the Tribunal that the outstanding matters may pose serious health and safety concerns to the Tenant and her family, particularly in respect of gas and electrical safety. There had been no explanation from the Landlord as to her failure to produce an EICR and a current Gas Safety Certificate in satisfactory terms. Accordingly, the Tribunal decided to give the Landlord a final opportunity to produce the required certification (or written representations explaining her failure to do so), in terms of a formal Direction to be issued by the Tribunal, failing which consideration would be given to significantly increasing the level of the RRO. A Hearing Note was also issued to parties outlining the above. The Landlord was also reminded that failure to comply with an RSEO was a criminal offence, as was renting out a property without a valid Landlord Registration. The Tribunal Administration had verified that the House was no longer included in the Register of Landlords. The Landlord's Non-Compliance with the RSEO was automatically notified to the local authority on 30 December 2024, as required by the legislation. It was now the Tribunal's intention to notify/enquire with the local authority regarding the Landlord Registration situation and to notify the Police regarding the Landlord's Non-Compliance with the RSEO.

18. The Direction issued by the Tribunal stated as follows:-

*"The Landlord is required:-*

1. *To submit to the Tribunal an up to date and satisfactory Gas Safety Record from a Gas Safe registered engineer in relation to the House.*
2. *To submit to the Tribunal an up to date, satisfactory and complete Electrical Installation Condition Report (EICR) in respect of the installations in the House for the supply of electricity and the electrical fixtures and fittings, including the smoke and heat detectors, and a Portable Appliance Test (PAT) in respect of any portable electrical appliances supplied by the Landlord from a suitably qualified and registered SELECT, NICEIC or NAPIT contractor to ensure that the installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order.*

3. *To submit to the Tribunal written representations clarifying the position with regard to her Landlord Registration in respect of the House.*
4. *To submit any other written representations that she wishes to, explaining her failure to provide the gas and electrical safety certification outlined in paragraphs 1 and 2 above, as required in terms of the Repairing Standard Enforcement Order dated 2 April 2024.*

*The documentation referred to above should be lodged with the Tribunal Administration no later than 17 October 2025. A final Decision of the Tribunal following its inspection of the property and subsequent hearing on 18 September 2025, including a review of the Rent Restriction Order, will be issued on or immediately after 18 October 2025.”*

19. There was no response from the Landlord to the Tribunal's Direction within the time limit stated. The Tribunal sought an update from the Tenant and her further comments regarding review of the RRO. The Tenant responded with emails dated 31 October 2025 and 6 and 13 November 2025. It was noted that the Tenant had been contacted by the Police to provide a statement regarding the potential prosecution of the Landlord and a Gas Safety Check had now been arranged to take place on 27 November 2025. The Landlord had also been in direct contact with the Tenant to complain about her providing a statement to the Police and to state that she would be selling the Property as soon as the Tribunal proceedings were resolved.
20. The Tribunal emailed the Landlord to explain the position again with regard to referral of the matter to the Police. The Landlord responded further with regard to this issue on 20 November 2025. She thereafter submitted further emails dated 21 November 2025 regarding her Landlord Registration position and attaching a satisfactory EICR dated 18 June 2021. By email dated 1 December 2025, she provided a further update regarding the installation of the remaining two windows and further commented regarding the Police issue. On 5 December 2025, the Landlord provided a satisfactory Gas Safety Record dated 27 November 2025 and provided further updates on 8 and 15 December 2025 regarding the window installation, due to take place on 7 January 2026.
21. On 7 January 2026, the Tenant emailed the Tribunal to confirm that the remaining two replacement windows were installed that day. On 20 January 2026, the Landlord confirmed likewise.
22. On 21 January 2026, the Tribunal requested any further proposals from the Landlord to resolve the outstanding matters (black mould and other issues affecting the bathroom) within 14 days. The Landlord responded on the same date explaining that she had no further proposals regarding the mould. She suggested that the roof repairs and the new window would hopefully resolve the issue in time. She advised that the extractor fan would be repaired or replaced in February 2026.

23. On 9 February 2026, parties were informed that the Tribunal intended to re-inspect the Property in due course to ascertain if all issues had been resolved and that the RRO would remain in place pending the re-inspection. The Tribunal also notified the Police that there had now been further compliance with the RSEO, although it remained in place.
24. On 21 March 2026, the Landlord advised that the bathroom extractor fan had been replaced.
25. On 28 March 2026, parties were advised that the Re-inspection of the Property would take place on 11 May 2026 at 10am.

### **Re-inspection – 11 May 2026**

26. The Re-inspection took place on 11 May 2026 at 10am. Only the Tenant was in attendance. The Tribunal found that the window in bedroom 3 has been replaced. There is no evidence of recent condensation around or affecting the window fitting. Residual mould staining, completely dry at the time of inspection, remains on the external wall to the left of the window and redecoration of this area has not been addressed. The electric ceiling mounted ventilator in the bathroom has been renewed and when tested was established to be functioning at the date of inspection. The surrounding ceiling plaster still displays evidence of mould staining. The bathroom window has been replaced. Significant evidence of mould, almost certainly as a result of previously high levels of damp and condensation, remains affecting wall plaster, ceramic tiles and ceiling. These areas of mould are highly visible and redecoration of the bathroom remains outstanding. A copy of the Re-inspection Report (including photographs) prepared by the Ordinary (Surveyor) member of the Tribunal dated 11 May 2026 is attached to this Decision and referred to for its terms.
27. The Re-inspection Report was circulated to the parties on 13 May 2026, inviting any comments by 27 May 2026 or any requests for a hearing. No responses were received from either party.

### **Reasons for Decision**

28. The Tribunal considered the background to the case, the terms of the original RSEO, the previous procedure which had taken place, the representations made by both parties, the further documentation/certification produced by the Landlord and the Tribunal's findings at the Re-inspection on 11 May 2026, as outlined above and in the Re-inspection Report. The Tribunal determined that it would further vary the terms of the RSEO which had been varied previously to allow the Landlord further time to comply.
29. At the previous Re-inspection on 18 September 2025, it had been noted that item 1 (windows) of the RSEO had only been partially addressed

and that items, 2 (damp/mould), 3 (extractor fan), 7 (Gas Safety Record) and 8 (EICR) remained outstanding.

30. Prior to the Re-inspection on 11 May 2026, a Gas Safety Certificate dated 27 November 2025 and an EICR dated 18 June 2021 were both produced by the Landlord to the Tribunal and both were in satisfactory terms, although it was noted that the EICR which is valid for a period of 5 years is due for renewal with effect from **18 June 2026**. Accordingly, items 7 and 8 of the RSEO had now been complied with.
31. At the Re-inspection on 11 May 2026, it was noted that the two remaining windows and the extractor fan in the bathroom had now been replaced and all were satisfactory and in full working order. Accordingly, items 1 and 3 of the RSEO had now been fully complied with.
32. The Tribunal considered item 2 of the RSEO which states that the Landlord was to:-

***“Instruct a suitably qualified specialist to undertake a detailed survey of the House to identify the cause(s) and full extent of the condensation, damp, damp staining and mould throughout and any necessary remedial action. Any reports, quotations or receipts in respect of the repairs should, when available, be submitted to the Tribunal for consideration. Thereafter all necessary repairs to remedy these defects should be completed, and any resultant decoration made good to ensure that the House is in a reasonable state of repair, wind and watertight and in all other respects reasonably fit for human habitation.”***

The Tribunal have not received a report in accordance with item 2 of the RSEO and it is not clear if one was ever commissioned.

33. During the Re-inspection it was noted that the majority of the items requiring further investigation and repair in terms of the RSEO have now been addressed. The only outstanding item relative to the RSEO is the removal of the mould at bedroom 3 and the bathroom and the subsequent redecoration of these areas.
34. The Tribunal considered the terms of Section 25 of the 2006 Act in respect of Variation and Revocation of RSEOs. The Tribunal did not consider that the outstanding work required by item 2 and identified above was no longer necessary, so were not prepared to revoke the RSEO. However, the Tribunal did consider that it was reasonable for it to vary the RSEO, in the circumstances. The Tribunal determined that the Varied RSEO should state as follows:-

***“1. The Tribunal requires the Landlord to undertake all necessary repairs, treatment or remedial work to the bathroom and third bedroom to eradicate the remaining black mould and thereafter make good any***

*decoration therein to ensure that the House is in a reasonable state of repair and in all other respects reasonably fit for human habitation.*

*2. The period allowed for the completion of the work required by this varied Order is extended until **31 August 2026**".*

35. As the Tribunal had decided not to revoke the RSEO, the Rent Relief Order (RRO) dated 22 November 2024 does not require to be revoked in terms of Section 27 of the 2006 Act. The Tribunal considered it appropriate in the circumstances for the RRO to remain in place, given that there is still a degree of non-compliance by the Landlord and to incentivise her to attend to the remaining issues. However, in the circumstances, the Tribunal determined that the RRO should be reduced from 30% to 5 %, given that most issues required in terms of the original RSEO had now been attended to.

36. The decision of the Tribunal was unanimous.

### **Right of Appeal**

**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.**

In terms of Section 63 of the Act, 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.

Date: 25 June 2026