

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



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

**Determination: Statement relative to Certificate of Completion of work issued under Section 60 of the Housing (Scotland) Act 2006 (the 2006 Act).**

**Chamber Ref: FTS/HPC/RP/20/2394**

**12/2 Westhall Gardens, Edinburgh, EH10 4JQ which property consists of the first floor flat above ground or street more particularly described in Disposition by Peter McKiernan in favour of Janette Elaine Smith recorded in the Division of the general Register of Sasines applicable to the County of Midlothian on 7<sup>th</sup> June 1990 and being part of the building 12 Westhill Gardens, erected on ground at Viewforth, being the subjects described in the Disposition to Frank Moffat recorded in the said Division of the General Register of Sasines on 16<sup>th</sup> May 1884 (“the Property”)**

**The Parties:-**

**Ms Katie Biggs, sometime residing at the property, (“the former Tenant”) and (“the Applicant”)**

**Jeanette Smith, Eshiels Cardie Hill House, Eshiels, Peebles, EH45 8NA and care of D.J. Alexander, I Wemyss Place, Edinburgh, EH3 6DH (“the Landlord”) and (“the Respondent”)**

**D.J. Alexander, I Wemyss Place, Edinburgh, EH3 6DH (“the Respondent’s Agents”)**

**Tribunal Members:**

**Mr Martin McAllister, solicitor, (Legal Member) and Ms Sara Hesp, chartered surveyor, (Ordinary Member) (“the tribunal”).**

**Background:**

1. On 11<sup>th</sup> October 2021, the First-tier tribunal for Scotland (Housing and Property Chamber) made a repairing standard enforcement order (RSEO) in respect of the property.

2. The RSEO was in the following terms:

1. **The Landlord is to make the living room windows wind and watertight.**
2. **The Landlord is to secure and repair the window in the master bedroom.**

**The works were to be completed within four weeks of service of the repairing standard enforcement order on the Landlord or her letting agent.**

3. On 23<sup>rd</sup> June 2022 the members of the tribunal arrived at the Property at 11.30 am which was the time scheduled for inspection and which had been intimated to the letting agents and the Landlord on 7<sup>th</sup> June 2022. The members of the tribunal were unable to gain access at the time which had been intimated to parties.
4. At 11.55 am, a person arrived at the Property and introduced himself as Mr Amegad Abdelgawad. He said that he had been the tenant of the Property since 6<sup>th</sup> June 2022 and said that, as far as he was aware, another tenant had been in the Property for five or six months prior to him taking up his tenancy.
5. Mr Abdelgawad said that the letting agents are D.J.Alexander and that he had not been made aware of the reinspection of the Property. Mr Abdelgawad allowed the members to inspect the Property.
6. The ordinary member prepared a schedule of photographs which is attached to this Decision. The members of the Tribunal were satisfied that the repairs which had been required by the RSEO had been completed satisfactorily and determined to issue a Certificate of Completion in terms of Section 60 of the 2006 Act.
7. Notwithstanding the fact that the RSEO had been complied with, the tribunal had concerns about the actings of the Landlord and her letting agents. It was only because of the fact that the members of the tribunal waited at the Property for twenty five minutes after the scheduled time that they were able to engage with the current tenant and it was only because of his cooperation that access was achieved. Had this not been achieved, further procedure would have had to be adopted at a cost to the public purse.
8. During the course of consideration of the application, the Landlord failed to comply with Directions under Rule 16 of The First -tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"). At some point, D.J. Alexander assumed the role of letting agent for the Property. On 26<sup>th</sup> May 2022 a Notice of Requirements was sent to the letting agents in terms of Rule 21 of the Rules. The tribunal was satisfied that this had been delivered by Royal Mail on 27<sup>th</sup> May 2022. D.J. Alexander was asked to provide details of the Landlord's

residential address which at that time was unknown and details of any tenancies granted for the Property since the making of the RSEO. They failed to respond.

9. On 7<sup>th</sup> June 2022, both the Landlord and letting agent were written to with regard to access for the reinspection and they neither contacted the Tribunal to indicate that the arrangement was unsuitable or made appropriate arrangements for access. The intimations had been made by recorded delivery. One had been sent to the Landlord at her home address, one had been sent to the Landlord care of D.J. Alexander and one had been sent to D.J. Alexander. The tribunal had sight of the Royal Mail confirmations of delivery which had been effected on 9<sup>th</sup> June 2022. Mr Abdelgawad had said that he had not been contacted by either the letting agent or the Landlord.
10. On 30<sup>th</sup> June 2021, when the tribunal members had inspected the Property, it had been unoccupied. It is clearly now subject to a private residential tenancy and, according to the current tenant was subject to at least one other tenancy since the making of the RSEO in October 2021.
11. In terms of Section 28(5) of the Housing (Scotland) Act 2006 *“A landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house.”*
12. It appears to the tribunal that the Landlord has committed an offence.
13. The tribunal also had regard to the Letting Agent Code of Practice 2016 and considered that D.J. Alexander may not have complied with it.

**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.**

Martin J. McAllister, Solicitor,

Legal Member  
6<sup>th</sup> July 2022