

Housing and Property Chamber

First-tier Tribunal for Scotland



REPAIRING STANDARD ENFORCEMENT ORDER

Chamber Reference number: FTS/HPC/RP/18/1436

Parties: Ms Emma Kelly now formerly residing at 6E Macewan Place, Kilmarnock, KA3 7ER ("the Tenant") and represented by Miss Claire Strong, Shelter, 116 Osborne Street, Glasgow G1 5QH and

Stewart Hale and Mrs Janet Hale residing some time at 12, Ash Tree Avenue, Manchester ("the Landlords")

Property: 6E, Macewan Place, Kilmarnock, KA3 7ER registered in the Land Register of Scotland under Title Number AYR75216 ("the Property")

Tribunal Members

Karen Moore (Chairperson)

Carol Jones (Ordinary Member)

Notice to Landlords

Stewart Hale and Mrs Janet Hale residing at 12, Ash Tree Avenue, Manchester ("the Landlords")

Whereas in terms of its decision dated 12, December 2018, the First-tier Tribunal for Scotland determined that the Repairing Standard Enforcement Order imposed by it on 18 September 2018 be varied, now varies the Repairing Standard Enforcement Order as follows:

The time limit for compliance with the said Repairing Standard Enforcement Order is amended to **31 January 2019**.

In Witness Whereof these presents are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 12, December 2018 before this witness, Norman William Moore, solicitor, 1A, South Muirhead Road, Cumbernauld G67 1AX.

W Moore

K Moore

(Witness)

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under Section 22(1) of the Housing (Scotland) Act 2006 ("the Act")

Chamber Reference number: FTS/HPC/RP/18/1436

Parties: Ms Emma Kelly now formerly residing at 6E, Macewan Place, Kilmarnock, KA3 7ER ("the Tenant") and represented by Miss Claire Strong, Shelter, 116 Osborne Street, Glasgow G1 5QH and Stewart Hale and Mrs Janet Hale residing at 12, Ash Tree Avenue, Manchester ("the Landlords")

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Tribunal Members

Karen Moore (Chairperson)

Carol Jones (Ordinary Member)

This Decision should be read in conjunction with Decision dated 18 September 2018 and Repairing Standard Enforcement Order both dated 18 September 2018 in respect of the Property

Background

1. By application comprising an application form and supporting copy emails and correspondence between and amongst the parties and their respective agents and representatives received on 20 June 2018 ("the Application"), the Tenant's representative applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of

Sections 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act and an Inspection and Hearing were fixed for and held on 7 September 2018 at 10.00 a.m. and 11.30 a.m., respectively.

2. The outcome of the Inspection and Hearing was that the tribunal determined that the Landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 and imposed a Repairing Standard Enforcement Order ("RSEO") as required by Section 24 (1) of the Act as follows:-

"The Landlords must on or before 30 November 2018: -

1. *Instruct a Gas Safe registered plumbing and heating engineer (i) to carry out a full inspection of the gas installations in the Property including the boiler, the hot water supply and the radiators in the Property (ii) to carry out such works as are necessary to ensure that the gas installations are in proper working order and that the hot water supply is sufficient and suitable for the Property, including if necessary, the replacement of the boiler and the hot water tank (iii) replace the living room radiator to ensure that the heating installation in the Property is safe, functional and in proper working order and (iv) thereafter provide a CP 12 Gas Safety Certificate to the tribunal or if the boiler is replaced, all necessary commissioning documents and certificate;*
2. *Instruct a suitably qualified and registered SELECT or NICEIC electrical contractor (i) to carry out portable appliance testing on the appliances supplied by the Landlords, namely the washing machine and the cooker and (ii) repair or, if necessary, replace these appliances to ensure that they are in proper working order;*
3. *Instruct a suitably qualified contractor to investigate the cause of any ongoing leaks in the kitchen and repair or replace the floor boards in the kitchen and thereafter replace the floor covering in the kitchen to ensure that the floor and flooring are in a reasonable condition, are stable underfoot, are free from trip hazards and are free from dampness and infestation;*
4. *Repair or replace the living room window to ensure that the tilt and turn mechanism is fully operational and that the window is properly sealed;*
5. *Instruct a suitably qualified Pest Control Specialist company to carry out a full inspection of the Property and to carry out such works as are necessary to ensure the eradication of all insects and pests within the Property, and, thereafter, provide a certificate or report to this effect to the tribunal and*
6. *Make good all décor damaged as a result of these works."*

Reinspection and request from Landlords to vary RSEO

3. A Reinspection of the Property was fixed for 14 December and intimated to the Landlords. By email dated 7 December 2018, Mrs Hale of the Landlords intimated to the Tribunal that the Landlords had been unaware of the Application and the RSEO and had since terminated their contract with the agents who had acted on their behalf. The Landlords advised that they had not yet carried out the works required by the RSEO and requested further time to engage another agent to act on their behalf and to carry out the said works.

Decision of Tribunal and reasons for decision

4. The Tribunal, having regard to the Landlords' request and having regard to the fact that it appeared to the Tribunal that the Property was unlet and so no tenant appeared to be prejudiced, agreed that, in the interests of justice, it was right and proper to vary the RSEO to allow the Landlords further time to comply with the RSEO, and so the Tribunal varied the RSEO.

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.

Effect of Section 63

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.

K Moore

Karen Moore, Chairperson,

12 December 2018