

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



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

**DETERMINATION** by 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 (1) of the Housing (Scotland) Act 2006

**Ref: FTS/HPC/RP/0131**

Property: Flat Ground Right situated at and known as 10 Avenue Street, Stewarton, Ayrshire, KA3 5AP being the subject registered in the Land Register of Scotland under Title No: AYR32145 (**"the property"**)

The Parties:-

East Ayrshire Council, Private Sector Housing Unit, Civic Centre North, John Dickie Street, Kilmarnock, KA1 1HW (**"the Third Party Applicant"**)

and

Brian Green, residing at 3 MacPhail Drive, Kilmarnock, KA3 7EL (**"the Landlord"**)

Tribunal Members:-

Mr James Bauld – Legal Member

Mr Alex Hewton – Ordinary Member

### Background

1. By application dated 31<sup>st</sup> March 2017, the Third Party Applicant (herein after referred to as **"the Council"**) made an application to the First-tier Tribunal (Housing and Property Chamber) indicating that they believed that the landlord was failing to comply with the duties imposed upon him by section 14(1)(d) of the Housing (Scotland) Act 2006 (**"the 2006 Act"**). Following upon this application a hearing took place on 29<sup>th</sup> June 2017 and as a result of that hearing the Tribunal issued a Decision dated 24<sup>th</sup> July 2017 indicating that the landlord had failed to comply with the various duties imposed upon him by the Act and the Tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the property.
2. In terms of the RSEO the landlord was ordained to carry out certain works to the property and to produce certain documents within a period of time specified in the RSEO. Following upon the expiry of that period of time no indication had been received from the landlord that these documents had been produced nor had he confirmed that the works had been carried out.
3. Accordingly arrangements were made for the ordinary member of the Tribunal to re-inspect the property and the re-inspection was carried out on 26<sup>th</sup> September 2017. A report was

prepared and photographs were taken. That report was issued to the parties and they were invited to comment upon same.

4. By 28<sup>th</sup> November 2017 no response had been received from either party to the re-inspection report.
5. In terms of the re-inspection report, the ordinary member of the Tribunal noted that the landlord had undertaken certain works required by the RSEO. The ordinary member noted that smoke alarms had been installed in the lounge and hall and a heat alarm had been installed in the kitchen and that these appeared to be interconnected.
6. However the ordinary member noted that the remaining works required in terms of the RSEO had not been done nor had any of the requested reports or documents been produced to the Tribunal.

### **Decision**

7. The Tribunal carefully reviewed matters and in particular the evidence obtained at the re-inspection.
8. The Tribunal took the view that the landlord had only complied with a minor part of the requirements of the RSEO. The landlord had failed to produce the relevant Electrical Installation Condition Report and Energy Performance Certificate required by the RSEO. The landlord had failed to install a carbon monoxide detector. More significantly, the landlord had failed to obtain the report ordered by the Tribunal, namely a report from an appropriately qualified and registered roofing contractor in respect of the roof area of the building to report on whether the roof required repairs or whether it required to be replaced.
9. Accordingly, the Tribunal took the view that the landlord had failed to implement the works required in terms of the RSEO and was accordingly in breach of the Order. In accordance with the relevant provisions of section 25 of the 2006 Act the Tribunal required to determine whether a Rent Relief Order should be made.
10. The Tribunal took the view that the works required in the RSEO had been outstanding since July 2017. It appears that no attempt has been made by the landlord to comply with the vast majority of the requirements of the RSEO. In the view of the Tribunal, the landlord has had ample time to implement and comply with the terms of the RSEO. The Tribunal took the view that the landlord's failure to comply with the RSEO was a significant failure and in all the circumstances the Tribunal determined that a Rent Relief Order should be made.
11. The Tribunal carefully considered the level at which a Rent Relief Order should be made. The Tribunal noted that the maximum percentage deduction which could be made was 90%. The Tribunal took the view that the failure by the landlord to produce the relevant Electrical Installation Condition Report and Energy Performance Certificate indicated that the landlord had simply ignored the RSEO. The Tribunal also noted that the landlord had failed to obtain the report from the registered roofing contractor. Accordingly, the Tribunal took the view that the failure by the landlord to comply with the RSEO was significant and that there should be an appropriate reduction made in the ongoing rent to reflect same. The Tribunal took the view that the appropriate reduction in rent should be 25% in the ongoing monthly rent and accordingly the Tribunal determined to make a Rent Relief Order in those terms.
12. The ordinary member of the Tribunal produced a re-inspection report which was issued to the parties and a copy of that report is attached to this Decision as an appendix.
13. The Decision of the Tribunal is unanimous.

## Right of Appeal

14. 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.
15. 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.

**J Bauld**  
Signed  
James Bauld, Chairperson  
**D Jones**  
.....Witness  
SECRETARY  
7 WEST GEORGE STREET  
GLASGOW, G2 1BA

Date 19 January 2018

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### RE-INSPECTION REPORT

**PROPERTY** – Flat Ground Right, 10 Avenue Street, Stewarton, KA3 5AP



**Ref no** FTS/HPC/RT/17/0131

**Inspected by** Alex Hewton (Ordinary member)

**Inspection** The property was inspected at 10.30am on Tuesday 26<sup>th</sup> September 2017.

**Access** Mr Gordon Thompson (the tenant) was present and provided access to the property.

Mr Brian Green (the landlord) was also present, as was a representative from East Ayrshire Council - Private Sector Housing Unit, Ms Elaine Cavanagh (the third party applicant). By prior arrangement, access was also gained to the upstairs flat owned by Ms Gillian Kirkpatrick.

## **Repairing Standard Enforcement Order**

In particular, the Tribunal required the Landlord to

- (a) obtain and produce an electrical installation condition report within twenty one days and to carry out any works which are necessary in terms of that report to meet the repairing standard;
- (b) to obtain and produce an energy performance certificate within twenty one days;
- (c) to install within the property appropriate smoke alarms, carbon monoxide detectors and heat detectors within twenty eight days to ensure the property meets the terms of the repairing standard;
- (d) to obtain a report within 28 days from an appropriately qualified and registered roofing contractor or registered building professional in respect of the roof area of the whole building, including the roof coverings, the roof structure and all associated areas. The report should ascertain the overall condition and also specify any repairs required at the present time to make the roof area wind and watertight or whether the roof covering should be replaced along with any consequent work to the structure or associated areas. Any works required in terms of said report are to be carried out within three months.

Such a report may be obtained from either a Chartered Building Surveyor, a Registered Architect, or a member of a Registered Roofing Contractors Association eg The National Federation of Roofing Contractors, The Confederation of Roofing Contractors or a similar independent organisation.

**Findings on re-inspection – see attached photograph schedule below:**

The Ordinary member found that the following works had been undertaken

- Smoke alarms had been installed in the Lounge and Hall, and a heat alarm had been installed in the Kitchen. These appeared to be interconnected.

The Ordinary member noted that the following works remained outstanding

- The Landlord and Ms Cavanagh both confirmed that an EICR had been sent to the third party applicant, but at the time of the inspection no report had been sent to the Tribunal.
- The Landlord also confirmed that an energy performance certificate was sent to the third party applicant but again at the time of the inspection no report had been sent to the Tribunal.
- Whilst smoke and heat detectors were installed to the property, there were no signs of carbon monoxide detectors at either the gas fire or the boiler. The gas fire was reported by both the landlord and tenant to be disconnected but we have no confirmation that this is the case.
- The landlord again reiterated that the roof was wind and watertight and that his roofer was prepared to come to a meeting to confirm this. He confirmed that he would obtain a written report to that effect. The third party applicant informed the Housing and Property Chamber that a flash flood had occurred "on Tuesday" and this had resulted in water ingress to the upstairs flat (owned by Ms Kirkpatrick) at "the loft access area that makes up my kitchen". There was no evidence of this at my re inspection, although Ms Kirkpatrick was able to define the area.

All photographs in this report were taken at the re-inspection on September 26<sup>th</sup>, 2017(see below)



Consumer unit



Boiler ( no CO Monitor)



Gas fire (no CO Monitor)



Common close ceiling



Upstairs flat, recent water penetration area

**Comments:** This report will be submitted to the First –tier Tribunal for Scotland (Housing and Property Chamber) for their decision.

Alex Hewton  
Ordinary Member  
First –tier Tribunal for Scotland (Housing and Property Chamber)

26th September 2017

# Housing and Property Chamber First-tier Tribunal for Scotland



## Rent Relief Order

### Ordered by the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 27 of the Housing (Scotland) Act 2006

Reference Number: FTS/HPC/RP/17/0131

Property: flat ground right situated at and known as 10 Avenue Street, Stewarton, Ayrshire, KA3 5AP, being the subjects registered in the Land Register of Scotland under Title Number: AYR32145 ("The Property")

The Parties:-

East Ayrshire Council, Private Sector Housing Unit, Civic Centre North, John Dickie Street, Kilmarnock, KA1 1HW ("the Third Party Applicant")

and

Brian Green, residing at 3 MacPhail Drive, Kilmarnock, KA3 7EL ("the Landlord")

Tribunal Members:-

Mr James Bauld – Legal Member

Mr Alex Hewton – Ordinary Member

#### **NOTICE TO Mr Brian Green ("the Landlord")**

Whereas in terms of its decision dated 19<sup>th</sup> January 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order ("RSEO") in relation to the house made by the Tribunal on 24<sup>th</sup> July 2017.

The Tribunal determined to make a Rent Relief Order ("RRO") in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 25% of the rent which would, but for the Order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the RRO may be appealed under section 64 of the said Act.

**A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the Tribunal is granted, then the effect of the decision and the RRO is suspended until the appeal is abandoned or finally determined by the Upper

Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The RRO will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

Signed **J Bauld** ..... Date *19 Jan 2018*  
James Bauld, Chairperson

**D Jones**  
..... Witness  
Donna Jones, Secretary  
7 West George Street, Glasgow, G2 1BA