

# Housing and Property Chamber First-tier Tribunal for Scotland



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

## Notice of Revocation of Repairing Standard Enforcement Order (“RSEO”):

Housing (Scotland) Act 2006 Section 25

Chamber Ref: PRHP/RP/15/0249

Title no: ANG6366

21D Balunie Avenue, Dundee DD4 8QW (“the Property”)

The Parties:-

Lorraine Scrimgeour, 21D Balunie Avenue, Dundee DD4 8QW (“the Tenant”)  
(represented by her agent Trudy Gill, Dundee North Law Centre, 101 Whitfield  
Drive, Whitfield, Dundee DD4 0DX)

David Sturrock, 21D Balunie Avenue, Dundee DD4 8QW (“the Landlord”)  
(represented by his agents Lindsays, Caledonian Exchange, 19A Canning  
Street, Edinburgh EH3 8HE)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) having determined on 31 August 2017 that the work required by the RSEO dated 22 December 2015 relative to the Property served on or about 7 January 2016 is no longer necessary, the said RSEO is hereby revoked with effect from the date of service of this Notice.

**A landlord or tenant 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 aggrieved party must first seek permission to appeal from the First-tier Tribunal 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.

In witness whereof these presents type-written on this and the preceding page are executed by David Bartos, legal member of the Tribunal, at Prague, Czech Republic, on 31 August 2017 in the presence of the undernoted witness:-

**T Harvey** witness **D Bartos** Legal Member

THOMAS G. HARVEY name in full

6 RIVERSIDE Address

STOKESLEY

MIDDLESBROUGH, TS9 5RD

# Housing and Property Chamber First-tier Tribunal for Scotland



Decision of Housing and Property Chamber of the First-tier Tribunal for  
Scotland  
under Section 25 (1) of the Housing (Scotland) Act 2006

Statement of Reasons for Decision of the Housing and Property Chamber of the  
First-tier Tribunal for Scotland

(Hereinafter referred to as "the Tribunal")

Under Section 25(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/15/0249

Re : 21D Balunie Avenue, Dundee DD4 8QW ("the Property")

Title No: ANG6366

The Parties:-

Lorraine Scrimgeour, 21D Balunie Avenue, Dundee DD4 8QW ("the Tenant")  
(represented by her agent Trudy Gill, Dundee North Law Centre, 101 Whitfield  
Drive, Whitfield, Dundee DD4 0DX)

David Sturrock, 21D Balunie Avenue, Dundee DD4 8QW ("the Landlord")  
(represented by his agents Lindsays, Caledonian Exchange, 19A Canning  
Street, Edinburgh EH3 8HE)

The Tribunal comprised:-

Mr David Bartos                      - Chairperson  
Ms Carol Jones                        - Ordinary (surveyor) member

## **Decision**

The Tribunal revoked the Repairing Standard Enforcement Order dated 22 December 2015 in respect of the Landlord and the Property.

**Background:-**

1. On or about 7 January 2016 the former Private Rented Housing Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property dated 22 December 2015. The works in the RSEO required to be completed by 28 days from the date of service of the RSEO on the Landlord.
2. On 29 February 2016 the Committee's Surveyor member carried out a re-inspection of the Property, other than the production of a Gas Safety Record she found that none of the work set out in the RSEO had been carried out. The committee members carried out a further inspection of the property prior to a second hearing on 9 September 2016, they found that requirements (a)(i), (b), (d), and (e) of the RSEO had been carried out but that parts (a)(ii) and (c) had not been carried out. The work not carried out included the putting of the gas meter and connecting pipework into a reasonable state of repair and proper working order. The surveyor member produced a Re-inspection Report dated 3 March 2016 which is referred to for its terms.
3. On 16 September 2016 the Committee made a decision that the Landlord had not complied with requirements (a)(ii) and (c) of the RSEO in respect of the sealing of the bath to its adjoining walls and the putting of the gas meter and connecting pipework into a reasonable state of repair and proper working order. Consequent on this, on the same date, the Committee made a rent relief order of 50%.
4. With effect from 1 December 2016 the Committee was replaced by the Housing and Property Chamber of the First-tier Tribunal for Scotland. The Committee members continued to act as Tribunal members.
5. The Landlord appealed the decision and rent relief order of 16 September 2016 to the sheriff. On 7 March 2017 the sheriff at Dundee sheriff court, with the agreement of both Landlord and Tenant (through her representatives), quashed the decision of the Committee of 16 September 2016 together with the rent relief order. The order (interlocutor) of the sheriff stated as the basis of the quashing that both Landlord and Tenant were agreed that the decisions of the Committee which the Landlord had appealed were no longer necessary.
6. By letter dated 11 April 2017 the Landlord's agents sent a copy of the sheriff's order to the Tribunal Office. By letter to the Landlord's agents dated 26 April 2017 the Tribunal's clerk notified them that the RSEO remained in place despite the sheriff's order.

7. By letter dated 9 May 2017 the Tribunal's clerk wrote to the Landlord, Tenant, and the representatives of both, that given the basis of the sheriff's order the Tribunal proposed to revoke the RSEO on the basis that the work required in it was no longer necessary. The letters invited the notification of objections to the proposed revocation within 21 days together with reasons.
8. No response to that letter was received by the Tribunal from the Landlord, Tenant or the representatives of either. Despite this the Tribunal still lacked documentation evidencing the carrying out of in particular the work to the gas meter. Accordingly by letter of 12 July 2017 the Tribunal's clerk requested the supply of this documentation from the Landlord. He did not supply the documentation. By e-mail received by the Tribunal Office on or about 1 August 2017 the Landlord supplied photographs showing a gas meter. However it was not clear from these photographs that the gas meter and surrounding pipework had been properly secured. Accordingly a further re-inspection required to take place. This took place on 28 August 2017 following which the ordinary (surveyor) member of the Tribunal produced a re-inspection report dated 29 August 2017 which is referred to for its terms.
9. During the course of the re-inspection the Landlord advised that he now resided in the Property and that the Tenant had moved out.
10. The evidence before the Tribunal consisted of:-
  - The RSEO
  - Two decisions (including rent relief order) both dated 16 September 2016
  - The interlocutor of Sheriff Brown at Dundee sheriff court dated 7 March 2017
  - Letter from Lindsays to the Tribunal Office dated 11 April 2017
  - Copy letter from the Tribunal Office to Lindsays dated 26 April 2017
  - Copy letters from the Tribunal Office to Lindsays, to Dundee North Law Centre, to the Landlord, and to the Tenant all dated 9 May 2017
  - Photographs supplied by the Landlord to the Tribunal Office on or about 1 August 2017
  - Re-inspection report dated 29 August 2017

### **Findings of Fact**

11. Having considered all the evidence, the Tribunal found the following facts to be established:-

- (a) The RSEO dated 22 December 2015 was served on the Landlord on or about 7 January 2016. As at 9 September 2017 the works sought in the RSEO lettered (a)(i), (c), and (f) had not been carried out as stated in the Committee's decisions of 16 September 2016. The other work in the RSEO had been carried out.
- (b) The Committee's decisions (including the rent relief order) dated 16 September 2016 have been quashed by the sheriff.
- (c) The decisions were quashed on the basis that both Landlord and Tenant agreed, through their representatives, that the decisions were no longer necessary.
- (d) There has been no objection by the Tenant or her representatives to the Tribunal's proposed revocation of the RSEO on the basis that the work found not to have been carried out is no longer necessary.
- (e) As at 28 August 2017 all of the work in the RSEO lettered (a) to (e) has been carried out as set out in the re-inspection report which lettered parts are part of these findings of fact. The schedule to this decision contains photographs taken at the Property on 28 August of the work identified under each photograph.

### **Reasons for Decision**

12. The Tenant or her representatives put forward no objection to the proposed revocation. In the light of the facts found above the Tribunal concluded that with the exception of the provision of written documentation under letter (f) relating to the carrying out of the gas meter work, all of the work in the RSEO had been completed.
13. It would have been preferable if the Landlord had supplied written documentation from the persons who had supplied and installed the new gas meter that the work had been done. This would have avoided the necessity and cost of the final re-inspection. Nevertheless given that there is now a new gas meter and surrounding pipework that has been properly secured and is in a reasonable state of repair and proper working order, no further written documentation is necessary.
14. For these reasons the Tribunal took the view that the documentation required by part (f) of the RSEO was no longer necessary and revoked the RSEO.

### **Decision**



- 15. In the exercise of its discretion the Tribunal proceeded to revoke the RSEO as stated above. The decision of the Tribunal was unanimous.

**Rights of Appeal**

- 16. A landlord or tenant aggrieved by this decision may seek permission from the Tribunal to appeal on a point of law against this decision to the Upper Tribunal and that within 30 days beginning with the date when this decision was sent to the party seeking permission.
- 17. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such permission or appeal proceedings is the other party to the proceedings and not the Tribunal which made the decision.

**Effects of Section 63 of the 2006 Act**

- 18. Where an application for permission to appeal is made, the effect of this decision is suspended until the application is abandoned or finally refused by the First-tier Tribunal (or upon subsequent application for permission to the Upper Tribunal, finally refused by it) or any subsequent appeal to the Upper Tribunal is abandoned or finally refused.
- 19. In the event of such application or appeal this decision is to be treated as having effect from the day on which the application was abandoned or finally refused or the later day on which the appeal is abandoned or finally refused.

Signed ..... **D Bartos** ..... Date: 31 August  
 2017.....

David Bartos, Chairperson

Signature of Witness: **T Harvey** : 31<sup>st</sup> Aug 2017

Name and address of the witness (please print):-

THOMAS G. HARVEY  
 6 RIVERSIDE, STOKESLEY,  
 MIDDLESBROUGH,  
 TS9 5DD

Schedule of photographs taken during the re- inspection of 21D Balunie Avenue, Dundee DD4 8QW by the ordinary member (surveyor) of the First-tier Tribunal for Scotland (Housing and Property Chamber) on the 28 August 2017.

Reference : PRHP/RP/15/0249



Bathroom - bath and bath panel sealed properly



Bathroom - new wet wall panelling/shower curtain



Bathroom - new wet wall panelling



Kitchen - new gas meter and bracket

**D Bartos**

**T Harvey** (witness)