

# Housing and Property Chamber First-tier Tribunal for Scotland



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

Certificate of Completion of Work: Housing (Scotland) Act 2006 Section 60

Chamber Ref: FTS/HPC/RP/18/1447

Title no/Sasines Description: LAN 117921

52 Howletnest Road, Airdrie, ML6 8AL ("the House")

The Parties:-

Miss Kirsty Leung, residing at the House  
("the Tenant")

Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF  
("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby certifies that the work required by the **Repairing Standard Enforcement Order** relative to the House dated 25 September 2018 has been completed. Accordingly, the said Repairing Standard Enforcement Order relative to the House has been discharged.

**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.

In witness whereof these presents are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow, on 10 December 2019 in the presence of the undernoted witness:-

**F Weir**

\_\_\_\_ witness

**N Weir**

\_\_\_\_ Legal Member

KIMAY LEE name in full

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TRING, HERTS HP23 4LN  
Address

# Housing and Property Chamber First-tier Tribunal for Scotland



**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 60 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/18/1447**

**Title no/Sasines Description: LAN 117921**

**52 Howletnest Road, Airdrie, ML6 8AL (“the House”)**

**The Parties:-**

**Miss Kirsty Leung, residing at the House  
 (“the Tenant”)**

**Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF  
 (“the Landlord”)**

## **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 Landlord has complied with the Repairing Standard Enforcement Order (RSEO) relative to the House dated 25 September 2018 determined that the Landlord has complied with the RSEO and that a Certificate of Completion to that effect should be issued.**

**The Tribunal comprised:-**

**Nicola Weir, Legal Member**

**Nick Allan, Ordinary Member**

## **Background**

1. By Application received on 20 June 2018, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of

repair and in proper working order (Section 13(1)(d). Specifically, the Tenant stated "I have informed landlord there is leak from living room coming from bathroom and there is clearly a big cross crack in ceiling which will fall through at some point. You can clearly see the water mark and crack and hole." As to the nature of the work that requires to be done, the Tenant stated that the Landlord "needs to check in bathroom where leak is coming from and fix crack in the ceiling." In connection with the Application, the Tenant also submitted copy tenancy agreement, Form AT5 and proof of notification to the Landlord of the repairs required

2. On 10 July 2018, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral, Inspection and Hearing in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 23 July 2018. In terms of same, representations were to be lodged by 13 August 2018. Neither party lodged any representations.
3. The Tribunal inspected the House on the morning of 12 September 2018. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.
4. Following the Inspection of the House, the Tribunal held a Hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.
5. Following the Hearing, the Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") dated 25 September 2018 in relation to the House. In particular, the Tribunal required the Landlord:-
  - (1) *To obtain and exhibit to the Tribunal a report from a suitably qualified contractor identifying the source of the water leak (s) from the bathroom;*
  - (2) *To rectify said leak(s) by repairing or, as necessary, replacing any fixtures, fittings or appliances to ensure that they are in a reasonable state of repair and in proper working order and to prevent any further water ingress into the living room;*
  - (3) *To repair or, as necessary, replace the surface of the living room wall and ceiling to rectify the hole, cracks and other damage, including staining, caused by the said water ingress and thereafter, to paint or re-decorate same, to provide a satisfactory finish;*
  - (4) *To repair or, as necessary, replace the bathroom floor and floor covering to rectify all water damage and to ensure that the flooring is in a reasonable state of repair and in proper working order; and*
  - (5) *To make good any other damage caused by the carrying out of any of the above works.*

The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within the period of 6 weeks from the date of

service of the RSEO. The RSEO was issued on 28 September 2018 and the period of 6 weeks therefore expired on 10 November 2018.

6. Following further procedure, including a Re-inspection of the House by the Ordinary Member on 29 November 2018 and a further Hearing attended by both parties on 11 March 2019, the Tribunal determined that further time should be allowed for the work to be carried out and that the RSEO should be varied by extending the time for completion of the work until 6 May 2019. A Notice of Variation dated 30 March 2019 in that regard was thereafter issued by the Tribunal.
7. A second Re-inspection of the House was carried out by the Ordinary Member on 3 June 2019. Further works had been carried out since the first Re-inspection but not all issues had been resolved. In particular, there were still high dampness readings from sections of the bathroom floor and the living room ceiling and signs of increased damage to the living room ceiling. Further written representations were received from both parties and a further Hearing took place at the Glasgow Tribunals Centre on 16 September 2019. The Tenant and Landlord were both in attendance, gave evidence and answered questions from the Tribunal. The Landlord requested additional time to complete the works required by the RSEO and both parties indicated a willingness to have the necessary works completed. The Tribunal accordingly considered it reasonable to vary the RSEO by extending the time for completion of the works for a further 6 weeks until 28 October 2019 and proceeded to issue a Variation of the RSEO dated 10 October 2019.
8. On 26 September 2019, the Landlord emailed the Tribunal to confirm that the required works had been completed and attached a letter from his contractor confirming the investigations carried out and works undertaken, photographs showing the position before and after the works and a copy text message from the Tenant confirming that the works had been done and that there were no leaks. Copies of the Landlord's email and attachments were circulated to the tenant and no response was received.
9. A third Re-inspection of the House was carried out by the Ordinary Member on 14 November 2019. A copy of his Report dated 19 November 2019 headed "3<sup>rd</sup> re-inspection photograph Schedule" is attached to this Statement of Decision, executed as relative hereto and referred to for its terms. A copy of the Report was issued to parties on 19 November 2019, requesting that if they wished to comment on the Report by way of written representations or request an oral hearing, they should do so by 3 December 2019. No response has been received from either party. The Tribunal considered the terms of the Re-inspection Report, the documentation previously received from the Landlord and the fact that the Tenant has made no representations to the contrary in response to either. The Tribunal was of the view that it was able to make sufficient findings to determine the case at this stage without having a further Hearing. The Tribunal considered that to do so would not be contrary to

the interests of the parties. The Tribunal accordingly proceeded to make their decision.

### **Reasons for decision**

10. The Tribunal was satisfied from the findings on Re-inspection and from consideration of the documentation submitted by the Landlord, all as referred to above, that all works required in terms of the RSEO had now been completed and that the RSEO had accordingly been complied with by the Landlord. Accordingly, the Tribunal was of the view that a Certificate of Completion to that effect should now be issued.

### **Decision**

11. The Tribunal determined that the Landlord had complied with the RSEO and that a Certificate of Completion to that effect should be issued.

12. 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.**

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**N Weir**

Signed..... Date: 10 December 2019  
Nicola Weir, Legal Member of the Tribunal

Glasgow, 10 December 2019  
This is the Re-inspection Report referred to  
in the Statement of Reason of even date  
herewith. N Weir Legal Member of Tribunal

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



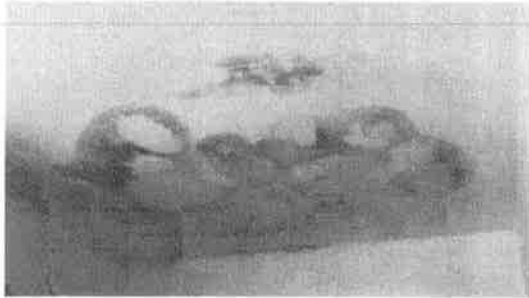
**3rd re-inspection photograph Schedule**

**52 Howletnest Road, Airdrie, ML6 8AL**

**Case Reference:** FTS/HPC/RP/18/1447  
**Date of inspection:** 14/11/2019  
**Time of inspection:** 14.00 pm  
**Weather conditions:** Dry and sunny  
**Present:** Mr Nick Allan – Ordinary Member  
Miss Kirsty Leung – Tenant  
Mr Paul McNiven - Landlord



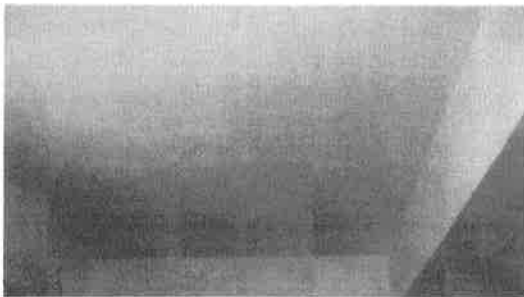
**Photo 1 – Front elevation**



**Photo 2** – Noted at inspection 03/06/19



**Photo 3** – Noted at inspection 03/06/19



**Photo 4** – Repaired ceiling at 14/11/19



**Photo 5** – Repaired wall at 14/11/19



**Photo 6** – Floor section at door now dry



**Photo 7** – Slight dampness in floor

**Re-inspection notes**

1. Low dampness readings were obtained from a small section of the repaired and decorated living room wall. At the date of the inspection

the levels of dampness recorded do not constitute a risk to timber.  
**Photo 5** above refers.

2. The living room ceiling has been completely repaired and redecorated. No dampness readings were recorded at this location. **Photo 4** above refers.
3. The section of flooring adjacent to the bathroom door is now completely dry. **Photo 6** above refers.
4. Low dampness readings were obtained from small sections of the bathroom floor, mainly next to the shower enclosure door. The levels of dampness occurring at this location are not currently considered to be a risk to timber. **Photo 7** above refers.

**Observation in respect of (4) above**

It was noted that the bathroom sealant waterproofing the floor tray within the shower enclosure has deteriorated since the previous re-inspection on the 3<sup>rd</sup> June 2019. In addition, the sealing bead waterproofing the floor surface to the external face of the shower enclosure has also deteriorated. Whilst the integrity of the sealant is currently sufficient, it is unlikely to last indefinitely.

Nick Allan – Ordinary Member  
First-tier Tribunal  
Housing and Property Chamber – 19<sup>th</sup> November 2019