

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION: in terms of Section 25(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act  
Chamber Ref: FTS/HPC/RP/21/1085**

**Re: Property at Flat 15, 3, Lochinvar Drive, Edinburgh EH5 1GJ registered in the Land Register for Scotland under Title Sheet Number MID95091 (“the Property”)**

**Parties:**

**Mr Duncan McNeill-McCallum and Mrs Emma McNeill-McCallum both residing at the Property (“the Applicants”)**

**Mrs Jane Miller (“the Respondent”) per her representatives Messrs Elliot & Company, WS 8 Charlotte Street, Perth, PH1 5LL (“the Respondent’s Representatives”)**

**Tribunal Members: Karen Moore (Legal Member) and Andrew Taylor (Ordinary Member)**

## **Decision**

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order (RSEO) both dated 15 September 2021 and Variation of RSEO dated 17 January 2022

The Tribunal having determined that the RSEO made by it on 15 September 2022 and varied on 17 January 2022 is no longer required revoked the RSEO in terms of Section 25(b) of the Act.

## Background

1. By application received on 7 May 2021 (“the Application”), the Applicants made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination that the Respondent has failed to comply with the duty imposed on her by Section 14(1)(b) of Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1)(c), 13(1)(d), and 13(1)(h) of the Act.). A Case Management Discussion was held on 6 July 2021 by telephone conference call, an Inspection of the Property was carried out on 8 September 2021 and a Hearing was held on 15 September 2021 by telephone conference call, following all of which the Tribunal determined that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Act and imposed the RSEO:-

*“The Landlord must on or before 15 November 2021: -*

1. *Engage a suitably qualified heating engineer to carry out an inspection of and report (“the Report”) on the operation and effectiveness of the electric heating and hot water supply installation including boiler, all radiators, valves, programmers and thermostats;*
2. *Follow any recommendations of the Report to ensure that the entire system is fully functioning, safe and in proper working order;*
3. *On completion of the works provide a copy of the Report and any receipted invoices for the work carried out to the Tribunal and the Applicants and Tenants;*
4. *Engage a suitably qualified joiner/window specialist to repair or replace the Juliet balcony bedroom door so that it is capable of being properly opened and closed, has intact seals and is wind and watertight and additionally, to inspect the threshold/sill of the Juliet balcony door and the lounge patio door unit and carry out any works required to make these areas wind and watertight.*
5. *Repair the leak under the en-suite shower room wash hand basin;*
6. *Replace the badly fitting toilet seat in the en-suite shower room and*
7. *Carry out all making good and decoration associated with the completion of the foregoing works.”*

2. The Parties provided the Tribunal with updates on the progress of the works required by the RSEO and a further Inspection of the Property took place on 2 December 2021 after which the Tribunal varied the RSEO to allow further time for compliance.
3. The Parties both submitted further written representations in response to the variation of the RSEO. In particular, the Applicants notified the Tribunal that the en

suite shower room had failed completely, with the collapse of the shower cubicle and surround.

4. The Parties advised the Tribunal that Respondent had served Notice to Leave on the Applicants on the ground that she intended to sell the Property and that the Applicants intended to vacate the Property on 31 May 2022.
5. A further Re-Inspection of the Property was arranged for and carried out on 20 May 2022 and the Re-Inspection Report was issued to the Parties.

### **Summary of the Issues**

6. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO.

### **Findings in Fact**

7. From the further Re-Inspection on 20 May 2022 and the written representations, the Tribunal found that the RSEO had not been complied with in full as the toilet seat had not been repaired.
8. From the written submissions of the Parties the Tribunal found that Respondent had intended to sell the Property and that the Applicants intended to vacate the Property on 31 May 2022.

### **Decision of the Tribunal and Reasons for the Decision of the Tribunal**

9. The Tribunal's decision is based on all of the information before it whether referred to specifically or not.
10. The Tribunal had regard to Section 25 (1) of the Act which states:- *“(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”*
11. With regard to Section 25(1)(b) of the Act, the Tribunal gave consideration to whether it should revoke the RSEO and held the view that only a minor element of the works had not been carried out. The Tribunal noted that the en suite would require to be replaced or renewed in its entirety either by the Applicant before the sale of the Property or by new owners after their purchase and that the toilet seat

would be replaced at this time. The Tribunal was satisfied that the Property would not be re-let when the Applicants vacated the Property.

12. Accordingly, the Tribunal determined to revoke the RSEO in terms of Section 25(1)(b) of the Act

13. The decision is unanimous.

### **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.

Signed

A solid black rectangular box redacting the signature of Karen Moore.

Karen Moore, Chairperson

Date 26 May 2022