

# Housing and Property Chamber First-tier Tribunal for Scotland



## Notice of Decision to vary a Repairing Standard Enforcement Order under section 25(1) of the Housing (Scotland) Act 2006

**Chamber Ref: PRHP/RP/16/0226**

**Title Number: KNC7895**

**Property at 166 Cairngorm Drive, Aberdeen, AB12 5PL  
("The House")**

### **The Parties:-**

Mr Trevor Donaldson, residing at 166 Cairngorm Drive, Aberdeen, AB12 5PL ("the Tenant")

and

Mr Mohammed Mehrabadi and Mrs Lynne Mehrabadi, both residing at 374 Great Western Road, Aberdeen ("the Landlords")

### **The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr Colin Hepburn	-	Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined on 19 April 2017 that the Repairing Standard Enforcement Order ("RSEO") relative to the House dated 14 September 2016 should be varied, the said RSEO is hereby varied with effect from the date of service of this Notice in the following respects:-

1. The period allowed for completion of the work required by the RSEO is extended for a period of six weeks from the date of this Notice.

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

**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, a 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.**

Where such an appeal is made, the effect of the decision and of any order is suspended under 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 Ruth Elizabeth O'Hare, Solicitor, Chairperson of the Tribunal at Glasgow on 19 April 2017 before this witness

**T O'Hare**

\_\_\_\_\_ witness

**R O'Hare**

chairperson

Thomas O'Hare, 7 Mossbeath Grove,  
Glasgow, G71 7UU

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**Statement of Decision under section 25(1)(a) of the Housing (Scotland) Act 2006 ("the 2006 Act")**

**Chamber Ref: PRHP/RP/16/0226**

**Title Number: KNC7895**

**Property at 166 Cairngorm Drive, Aberdeen, AB12 5PL  
("The House")**

**The Parties:-**

Mr Trevor Donaldson, residing at 166 Cairngorm Drive, Aberdeen, AB12 5PL ("the Tenant")

and

Mr Mohammed Mehrabadi and Mrs Lynne Mehrabadi, both residing at 374 Great Western Road, Aberdeen ("the Landlords")

**The Tribunal comprised:-**

Mrs Ruth O'Hare - Legal Member  
Mr Colin Hepburn - Ordinary Member

**Background**

1. Reference is made to the determination of the Private Rented Housing Committee dated 14 September 2016 which determined that the Landlords had failed to comply with the duty imposed by section 14(1)(b) of the Act in that he had failed to ensure the Property met the Repairing Standard. On the same date the Committee imposed a Repairing Standard Enforcement Order ("RSEO"). The works required by the RSEO were:-

- (a) Instruct a professional window installer to carry out a full inspection of the windows in the kitchen and kitchen extension and carry out any works identified to ensure the property is wind, watertight and in a reasonable state of repair;
- (b) Repair or replace the window blind in the living room;
- (c) Repair the gas fire in the living room to ensure it is in proper working order and approved by a Gas Safe registered engineer or alternatively remove the gas fire, seal the flue and make good decoration;

- (d) Repair or replace the pane of glass with the defective vent in the living room window;
- (e) Instruct a qualified plumber to check the pipework and correct fall on the waste pipe to the bath to allow the pipes to properly drain;
- (f) Repair or replace the sealant around the bath;
- (g) Install a proper mechanical ventilation system in the bathroom;
- (h) Repair or replace the defective kitchen fittings and units as necessary;
- (i) Repair or replace the door entry system to ensure it is in proper working order;
- (j) Repair the television aerial to ensure proper signal;
- (k) Install smoke and heat detectors in the property in compliance with current standards;
- (l) Carry out such works as required to clear moss from the roof of the property and all detritus from the gutters pertaining to the property;
- (m) Carry out portable appliance testing on all appliances provided by the landlords to include all those present in the property at the commencement of the tenancy; and
- (n) Carry out all works required to make good decoration in the property following the above works.

The RSEO gave the Landlord twelve weeks to carry out the works.

2. On 1<sup>st</sup> December 2016 the jurisdiction for the application passed from the Committee to the First Tier Tribunal – Housing and Property Chamber. The Tribunal therefore assumed responsibility for the matter.

### **The Re-inspection**

3. On 17<sup>th</sup> January 2017 the Ordinary Member re-inspected the property on behalf of the Tribunal. The Tenant was present and allowed access to the house for the re-inspection. He was accompanied by Hamish McKenzie from Shelter Scotland as his adviser. The Landlord was not present. The Ordinary Member noted a number of items required by the RSEO were outstanding in particular with regard to the windows, window blind, gas fire, bath pipework, mechanical ventilation system, kitchen worktops, door entry system, smoke and heat detectors, portable appliance testing and redecorative works. A copy of the re-inspection report is attached herewith.

4. By letter dated 2 February 2017 Hamish McKenzie made written representations on behalf of the Tenant regarding the terms of the re-inspection report. He concluded that there were outstanding items relating to the windows and the kitchen units that were affecting the Tenant's enjoyment of the property. He confirmed the Tenant's wish to attend a hearing.
5. By letter dated 24 February 2017 the Landlords made written representations regarding the terms of the re-inspection report. He submitted that there had been difficulties coordinating the works but that further works had been done since the re-inspection with regard to portable appliance testing, the re-positioning of smoke and heat detectors, replacement of windows, the window blind and redecoration. The Landlords confirmed their wish to attend a hearing.
6. In view of the views expressed by both parties in the written representations the Tribunal determined to hold a hearing.

### **The Hearing**

7. The hearing took place in Ruthrieston Community Centre, Aberdeen on 4<sup>th</sup> April 2017. Mr Mehrahabi ("the Landlord") was present and represented his wife Mrs Lynne Mehrahabi. The Tenant was present and accompanied by Hamish McKenzie. The Tribunal heard submissions from both parties on the items required by the RSEO as follows:-

(a) The windows in the kitchen and kitchen extension

The Landlord confirmed that a professional glazier had carried out an inspection of the windows. The recommendation was that the window in the kitchen extension be replaced. This had now been done. Repair works had also been undertaken to the kitchen window which had resolved the problems with water ingress. The Tenant advised that it would have been his preference for the kitchen window to have been replaced and he understood the glazier had made a verbal recommendation in this regard. However he confirmed that the works stated by the Landlord had been carried out and the windows appeared to be in a reasonable state of repair for the time being. He did express concerns that this could be a temporary fix.

(b) The window blind in the living room.

Both parties confirmed that the blind had now been repaired and that this section of the RSEO had been complied with.

(c) The gas fire in the living room.

The Landlord advised that he had offered to remove the gas fire and reinstate the fireplace for use as an open fire however the Tenant did not want this. The Tenant confirmed that he would have no use for an open fire and instead would prefer the gas fire was left in its current state. He remained concerned as to whether the gas fire had been properly disconnected. An engineer from Scottish Gas had attended the house recently and had stated that the gas fire was

inoperable. However she was unable to confirm whether it was safe. The Landlord stated that the fire had definitely been disconnected.

(d) The pane of glass to the living room window

Both parties confirmed the findings of the re-inspection report, namely that this had now been repaired and this section of the RSEO had therefore been complied with.

(e) The pipework to the bath

The Landlord advised that a plumber had inspected the pipework but had advised that due to its positioning within the house there were no works that could be carried out to resolve the slow water drainage. The outlet of the waste pipe was too high. The Tenant confirmed this and accepted that there was likely to be little more that could be done in respect of this issue.

(f) The sealant around the bath

Both parties confirmed the findings of the re-inspection report, namely that this had now been repaired and this section of the RSEO had therefore been complied with.

(g) The mechanical ventilation system in the bathroom

It was accepted by the Landlord that no mechanical ventilation system had been installed. He advised that in his view there were no problems with condensation in the bathroom and any issues could be resolved by opening the window. The Tenant clarified that the window in the bathroom was not external and instead opened out on to the former balcony which had now been closed in. It would therefore be difficult to achieve proper ventilation through opening the bathroom window. The Landlord accepted this.

(h) The defective kitchen fittings and units

Both parties agreed with the findings of the re-inspection report namely that new base and cupboard units in the kitchen had been installed. The Landlord advised that this was a temporary measure and he intended to install a new kitchen at a later date. The kitchen worktop had now been sealed and a bracket fitted underneath to support it. The Tenant indicated that he considered further work would be required as water continued to pool on the worktop. However he conceded that it was presently watertight and usable.

(i) The door entry system.

Both parties confirmed that the door entry system had been repaired and was in proper working order. This section of the RSEO had therefore been complied with.

(j) The television aerial

Both parties confirmed the findings of the re-inspection report, namely that the aerial hanging outside the property was not connected to the house.

(k) The smoke and heat detectors

The Landlord advised that he had been made aware that the detectors had been incorrectly installed. He had sought guidance and had relocated the detectors to rectify the issue. The Tenant confirmed that this section of the RSEO had now been complied with.

(l) The roof and the gutters

Both parties confirmed that this work had now been done insofar as possible. The Landlord advised that he had endeavoured to also clear the gutters on the opposite side of the building but had been prevented from doing so by a neighbour. The Tenant confirmed this to be the case and accepted that the Landlord had taken steps to comply with this section of the RSEO.

(m) Portable appliance testing

Both parties confirmed that portable appliance testing had now been carried out and that this section of the RSEO had been complied with.

(n) Redecoration

The Tenant confirmed that the house had been painted. The Landlord advised that new flooring was due to be installed over the next few days.

## **Decision**

8. The Tribunal having made such enquiries as it saw fit for the purpose of determining whether the Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that the RSEO should be varied so as to give the Landlord a further six weeks to complete the works required all in terms of Section 25(1) of the Housing (Scotland) Act 2006.

## **Reasons for the decision**

9. The Tribunal determined the application having regard to the findings of the re-inspection and the verbal submissions and written representations from the Landlords and the Tenant.
10. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.



11. The Tribunal determined that the majority of the works required by the RSEO had been completed. The Tribunal accepted that where the works required cooperation from the owners of neighbouring properties, the Landlord had taken sufficient action in this regard. The Tribunal also accepted there was nothing more that could be done in respect of the bath waste pipe. The Tribunal was therefore satisfied that the Landlord had made efforts to comply with the work required by the RSEO.
12. It was clear however that no action had been taken to either repair or remove the gas fire in the living room and no mechanical ventilation system had been installed in the bathroom. The Tribunal noted the submissions from the Landlord and the Tenant regarding the gas fire however took the view that it could not remain in its current state. It was apparent that there was dubiety as to whether the fire was safe. Whilst the Landlord had stated that he was clear it had been disconnected there was nothing from a Gas Safe engineer to confirm this to be the case. In any event the Tribunal took the view that in order to remove any risks and ensure compliance with the Repairing Standard the fire would require to either be repaired and certified to be in safe working order or alternatively removed entirely and the flue sealed. The Tribunal would therefore require the Landlord to take steps in this regard to comply with this section of the RSEO.
13. The Tribunal also disagreed with the Landlord's view that the opening of the bathroom window could resolve any condensation issues in the bathroom. This appeared to be based on the misunderstanding that the bathroom window pertained to an external wall. The Tribunal therefore remains of the view that a proper mechanical ventilation system requires to be installed in the bathroom.
14. The Tribunal also noted there to be some dispute between the Landlord and the Tenant regarding whether the works carried out to the windows and the kitchen units were satisfactory albeit the Tenant appeared to concede during the hearing that both the kitchen units and the windows were presently in a reasonable state of repair. Based on the submissions the Tribunal took the view that it appeared these sections of the RSEO had been complied with, however the Tribunal considered it would be appropriate for these areas to be re-inspected so that the Tribunal could satisfy itself that the works carried out were of a satisfactory standard.
15. The Tribunal therefore concluded that it would be appropriate to vary the RSEO under section 25(1)(a) of the 2006 Act to extend the period within which the work required by the order must be completed following which a further re-inspection would be undertaken by the Ordinary Member. The Tribunal considered an extension of six weeks would be reasonable in the circumstances.

**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.**



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.

Signe **R O'Hare** \_\_\_\_\_

Ruth O'Hare  
Chairperson

19 April 2017



**Re-inspection report**

**Date of inspection: 17<sup>th</sup> January 2017**

**Reference Number: PRHP/RP/16/0226**

**Property: 166 Cairngorm Drive, Aberdeen AB12 5LP**

**Surveyor: Colin F Hepburn**

**Access: Provided by Mr Trevor Donaldson, the Tenant**

**In attendance: Mr Trevor Donaldson and Mr Hamish Mackenzie**

**Repairing Standard Enforcement Order (RSEO)**

**Whereas in terms of its decision dated 14 September 2016 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed on it by Section 14(1)(b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:**

- a. The house is not wind and watertight and in all other respects reasonably fit for human habitation;**
- b. The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;**
- c. The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order;**
- d. Any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order;**
- e. The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.**

**Works required by the RSEO:**

- 1. Instruct a professional window installer to carry out a full inspection of the windows in the kitchen and kitchen extension and carry out any works identified to ensure the property is wind, watertight and in a reasonable state of repair;**
- 2. Repair or replace the window blind in the living room;**

3. Repair the gas fire in the living room to ensure it is in proper working order and approved by a GasSafe registered engineer or alternatively remove the gas fire, seal the flue and make good decoration;
4. Repair or replace the pane of glass with the defective vent in the living room window;
5. Instruct a qualified plumber to check the pipework and correct fall on the waste pipe to the bath to allow the pipes to properly drain;
6. Repair or replace the sealant around the bath;
7. Install a proper mechanical ventilation system in the bathroom;
8. Repair or replace the defective kitchen fittings and units as necessary;
9. Repair or replace the door entry system to ensure it is in proper working order;
10. Repair the television aerial to ensure proper signal;
11. Install smoke and heat detectors in the property in compliance with current standards;
12. Carry out such works as required to clear moss from the roof of the property and all detritus from the gutters pertaining to the property;
13. Carry out portable appliance testing on all appliances provided by the landlords to include all those present in the property at the commencement of the tenancy;
14. Carry out all works required to make good decoration in the property following the above works.

**Works in the RSEO undertaken:**

1. The pane of glass to the living room window has been replaced.
2. The sealant around the bath has been repaired.
3. The kitchen units have been replaced in part with a new base unit to support the sink and new cupboard units installed.
4. The television aerial has been confirmed to be the responsibility of a neighbouring flat owner and not connected to the subject flat.
5. The gutters to the common building have been cleared in part. The gutters to the opposite side of the building have not been cleared owing to a dispute with a neighbour.

**Outstanding works:**

A window contractor has inspected the windows in the kitchen and kitchen extension measuring up for replacement windows. No works have yet been done.

The blind to the living room window has not been repaired or replaced.

**The gas fire in the living room has not been inspected, repaired or removed.**

**The tenant advises that whilst the sealant around the bath has been renewed no works to the pipework have been undertaken.**

**No mechanical ventilation system has been installed in the bathroom.**

**Although the kitchen sink has been repaired the adjoining worktop has not been replaced and is loose and in poor condition.**

**The door entry system has been inspected but is still not in proper working order.**

**Smoke and heat detectors have been installed but the positioning of the detectors would not comply with the technical standards.**

**Portable appliance testing has not been undertaken.**

**Redecorative works not undertaken.**

**Photographs were taken on the day of inspection and are attached.**

**Colin F Hepburn MRICS**

**Date of report: 23<sup>rd</sup> January 2017**











