

# Housing and Property Chamber First-tier Tribunal for Scotland

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## VARIATION OF REPAIRING STANDARD ENFORCEMENT ORDER

**Chamber Reference number:** FTS/HPC/RP/18/1436

**Parties;**

Stewart Hale and Mrs Janet Hale residing at 12, Ash Tree Avenue, Manchester (“the Landlords”)

**Property:** 6E, Macewan Place, Kilmarnock, KA3 7ER registered in the Land Register of Scotland under Title Number AYR75216 (“the Property”)

**Tribunal Members**

Karen Moore (Chairperson)

Carol Jones (Ordinary Member)

**Notice to Landlords**

Stewart Hale and Mrs Janet Hale residing at 12, Ash Tree Avenue, Manchester (“the Landlords”)

Whereas in terms of its decision dated 9 July 2019, the First-tier Tribunal for Scotland determined that the Repairing Standard Enforcement Order imposed by it on 18 September 2018 be varied, now varies the Repairing Standard Enforcement Order further as follows:

The time limit for compliance with the said Repairing Standard Enforcement Order is amended to **31 December 2019**.

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.

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.

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents typewritten on this and the preceding page are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 9 July 2019 before this witness, Norman William Moore, solicitor, 1A, South Muirhead Road, Cumbernauld G67 1AX.

W Moore

*Witness*

K Moore

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION:** in terms of Section 25 of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act 2006

**Chamber Reference number:** FTS/HPC/RP/18/1436

**Parties:** Stewart Hale and Mrs Janet Hale residing at 12, Ash Tree Avenue, Manchester ("the Landlords")

**Property:** 6E, Macewan Place, Kilmarnock, KA3 7ER registered in the Land Register of Scotland under Title Number AYR75216 ("the Property")

## **Tribunal Members**

Karen Moore (Chairperson)

Carol Jones (Ordinary Member)

This Decision should be read in conjunction with:

Decision and Repairing Standard Enforcement Order both dated 18 September 2018;  
Decision and Variation of Repairing Standard Enforcement Order both dated 12 December 2018 and Decision and Variation of Repairing Standard Enforcement Order both dated 15 February 2019 in respect of the Property

## **Background**

1. By application comprising an application form received on 20 June 2018 ("the Application"), the then tenant's representative applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1) (c), 13(1) (d), 13(1) (f) and 13(1) (g) of the Act and an Inspection and Hearing were fixed for and held on 7 September 2018 at 10.00 a.m. and 11.30 a.m., respectively.
2. The outcome of the Inspection and Hearing was that the Tribunal determined that the Landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 and imposed a Repairing Standard Enforcement Order ("RSEO") as required by Section 24 (1) of the Act as follows:-

*"The Landlords must on or before 30 November 2018: -*

- 1. Instruct a Gas Safe registered plumbing and heating engineer (i) to carry out a full inspection of the gas installations in the Property including the boiler, the hot water supply and the radiators in the Property (ii) to carry out such works as are necessary to ensure that the gas installations are in proper working order and that the hot water supply is sufficient and suitable for the Property, including if necessary, the replacement of the boiler and the hot water tank (iii) replace the living room radiator to ensure that the heating installation in the Property is safe, functional and in proper working order and (iv) thereafter provide a CP 12 Gas Safety Certificate to the tribunal or if the boiler is replaced, all necessary commissioning documents and certificate;*
- 2. Instruct a suitably qualified and registered SELECT or NICEIC electrical contractor (i) to carry out portable appliance testing on the appliances supplied by the Landlords, namely the washing machine and the cooker and (ii) repair or, if necessary, replace these appliances to ensure that they are in proper working order;*
- 3. Instruct a suitably qualified contractor to investigate the cause of any ongoing leaks in the kitchen and repair or replace the floor boards in the kitchen and thereafter replace the floor covering in the kitchen to ensure that the floor and flooring are in a reasonable condition, are stable underfoot, are free from trip hazards and are free from dampness and infestation;*
- 4. Repair or replace the living room window to ensure that the tilt and turn mechanism is fully operational and that the window is properly sealed;*
- 5. Instruct a suitably qualified Pest Control Specialist company to carry out a full inspection of the Property and to carry out such works as are necessary to ensure the eradication of all insects and pests within the Property, and, thereafter, provide a certificate or report to this effect to the tribunal and*
- 6. Make good all décor damaged as a result of these works."*

#### **Further Procedure**

- 3.** Following email correspondence from Mrs Hale of the Landlords, a Re-inspection of the Property fixed for 14 December 2018 was adjourned and the RSEO varied to allow the Landlords further time until 31 January 2019 to engage another agent to act on their behalf and to carry out the said works. Mrs. Hale of the Landlords emailed the Tribunal again on 31 January 2019 to advise that works required by the RSEO remain incomplete and requested further time to comply which the Tribunal granted.
- 4.** A Hearing and Re- inspection were then fixed for 5 July 2019 and intimated to the Landlords. Mrs. Hale advised the Tribunal by email received on 3 July 2019 that the works required by the RSEO still remain incomplete and advised that she would not be able to provide access to the Property on 5 July 2019 as the person she had instructed was too busy to attend the Property. She supplied photographs showing that some of the works had been completed.

## **Matter for determination by the Tribunal.**

5. Having been satisfied that the works required by the RSEO as varied and as further varied had not been carried out fully, the matter before the Tribunal was how to proceed further.

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

6. The Tribunal, firstly, had regard to Section 26 (1) of the Act which states that it is for the first-tier tribunal to decide whether a landlord has complied with a repairing standard enforcement order and, secondly, had regard to the terms of Section 26(2) of the Act which states that failure to comply with a repairing standard enforcement order must be notified to the local authority. The Tribunal also had regard to the fact that a failure to comply with a repairing standard enforcement order is a criminal offence. The Tribunal weighed up the consequences for the Landlords of a finding of failure to comply with the fact that the Landlord had carried out some of the works required by the RSEO. The Tribunal took the view that, although the Landlords had provided very late notice that access would not be given on 5 July 2019 and the RSEO had still not been complied with given that the Property appeared to be un-let at this stage in the process, a finding of failure to comply was not appropriate.

7. The Tribunal then 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.”*

8. With regard to Section 25(1)(b), the Tribunal gave careful consideration to whether it should revoke the RSEO. The Tribunal had regard to the terms of the RSEO which deal with health and safety. The Tribunal held the view that, although the Property is not tenanted at present, the likelihood of a future tenancy could not be disregarded and that safeguarding the occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.
9. With regard to Section 25(1)(a), the Tribunal again gave consideration to Mrs. Hale's recent email and, with reluctance, agreed to vary the time to comply with the RSEO on this occasion.
10. The decision of the Tribunal is unanimous.
11. **The Landlords are again reminded that the works to be carried out are all of those ordered by the RSEO and narrated in full at paragraph 2 hereof. The**

**Tribunal draws the Landlords attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence and to Section 28(5) of the Act which states that it is an offence for a landlord to enter into a tenancy or occupancy arrangement in relation to a house which is subject to a repairing standard enforcement order.**

### **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

K Moore

Karen Moore, Chairperson

Date 9 July 2019