

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Variation of Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 Section 25

Chamber Ref: FTS/HPC/RP/16/1022

Title no: ARG15156

**Top Flat, Portdrishaig House, Tighnabruaich, PA21 2EB
("the Property")**

The Parties:-

**Mr. Edward Pybus, formerly residing at the property
("the Tenant")**

**Mr. Alan Davidson and Ms. Fiona Davidson, Mortgages and Financial Services for All, 73 High Street, Lochee, Dundee, DD2 3AT (represented by Margaret Cowley of Rosemount Property, www.rosemountproperty.co.uk)
("the Landlords")**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having determined on 22 June 2017 that the Repairing Standard Enforcement Order ("RSEO") relative to the property dated 1 April 2017 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 until 31 August 2017.

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, 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.

In witness whereof these presents type written on this and the preceding page are executed by Patricia Anne Pryce, Solicitor, Chairing Member of the tribunal at Glasgow on 22 June 2017 before this witness:-

P Pryce

witness

Chairing Member

NICHOLAS PRYCE name in full

55 BLYTHWOOD ST Address

GLASGOW

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Housing (Scotland) Act 2006 Section 25(1)(a)

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Cowley of Rosemount Property, www.rosemountproperty.co.uk)
("the Landlords")**

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 Repairing Standard Enforcement Order ("RSEO") relative to the property should be varied in terms of Section 25(1)(a) of the Housing (Scotland) Act 2006 ("the Act") agreed that the RSEO should be varied.

The Tribunal comprised:-

| | | |
|---------------------------------|----------|-----------------------------------|
| Mrs. Patricia Anne Pryce | - | Chairing Member |
| Ms. Carol Jones | - | Ordinary Member (Surveyor) |

Background

1. By application received on 14 December 2016, the Tenant applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application stated that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlords had failed to ensure that:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- (iii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Tenants brought forward the following breaches:-

- (a) Roof leaks. Repairs to the roof – water ingress in the back bedroom and stair well.
 - (b) Repairs to the gable end of the building – water ingress to the living room.
 - (c) Windows not wind and watertight. Repair the windows in the living room, back bedroom, bathroom, front bedroom and box room – they are not wind and watertight and don't open and close correctly.
 - (d) Fit fire alarms throughout.
 - (e) Repair electric socket in the kitchen.
 - (f) Repair the lock on the front door so we can secure the property.
 - (g) Dampness.
3. By Minute dated 25 January 2017 the Convener of the tribunal, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21(8A) of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a tribunal.
 4. On 30 March 2017, the tribunal inspected the house. The Tenant's partner was present at the inspection and provided access to the property. The Landlords were not present and were not represented at the inspection.
 5. Following the inspection, the tribunal held a hearing on the same date and no one attended the hearing.
 6. Following the hearing, the tribunal proceeded to make an RSEO in relation to the house. In terms of the RSEO the Landlords were required:-

- (a) To repair or replace the roof, including the roof located above the common stairwell of the property, and to repair any source of water ingress and dampness within the property whether emanating from the gable end wall or otherwise, to ensure that the property is wind and watertight and reasonably fit for human habitation.
- (b) To repair or replace the windows in the property to ensure that the property is wind and watertight and reasonably fit for human habitation.
- (c) To repair or replace the electrical socket located in the kitchen to ensure that that is in a reasonable state of repair and in proper working order.
- (d) To produce an Electrical Installation Condition Report by a suitably qualified and registered electrician, which report is to be completed after the repair of the electrical socket in (c) above is carried out.

The tribunal ordered that the works specified in the RSEO were to be carried out within 12 weeks from the date of service of the Notice, that is by 4 July 2017.

- 7. On 9 May 2017, the Landlords' representative, Margaret Cowley, wrote to the tribunal requesting that the RSEO be varied by extending the 12 week time limit for the works. The tribunal requested further information from the Landlords to enable the tribunal to reach a decision regarding this request for a variation of the RSEO. The tribunal received further written representations from the Landlords' agent on 16 June 2017. The agent submitted that the property is now vacant and Mr. Davidson is not planning on letting out the property again, Mr. Davidson is considering selling the property, Mr. Davidson works full time and the location of the property and the travelling times for Mr. Davidson between the property and Dundee where he resides is making it difficult for him to find appropriate trades to undertake the works.
- 8. The tribunal considered the Landlords' request for further time to complete the work. The tribunal notes that, in ordering the works to be carried out within 12 weeks, it had taken account of the rural location of the property. However, the tribunal further notes that the Landlords are located in Dundee which is some distance from the property. The tribunal acknowledged that the Landlords may not intend to re-let the property, however, the tribunal was not persuaded by this nor by the statement that the Landlords may sell the property. The Landlords are reminded that the RSEO is an order which is registered against the property and that failure to comply with an RSEO may constitute a criminal offence.
- 9. However, on balance, and given the respective locations of the Landlords and the property, the tribunal accordingly took the view that the RSEO should be varied by extending the time limit for completion of the work until 31 August 2017 and proceeded to issue a Variation of the RSEO.

Decision

- 10. The tribunal accordingly 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 31 August 2017.

11. 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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P Pryce

Signed
Legal Chairing Member

Date 22 June 2017