

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Case Reference FTS/HPC/RP/18/2103

Miss Karen Walker, 50 Wallace Avenue, Stevenston, KA20 4BN (“the Tenant”)

Manpinder Kaur, 1 Langmuir Avenue, Irvine and care of Ayr Estate and Letting Agents, 2 Parkhouse Street, Ayr, KA7 2HH (“the Landlord”)

50 Wallace Avenue, Stevenston, KA20 4BN registered under Title Number AYR65722 (“the Property”).

Tribunal Members: Martin McAllister, Solicitor (Legal Member) and Donald Wooley, Chartered Surveyor, (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) having determined on 12th June 2019 that the repairing standard enforcement order (**RSEO**) relative to the Property dated 24th October 2018 and subsequently varied should be further varied, the said **RSEO is hereby varied** with effect from the date of service of this Notice in the following respects:-

The period allowed for the completion of the work required by the order is extended to 31st August 2019.

Subsection 25(3) of the Housing (Scotland) Act 2006 as amended does 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.

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.

Please note that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to the house at any time during which an RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page are executed by Martin Joesph McAllister, solicitor, legal member of the Tribunal, at Kilwinning on 17th June 2019 in the presence of Audrey Boylan, 83 Main Street, Kilwinning.

A Boylan

M J McAllister

Housing and Property Chamber

First-tier Tribunal for Scotland



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Determination: Housing (Scotland) Act 2006: Section 25

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Background

1. By application received by the Tribunal on 17th August 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (the Tribunal) for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act. The Application was accompanied by a number of emails.

2. The Application stated that the Property does not meet the repairing standard set out Section 13 of the 2006 Act. It states that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that 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 and that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. On 24th October 2018 the tribunal made a repairing standard order in the following terms:

The Landlord is to

- 1. Instruct a suitably qualified timber and damp specialist contractor to prepare a report detailing the source of damp, condensation and possible timber decay affecting the bathroom, bedrooms, living room and entrance hall, the extent of any remedial action required, complete all recommended repairs as advised and thereafter redecorate as necessary. (Sections 13 (1) (a) and 13 (1) (b) of the 2006 Act).**
- 2. Repair or replace as necessary any defective bath, shower fittings and bathroom wall linings ensuring that there is a continuous and adequate seal between the bath, shower screen and surrounding wall linings. Thereafter redecorate as necessary. (Section 13 (1) (a) of the 2006 Act).**
- 3. Repair or renew defective door handle at entrance to the property. (Section 13 (1) (b) of the 2006 Act).**
- 4. Provide a current and satisfactory Electrical Installation Condition Report for the Property including PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property together with copies of documentary evidence in support of the checklist. (Section 13 (1) (c) of the 2006 Act).**
- 5. A suitably qualified electrical contractor should investigate, report on and complete any necessary repairs relating to the intermittent fault in the living room electrical socket, situated to the right hand side of the window, ensuring that it complies with all current regulations. (Sections 13 (1) (c) of the 2006 Act).**
- 6. Repair and or renew as required the defective concrete slab driveway, ensuring that it is in good general condition, fully functional and fit for purpose. (Section 13 (1) (a) of the 2006 Act).**

The Landlord requires to comply with the repairing standard order within two months of service of it on him.

4. On 8th January 2018 the ordinary member of the tribunal inspected the Property and found that, although some work had been done, there were still outstanding matters.

The Tenant advised the ordinary member that a Notice to Quit had been served on her which required her to leave the Property by 12th March 2019.

6. Subsequent to the inspection on 8th January 2019, the Landlord's agent submitted a report from Kerelaw Building Preservation dated 29th November 2019 which stated that there was saturation of the flooring directly below the bath due as a result of inadequate provision to seal the walls within the shower of the bath. The report stated that the extent of dampness has affected lower walls within the bathroom and adjacent hallway area. The report suggests that the specialist inspect the floor once the bathroom fittings had been removed.

7. Subsequent to the inspection on 8th January 2019, the Landlord's agent submitted an EICR dated 22nd December 2015 which stated that matters were satisfactory.

8. On 5th February 2019 the Tribunal considered that it would be reasonable to vary the repairing standard enforcement order to give more time for work required by the order to be completed. It determined that the Landlord would have until 15th March 2019 to implement the terms of the repairing standard enforcement order.

9. The ordinary member inspected the Property on 25th April 2019. He found that the double electric socket in the living room was functioning satisfactorily. He noted that there was no supporting documentation in respect of the repairs at the concealed areas beneath the bath. He noted that there was still dampness in the hallway.

10. Subsequent to the inspection on 25th April 2019 the Landlord's agents submitted a report from Kerelaw Building Preservation dated 21st May 2019 which was in connection with treating the dampness in the wall between the hallway and the bathroom.

11. The Landlord's agents advised the Tribunal that the Tenant had not left the Property and that there were difficulties in getting access.

12. On 12th June 2019 the members of the tribunal considered matters and noted that the Landlord would have difficulties in exercising access for the contractor to carry out the work to deal with the dampness. They considered that if they received confirmation and vouching for the work detailed in the report by Kerelaw Building Preservation dated 21st May 2019 they would be minded to issue a certificate of compliance in respect of the work required by the repairing standard enforcement order. In view of the work already carried out to implement the repairing standard enforcement order, the members of the Tribunal considered it reasonable to vary the time for the work required to be completed. It determined that the Landlord be given until 31st August 2019 to comply with the repairing standard enforcement order.

The tribunal determined to vary the repairing standard enforcement order in the following terms:

The Landlord is to complete the works necessary to implement the repairing standard enforcement order by 31st August 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.

M J McAllister

✓ Martin J. McAllister, ¹
Legal Member, First-tier Tribunal for Scotland
17th June 2019