

Housing and Property Chamber

First-tier Tribunal for Scotland



FOURTH NOTICE OF VARIATION AND STATEMENT OF DECISION TO VARY THE REPAIRING STANDARD ENFORCEMENT ORDER UNDER SECTION 25 OF THE HOUSING (SCOTLAND) ACT 2006 (“THE ACT”).

Chamber Ref: RP/HPC/RP/18/0231

THE PROPERTY:

46, Fort Street, Ayr KA7 1DE being All and Whole: (I) 2 storey house at 46 Fort Street, Ayr, part of the subjects referred to in Disposition in favour of William Auld, recorded in the Division of the General Register of Sasines applicable to the County of Ayr on 12 November 1902 and (II) offices at 48 Fort Street, Ayr, referred to in Disposition in favour of Ayr Tyre Factors Limited, recorded in the said Division of the General register of Sasines on 4 January 1962.

THE PARTIES:

Mr Douglas Swan, residing at 46 Fort Street, AyrKA7 1DE (“the tenant”)

and

Mrs Sally Ward, Ward Properties, Allestree Mews, Southwood, Troon KA10 7EL, per her agent Mr Colin Duck, Solicitor, The McKinstry Company, Queen’s Court House, 39 Sandgate, Ayr KA7 1BE (“the landlord”)

THE TRIBUNAL:

David M Preston (Legal Chair) and Donald Wooley, Surveyor (Ordinary Member)

Decision:

The tribunal hereby:

- 1. Cancels the re-inspection scheduled for 23 May 2019; and**
- 2. Further varies the Repairing Standard Enforcement Order dated 9 April issued on 12 April, both 2018 by extending the time limit specified therein for the works to be completed to a date six weeks from the date of issue of this Third Notice of Variation.**

Background:

1. On 27 March 2019 the tribunal issued a third Variation to extend the time limit for the landlord to carry out the outstanding works specified in the RSEO dated 9 April 2018 until 9 May 2019.
2. On 8 May 2019 the landlord's agent applied on behalf of the landlord for a further variation of the time limit within which the works are to be carried out. The application explained the steps which had been taken to carry out the works and the reasons for it not having completed within the existing time limit.
3. On 21 May 2019 the landlord's agent submitted further information regarding the reasons for non-completion of the works. In particular he advised that following application FTS/HPC/RE/3484, a warrant has now been obtained to allow access to the property for the landlord to carry out the works. It is anticipated that the powers granted under the warrant will be exercised in mid-June.
4. The tribunal also noted an email from the tenant dated 17 May 2019 in which he confirmed that there has been no progress since the tribunal last year.
5. In the light of the information received, the tribunal can see no benefit from proceeding with the scheduled re-inspection report and has determined to vary the RSEO to the effect of extending the time limit to allow the powers under the warrant to be exercised and for the works to be completed.

In terms of section 46 of the Tribunals (Scotland) Act, 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.

C D Preston

22 May 2019