

# Housing and Property Chamber First-tier Tribunal for Scotland



## REPAIRING STANDARD ENFORCEMENT ORDER

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

**Parties:** Ms Emma Kelly now formerly residing at 6E Macewan Place, Kilmarnock, KA3 7ER ("the Tenant") and represented by Miss Claire Strong, Shelter, 116 Osborne Street, Glasgow G1 5QH and

Stewart Hale and Mrs Janet Hale residing some time 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 15 February 2019, the First-tier Tribunal for Scotland determined that the Repairing Standard Enforcement Order imposed by it on 18 September 2018 be varied further, now varies the Repairing Standard Enforcement Order as follows:

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

In Witness Whereof these presents are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 15 February 2019 before this witness:-

K Moore

ABIGAIL THOMSON  
GLASGOW TRIBUNALS CENTRE  
20 YORK STREET  
GLASGOW  
G2 8GT

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### First-tier

### Tribunal for Scotland (Housing and Property Chamber)

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

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

**Parties:** Ms Emma Kelly now formerly residing at 6E, Macewan Place, Kilmarnock, KA3 7ER ("the Tenant") and represented by Miss Claire Strong, Shelter, 116 Osborne Street, Glasgow G1 5QH and 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 and Decision and Variation of Repairing Standard Enforcement Order both dated 12 December 2018 in respect of the Property

### Background

1. By application comprising an application form and supporting copy emails and correspondence between and amongst the parties and their respective agents and representatives received on 20 June 2018 ("the Application"), the 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 Reinspection 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.*
- 4. Mrs. Hale of the Landlords emailed the Tribunal on 31 January 2019 to advise that works required by the RSEO remain incomplete and requested further time to comply. Mrs Hale confirmed to the Tribunal that the Property remains unoccupied.*

#### **Decision of Tribunal and reasons for decision**

- 5. The Tribunal, having regard to the Landlords' request and having regard to the fact that it appeared to the Tribunal that the Property was unlet and so no tenant appeared to be prejudiced, agreed that, in the interests of justice, it was right and*

proper to vary the RSEO to allow the Landlords further time to comply with the RSEO, and so the Tribunal varied the RSEO.

6. The decision of the Tribunal is unanimous.
7. **The Landlords are 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 15 February 2019