

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**STATEMENT OF DECISION: Section 24 (1) of the Housing (Scotland) Act, as amended**

**Chamber Ref: FTS/HPC/RP/17/0117**

**Title no: MID95377**

**57F MacBeth Moir Road, Musselburgh EH21 8DQ ("The Property")**

**The Parties:-**

**Ms Anna Kulig, residing at 57F MacBeth Moir Road, Musselburgh EH21 8DQ ("the Tenant")**

**Mr Gary Patrick O'Donnell, residing at 39c Caiystane Gardens, Edinburgh EH10 6TB ("the Landlord")**

**Tribunal Members: Richard Mill (Legal Member) and Susan Napier (Ordinary Member)**

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the Property concerned, and taking account of the all representations received, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

### **Background**

Reference is made to the determination of the Tribunal dated 13 June 2017 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and to the Repairing Standard Enforcement Order ("the RSEO") also dated 13 June 2017 confirming that the Landlord had failed to ensure that the Property meets the repairing standard in terms of Section 13 (1)(a), (b) and (c) of the Act.

The RSEO required the Landlord to undertake works as is necessary for the purposes of ensuring that the Property concerned does meet the repairing

standard and that any damage caused by the carrying out of work in terms of the said Order is made good.

In particular, the Tribunal required the Landlord:-

- “1. To instruct a roofing contractor to inspect and survey the roof, ridges, chimney and gutterings above the Property and to produce a written report; and, if necessary, to carry out works recommended including any renewals or repairs so as to ensure that there is no water ingress into the Property.
2. To instruct a suitably qualified tradesman to carry out a repair to the front door of the Property so as to ensure that the door can be secured and locked with the use of the main door lock, in addition to the Yale lock provided, by ensuring that the metal doorkeeper affixed to the doorframe is fitted and secured correctly.
3. To instruct a qualified electrician to provide an Electrical Installation Condition Report (EICR) on the condition of the electrics within the Property providing specific commentary upon the installation and safety of the electrical shower within the bathroom and the halogen lights within the front bedroom to the Property; and any work required should be undertaken to ensure that there are no C1 or C2 recommendations.
4. To instruct a suitably qualified tradesman to survey the windows in the Property and to overhaul and repair same; specifically undertaking the following:-
  - i. To ensure that the new window unit installed in the living room of the Property in June 2016 is adjusted or sealed to ensure that there are no draughts around the frame.
  - ii. To repair or replace the double glazed units in the front bedroom of the Property to ensure that they are both wind and waterproof, and to ensure that the windows can be securely locked.
  - iii. To ensure that the glass pane in the bathroom window is suitably sealed along the bottom within the frame.
5. To instruct a suitably qualified tradesman to repair or replace the plug in the bathroom sink so as to ensure that the basin can be filled with water and thereafter drained.
6. To instruct a suitably qualified tradesman to repair or replace the under the counter freezer within the kitchen of the Property.

7. To instruct a tradesman to provide a watertight seal to the white cable which enters the corner of the living room at floor level from the balcony.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice and evidenced to the Tribunal."

A re-inspection of the Property was arranged to take place on 18 August 2017 by the Ordinary Member of the Tribunal. A copy of the re-inspection report was issued to parties thereafter.

It was identified that the Landlord had made no effort to carry out any of the works required in terms of the Repairing Standard Enforcement Order. He has made no communication with the Tenant, nor with the Tribunal.

The Tenant confirmed by way of Notice dated 5 September that she did not seek a hearing prior to the Tribunal determining the matter further. She made representations suggesting that a Rent Relief Order to the extent of 50% be granted. The Tribunal agrees that a Rent Relief Order is appropriate as the Landlord's failings impact upon the Tenant's enjoyment of the property. The issues however are such that a reduction in the rent of 30% is proportionate and accordingly the Tribunal makes such an Order.

No information was available which would justify affording the Landlord a further opportunity to carry out the works, and the outstanding issues originally identified remain outstanding. There has been no compliance. The Landlord has failed to comply with the Repairing Standard Enforcement Order.

### **Right of 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.

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(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road,

Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on  
12 September 2017 before this witness:-

**R Mill**

\_\_\_\_\_ Legal Member

\_\_\_\_\_ Witness

MARGARET JOHNSTONE MURRAY Name

69-71 DALRY ROAD Address

EDINBURGH

EH11 2AA

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**RENT RELIEF ORDER under Section 27 of the Housing (Scotland) Act 2006 as amended ("the Act")**

**Chamber Ref: FTS/HPC/RP/17/0117**

**57F MacBeth Moir Road, Musselburgh EH21 8DQ  
("The House")**

**The Parties:-**

**Ms Anna Kulig, residing at 57F MacBeth Moir Road, Musselburgh EH21 8DQ  
("the Tenant")**

**Mr Gary Patrick O'Donnell, residing at 39c Caiystane Gardens, Edinburgh  
EH10 6TB  
("the Landlord")**

### **NOTICE TO ("the Landlord")**

Whereas in terms of its decision dated 12 September 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Tribunal.

The Tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 30% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act. To ascertain the last date on which the decision can be appealed, please refer to the information note on appeals and reviews, a copy of which is attached.

**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.

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

**R Mill**

Signed

Legal Member

Date 12 September 2017