

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

Chamber Ref: FTS/HPC/RP/17/0045

Title no/Sasines Description: G/L, 87 Dens Road, Dundee, DD3 7HU, being the Subjects registered in the Land Register of Scotland under Title Number ANG31339 ("the Property")

The Parties:-

Miss Danielle McKay, formerly residing at the property ("the Tenant")

Mr Paul Paterson, residing at 51 Park Avenue, Enfield, EN1 2HH ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") having determined on 31 August 2017 that the RSEO relative to the property dated 25 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 the completion of the work required by the Order is extended until 31 October 2017.
2. The steps which the Tribunal require the Landlord to take in complying with the Order are amended as follows:-
 - (a) To carry out such re-pointing to the brickwork at the rear of the property as may be required to put it in a reasonable state of repair;
 - (b) To carry out such further repairs to the brickwork at the rear of the property as may be required to prevent the ingress of moisture to the bedroom.

Sub-section 25(3) of the Housing (Scotland) Act 2006 as amended 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.

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 other will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents typewritten on this and the preceding page are executed by Graham Harding, legal member of the Tribunal at Perth on 11 September 2017 in the presence of the undernoted witness.

G Harding

Witness

Legal Member

L Graham

Name in full

Address

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION of the Housing and Property Tribunal under
Section 25 (1) of the Housing (Scotland) Act 2006**

Chamber Ref: FTS8/HPC/RP/17/0045

**Ground Floor Left, 87 Dens Road, Dundee, DD3 7HU
("the Property")**

The Parties:-

**Miss Danielle Mackay, formerly residing at the Property
("the Tenant")**

**Mr Paul Paterson, 51 Park Avenue, Enfield, EN1 2HH
("the Landlord")**

Tribunal Members:-

**Graham Harding (Legal Member)
Geraldine Wooley (Ordinary Member)
("the Tribunal")**

Decision

The Tribunal having made enquiries for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order dated 25 April 2017 (hereinafter referred to as "the RSEO") in terms of Section 26 (1) of the Housing (Scotland) Act 2006 as amended) (hereinafter referred to as "the Act") determined that the works specified in the RSEO have not yet been completed to the satisfaction of the Tribunal but improvements having been made varies the RSEO and gives the Landlord until 31 October 2017 to complete the outstanding works.

Reasons

Reference is made to the RSEO dated 25 April 2017 which required the Landlord to carry out the works specified therein by 31 May 2017 and which was in the following terms:-

- (a) To carry out such re-pointing to the brick-work at the rear of the property as may be required to put it in a reasonable state of repair;

- (b) To repair or replace the plasterwork in the kitchen;
- (c) To monitor the damp levels in the kitchen and rear bedroom and when they reach an acceptable level re-decorate to remove signs of damp;
- (d) To carry out such further works as may be required to prevent as far as possible access to the property by rodents; and
- (e) To repair or replace the rear bedroom window so that it operates properly and is wind and water tight and inspect the other windows in the property to ensure that they are in reasonable condition and carry out any necessary repairs or replace if required.

The property was thereafter the subject of a re-inspection on 31 August 2017 followed by a Hearing on the same day.

The inspection

At the inspection it was dry and bright. The damp readings in the plasterwork in the kitchen wall were found to have reduced from 16.5 to 8.3 and the plasterwork had been repaired and repainted. There was no longer any evidence of damp in the kitchen ceiling and some repainting had taken place. There had been some external repointing work carried out to the kitchen and bedroom wall but the standard and extent of the work was poor. There was spalling to individual bricks. The rear bedroom window was found to be in good working order and operating satisfactorily. There was no significant evidence of rodent infestation. There was however significant damp readings in the rear bedroom wall to the right of the window.

The Hearing

The Landlord attended the Hearing along with Mr Sean Connell. The Landlord confirmed that Mr Connell was the new Tenant to the Property and that a Tenancy Agreement had been signed on 2 July 2017, however Mr Connell had not moved in to the property. The Tribunal explained to the Landlord that it was a criminal offence to rent out the property to a new Tenant whilst the RSEO was in force. The Landlord said that he had not been aware of this despite it being clearly stated on the RSEO. The Landlord however explained that as the Tenant had not moved in to the property he was not taking any rent for the property. The Landlord said that he understood that he could not accept rent for the property as long as the RSEO was in force.

The Landlord accepted that further work was required to the Property to deal with the continuing damp in the rear bedroom wall. The Landlord indicated that he thought further work to the exterior pointing and brick-work was required and undertook to carry out further works as soon as possible.

The Tribunal acknowledged that there had been significant improvements made to the property and in the circumstances determined that the Landlord be given until 31 October 2017 to attend to the remaining repairs. The

Tribunal accordingly determines that the RSEO should be varied to allow the Landlord until 31 October 2017 to complete the outstanding works, specifically to carry out such works as may be required to reduce the damp levels in the rear wall to the bedroom, including further re-pointing and repairs to the brickwork as may be necessary.

Summary of the issues

The issue to be determined is whether the Landlord has carried out the work specified in the RSEO to a satisfactory standard.

Findings of Fact

The Tribunal finds the following facts to be established:-

The Tenant has vacated the property. The Landlord has carried out significant repairs and re-decoration but there is still evidence of damp in the rear wall of the bedroom and the pointing to the exterior wall at the bedroom and kitchen is not to a satisfactory standard and repairs are required to the brickwork. The Landlord has undertaken to carry out further repairs.

Reasons for the decision

At the inspection, the Tribunal noted that there were high damp readings in the bedroom and that the pointing to the brickwork and spalling to some bricks was likely to cause further water ingress to the property. The Ordinary Member of the Tribunal took several photographs which form the Schedule attached to this Decision.

The Tribunal proceeded to make a variation of the RSEO.

The Decision of the Tribunal is unanimous.

Right of Appeal

In terms of Section 46 of The Tribunal (Scotland) Act 2014 a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal of 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 appear 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 and where the

Appeal is abandoned or finally determined by upholding the decision, the decision and the Order will be treated as having effect from the day on which the Appeal is abandoned or so determined.

Signed
Graham Harding, Legal Member

Date 11 September 2017



Housing and Property Chamber
First-tier Tribunal for Scotland

G/L 87 Dens Rd Dundee DD3 7HU

RE - inspection and Hearing 31 Aug 2017

1) Damp in plasterwork in kitchen wall



As at 5/04/17 –
reading 16.5



As at 31/08/17 –
reading has reduced to 8.3,
and plasterwork has been repaired
and repainted

2) Damp in kitchen ceiling



As at 5/04/17



As at 31/08/17 – no evidence of damp, and some repainting has taken place

3) Damp in bedroom wall

High damp meter readings were found in the rear bedroom wall to the right of the window



4a) External causes of damp: Pointing to kitchen/ bedroom wall



As at 5/04/17



As at 31/04/17 – some repointing carried out, but the standard and extent of the work is poor (see also 3b).

4b) External causes of damp: spalling to individual bricks.



5) Windows (internal): rear bedroom closing mechanism



As at 5/04/17



As at 31/08/17 –
now in working
order