

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/18/1447

Title no/Sasines Description: LAN 117921

52 Howletnest Road, Airdrie, ML6 8AL (“the House”)

The Parties:-

**Miss Kirsty Leung, residing at the House
 (“the Tenant”)**

**Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF
 (“the Landlord”)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) having determined on 16 September 2019 that the **Repairing Standard Enforcement Order** relative to the House dated 25 September 2018 (as already varied by Notice of Variation dated 30 March 2019) should be further varied, the said **Repairing Standard Enforcement Order** 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 **28 October 2019**.

Subsection 25(3) of the Housing (Scotland) Act 2006 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 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

Housing and Property Chamber First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25(1)(a) of the Housing (Scotland) Act 2006

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**Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF
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DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit for the purposes of determining whether the Repairing Standard Enforcement Order (“RSEO”) relative to the House should be varied in terms of Section 25(1)(a) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, agreed that the RSEO should be varied.

The Tribunal comprised:-

Nicola Weir, Legal Member

Nick Allan, Ordinary Member

Background

1. By Application received on 20 June 2018, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of

repair and in proper working order (Section 13(1)(d). Specifically, the Tenant stated "I have informed landlord there is leak from living room coming from bathroom and there is clearly a big cross crack in ceiling which will fall through at some point. You can clearly see the water mark and crack and hole." As to the nature of the work that requires to be done, the Tenant stated that the Landlord "needs to check in bathroom where leak is coming from and fix crack in the ceiling." In connection with the Application, the Tenant also submitted copy tenancy agreement, Form AT5 and proof of notification to the Landlord of the repairs required

2. On 10 July 2018, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral, Inspection and Hearing in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 23 July 2018. In terms of same, representations were to be lodged by 13 August 2018. Neither party lodged any representations.
3. The Tribunal inspected the House on the morning of 12 September 2018. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.
4. Following the Inspection of the House, the Tribunal held a Hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.
5. Following the Hearing, the Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") dated 25 September 2018 in relation to the House. In particular, the Tribunal required the Landlord:-
 - (1) *To obtain and exhibit to the Tribunal a report from a suitably qualified contractor identifying the source of the water leak (s) from the bathroom;*
 - (2) *To rectify said leak(s) by repairing or, as necessary, replacing any fixtures, fittings or appliances to ensure that they are in a reasonable state of repair and in proper working order and to prevent any further water ingress into the living room;*
 - (3) *To repair or, as necessary, replace the surface of the living room wall and ceiling to rectify the hole, cracks and other damage, including staining, caused by the said water ingress and thereafter, to paint or re-decorate same, to provide a satisfactory finish;*
 - (4) *To repair or, as necessary, replace the bathroom floor and floor covering to rectify all water damage and to ensure that the flooring is in a reasonable state of repair and in proper working order; and*
 - (5) *To make good any other damage caused by the carrying out of any of the above works.*

The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within the period of 6 weeks from the date of

service of the RSEO. The RSEO was issued on 28 September 2018 and the period of 6 weeks therefore expired on 10 November 2018.

6. Following further procedure, including a Re-inspection of the House by the Ordinary Member on 29 November 2018 and a further Hearing attended by both parties on 11 March 2019, the Tribunal determined that further time should be allowed for the work to be carried out and that the RSEO should be varied by extending the time for completion of the work until 6 May 2019. A Notice of Variation dated 30 March 2019 in that regard was thereafter issued by the Tribunal.
7. A second Re-inspection of the House was carried out by the Ordinary Member on 3 June 2019 and a copy of his Report (headed "2nd re-inspection photograph Schedule") is attached to this Statement of Decision. Further works had been carried out since the first Re-inspection but not all issues had been resolved. In particular, there were still high dampness readings from sections of the bathroom floor and the living room ceiling and signs of increased damage to the living room ceiling.
8. Further written representations were received from both parties and the the Tribunal considered it appropriate, in the circumstances, for a further Hearing to be convened. This took place at the Glasgow Tribunals Centre on 16 September 2019. The Tenant and Landlord were both in attendance, gave evidence and answered questions from the Tribunal.
9. The Tenant's position was that the works carried out by the Landlord had not resolved the leak(s) and that water was still coming into the living room through the ceiling when the shower or bath were used. The Tenant stated that the living room ceiling was now even more damaged than it had been at the time of the second Re-inspection. She stated that, although the Landlord's contractor had replaced the bathroom suite and bathroom flooring, no one had stripped back the ceiling in the living room to investigate the source of the leak(s). The Landlord's position was that he had spent significant sums having his contractor carry out the bathroom works. He had worked with this contractor before but that contractor has now refused to return to the House. He accordingly arranged for another contractor to attend at the House on 13 September 2019 and that he had found that someone had drilled 3 holes in the trap which serves the shower and bath and that this needed urgently replaced. The Landlord confirmed that the contractor had told him that the water was pouring into the living room and that there is a real concern that the living room ceiling would come down. The Landlord alleged that the Tenant or a member of her family had been responsible for drilling the holes and that the reason for the bathroom works being deliberately sabotaged by the Tenant was that the Tenant was using the repairs issues as justification for withholding rent. The Landlord made reference to separate eviction and rent arrears proceedings which are currently being dealt with by other Members of the First-tier Tribunal but which have been put on hold awaiting the outcome of these proceedings. The Tenant confirmed details of the other proceedings but denied that she or

any other member of her family had drilled holes in the plumbing. She stated that the previous contractor had done this as the water was not draining away properly.

10. The Tribunal explained to the parties that this Tribunal was not privy to the other proceedings currently before the First-tier Tribunal and that, other than a short report from the Landlord's new contractor dated 13 September 2019 confirming his findings that day regarding the drillholes, etc, the Landlord had not produced to the Tribunal any other evidence that he had referred to in his oral submissions to the Tribunal today. In particular, he referred to having photographs and video evidence from his previous contractor of the works done, an invoice from that contractor detailing the works done and the costs of that, an Affidavit from the previous contractor prepared in connection with the rent arrears proceedings and photographs/video evidence of the leak from his new contractor. The Landlord advised that he had emailed some of this information to the Tribunal Administration earlier today. The Tribunal advised that they had not had sight of these documents and that, having had a check made by the Tribunal Clerk, they were still not showing on the system.
11. There followed a discussion as to what the Landlord was intending to do now, if anything, as regards the repairs required to the House. The Landlord confirmed that, given the urgency of the situation, he was intending to have his new contractor attend at the House within the next few days to carry out the repairs necessary to stop the leak(s) and then to have the repairs carried out to the living room ceiling and wall. The Tenant confirmed that she would allow access for this to be done but requested a reasonable amount of notice. The Landlord confirmed that he would like an extension of the time allowed for compliance with the RSEO but stressed that his priority was getting these proceedings concluded so that his rent arrears and eviction proceedings against the Tenant could move forward. He maintained that he would be able to get the necessary works done within a week.
12. In connection with possible further procedure thereafter, the Tribunal requested that the Landlord ensure that he submit all the evidence he had referred to, as well as full details of the further works he is proposing to have carried out to the Tribunal, quoting this case reference. The Tribunal requested that the Tenant also keep the Tribunal informed of further developments and reminded parties that, if the Landlord was unable to secure access to the House for the further works required, that a separate application to the Tribunal for assistance in that regard can be made.

Reason for decision

13. The Tribunal considered the request by the Landlord for additional time to complete the works required by the RSEO and that both parties had indicated a willingness to have the necessary works completed.
14. The Tribunal accordingly considered it reasonable to vary the RSEO by extending the time for completion of the works for a further 6 weeks until 28 October 2019 and proceeded to issue a Variation of the RSEO.

Decision

15. The Tribunal accordingly determined that further time should be allowed for the work to be carried out and that the RSEO should be further varied by extending the time for completion of the work until 28 October 2019
16. The decision of the Tribunal was unanimous .

Right of Appeal

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.

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Signed.....  Date: 10 October 2019
Nicola Weir, Legal Member of the Tribunal

Housing and Property Chamber
First-tier Tribunal for Scotland



2nd re-inspection photograph Schedule

52 Howletnest Road, Airdrie, ML6 8AL

Case Reference: FTS/HPC/RP/18/1447

Date of inspection: 03/06/2019

Time of inspection: 14.00 pm

Weather conditions: Dry and overcast

Present: Mr Nick Allan – Ordinary Member
Miss Kirsty Leung - Tenant



Photo 1 – Front elevation



Photo 2 – Damp Living room ceiling



Photo 3 – Water damaged L/R wall



Photo 4 – New fitted bathroom



Photo 5 – New shower enclosure



Photo 6 – Dampness in floor



Photo 7 – Dampness in floor



Photo 8 – SFRS Hallway alarm



Photo 9 – SFRS landing alarm

Original inspection notes from 12/09/2018 - Below surface dampness readings were obtained from the living room wall section visibly affected by water ingress. These readings fell within the 170-200 range, thereby constituting a risk to timber.

1st Re-inspection note - The levels of dampness on the wall remain the same.

2nd Re-inspection note – This section of wall is now dry, but remains damaged. Photo 3 refers.

Original inspection notes from 12/09/2018 - No dampness readings were recorded from the living room ceiling, despite the visible staining on the ceiling surface.

1st Re-inspection note – The ceiling remains dry.

2nd Re-inspection note – Significant below-surface damp readings were obtained in the order of 300-500 constituting a risk to timber. A number of large cracks are also now opening up. Photo 2 refers.

Original inspection notes from 12/09/2018 - Below surface dampness readings were obtained from the bathroom floor. These ranged from 250 (nearest to the shower enclosure) to 600 (nearest to the bathroom door), thereby constituting a risk to timber.

1st Re-inspection note – The highest dampness readings were obtained from the floor immediately adjacent to the shower enclosure. These

ranged from 300-600, and there continues to be a risk to timber at this location.

The level of dampness in the floor section adjacent to the bathroom door has fallen considerably, and no longer constitutes a risk to timber. The Tenant indicated that the Shower has been used more sparingly since the date of the original inspection.

2nd – Reinspection note – The bathroom has been re-fitted and a new floor covering laid. Photos 4 & 5 refer. Slightly reduced below-surface dampness readings of 260 were obtained from the floor area immediately adjacent to the new shower enclosure which means there continues to be a risk to timber at this location. Photo 6 refers.

The section of flooring adjacent to the bathroom door now produces a significantly lower damp reading of 140, suggesting that it is continuing to dry out. Photo 7 refers.

Original inspection notes from 12/09/2018 - The battery operated smoke detector in the hallway was inoperative.

1st Re-inspection note – The smoke detector remains inoperative.

2nd – Reinspection note – A battery operated smoke detector has been fitted by the Scottish Fire and Rescue Service. Photo 8 refers.

Original inspection notes from 12/09/2018 - The battery operated smoke detector on the landing was missing except for its baseplate.

Re-inspection note – The position remains the same.

2nd – Reinspection note - A battery operated smoke detector has been fitted by the Scottish Fire and Rescue Service. Photo 9 refers.

First-tier Tribunal
Housing and Property Chamber – 13th June 2019

