

# 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 under section 26 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/17/0195**

**Property at 100 Argyll Road, Kinross, KY13 8BL  
("The house")**

**The Parties:-**

Miss Mhairi Stewart, residing at 100 Argyll Road, Kinross, KY13 8BL ("the Tenant")

Mrs Aileen McDonald, residing at Nether Common East, Rait, Perthshire, PH2 7RU  
("the Landlord")

**The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr David Godfrey	-	Ordinary Member

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 29 July 2017 and accordingly made a Rent Relief Order under section 27 of the Act. The Tribunal further determined that notice of the failure be served on the Local Authority in which the house is situated.

**Background**

1. Reference is made to the decision of the Tribunal dated 29 July 2017 which concluded that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in that she had failed to ensure that the house met the Repairing Standard. On the same date the Tribunal issued a RSEO in respect of the property. The works required by the RSEO were:-
  - (a) Repair or replace the electric panel heaters in the front and back bedroom and the wall heater in the bathroom;
  - (b) Repair or replace the switch for the immersion heater in the kitchen;

- (c) Install smoke and heat detectors in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under section 2 – Fire, sub-section 2.11 Communication.
- (d) Following completion of the works at (a), (b) and (c), produce an electrical installation condition report by a suitably qualified electrician confirming that the electrical installations within the House are in safe condition and in proper working order;
- (e) Replace the floor coverings in the entrance vestibule; and
- (f) Remove and treat the black mould in the vestibule and front bedroom and redecorate the affected areas;

The RSEO required the landlord to complete the works within two months of the date of service of the order.

- 2. On 30 October 2017 the Ordinary Member re-inspected the property on behalf of the Tribunal. The Tenant was present and allowed access. The Landlord was not present. The Ordinary Member noted that none of the works required by the RSEO had been completed. The Ordinary Member produced a re-inspection report which is attached herewith and referred to for its terms.
- 3. Following the re-inspection the Tribunal wrote to the parties with a copy of the re-inspection report and invited them to make written representations. The Tenant responded to advise that she agreed with the findings of the re-inspection report and considered a reduction in rent appropriate due to the nature of the works required. The Landlord did not respond. The Tribunal was satisfied that there was sufficient information and material upon which to reach a fair determination of the matter without requiring a further oral hearing.

### **Reasons for decision**

- 4. The Tribunal accepted the terms of the re-inspection report. No representations had been received from the Landlord disagreeing with its content. It was apparent that the Landlord had failed to complete any of the works required by the RSEO. Given the Landlord's lack of response throughout the process, the Tribunal had no confidence that she had any intention of complying with the order. The Tribunal was therefore satisfied that there was no justification for a variation of the order under section 25(3) of the Act. The Tribunal concluded that in view of the Landlord's failure to comply with the order, notification should be given to the Local Authority in terms of section 26 of the Act.
- 5. The Tribunal thereafter had regard to section 27 of the Act and whether it should make a Rent Relief Order. Taking into account the terms of the order, the Tribunal took the view that the majority of the works required were affecting the amenity of the house and therefore affecting the Tenant's enjoyment of the house. However of significant concern was the lack of smoke detectors which in

the view of the Tribunal could have potentially lethal consequences for the Tenant and her family. The Tribunal therefore determined that a Rent Relief Order was appropriate and that relief at the rate of 90% reflected both the loss of amenity and risk to life. The Tribunal proceeded to make a Rent Relief Order to that effect.

6. The decision of the Tribunal was unanimous.

**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.**

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

Ruth O'Hare  
Chairperson

15 December 2017

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

**RENT RELIEF ORDER in terms of section 27 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/17/0195**

**Property at 100 Argyll Road, Kinross, KY13 8BL  
("The house")**

**The Parties:-**

Miss Mhairi Stewart, residing at 100 Argyll Road, Kinross, KY13 8BL ("the Tenant")

Mrs Aileen McDonald, residing at Nether Common East, Rait, Perthshire, PH2 7RU  
("the Landlord")

**The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mr David Godfrey	-	Ordinary Member

**NOTICE TO:-**

Mrs Aileen McDonald, residing at Nether Common East, Rait, Perthshire, PH2 7RU  
("the Landlord")

In terms of its decision dated 15 December 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 Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house. The Tribunal therefore 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 equating to 90% of the monthly rent which would, but for the order, be payable. The rent reduction shall take effect twenty eight days after the last date on which the decision to make the Rent Relief Order may be appealed.

**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 Ruth O'Hare, Chairperson, 2 Mill O'Forest Grove, Stonehaven, AB39 2GH, chairperson of the Tribunal at Aberdeen on 15 December 2017 before this witness:-

[Redacted]

\_\_\_\_\_ witness

**R O'Hare**  
[Redacted]

\_\_\_\_\_ chairperson

Lorna Dibble, c/o Aberdeenshire Council,  
Woodhill House, Westburn Road, Aberdeen