## Housing and Property Chamber

First-tier Tribunal for Scotland

First-tier Tribunal for Scotland (Housing and Property Chamber)
Notice of Variation of Repairing Standard Enforcement order:
Housing (Scotland) Act 2006 : Section 25(1)
Chamber Ref: PRHP/RP/15/0332
Title no: AYR25741
2 Afton Place, Ardrossan, KA22 7JD
("The House")
The Parties:-
Mr Jamie McFarlane
residing at the House
("the Tenant")
Mr John Stevenson, 9 Auchenharvie Road, Saltcoats, KA21 5RJ (represented by his agent Property Matters, 97 John Finnie Street, Kilmarnock, KA1 1BG ("the Landlord")

NOTICE TO
Mr John Stevenson

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determines that the repairing standard enforcement Order relative to the Property dated 18th March 2016 and subsequently varied should be further varied with effect from the date of service of this Notice in the following respect:-

The period allowed for the completion of the work required by the repairing standard enforcement order is is extended until four weeks after service of this Notice of Variation.

Section 25(3) of the Housing (Scotland) Act 2006 does apply in this case.

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 on this and the preceding page are signed at Kilwinning on $7^{\text {th }}$ March 2017 by Martin Joseph McAllister, solicitor, before Audrey Boylan, 83 Main Street, Kilwinning

# Housing and Property Chamber <br> First-tier Tribunal for Scotland 

First-tier Tribunal for Scotland (Housing and Property Chamber)<br>Statement of Decision : Housing (Scotland) Act 2006 : Section 24(1)<br>Chamber Ref: PRHP/RP/15/0332<br>Title no: AYR25741<br>2 Afton Place, Ardrossan, KA22 7JD<br>("The House")<br>The Parties:-<br>Mr Jamie McFarlane residing at the House ("the Tenant")

Mr John Stevenson, 9 Auchenharvie Road, Saltcoats, KA21 5RJ (represented by his agent Property Matters, 97 John Finnie Street, Kilmarnock, KA1 1BG ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determines that the Repairing Standard Enforcement Order relative to the Property dated 18th March 2016 and subsequently varied 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 respect:-

The period allowed for the completion of the work required by the order is extended until four weeks after service of the Notice of Variation.

## Background

This application had been dealt with by the private rented housing panel and a committee comprising Martin J. McAllister, legal member and George Campbell, surveyor member. Since $1^{\text {st }}$ December 2016 the application has been dealt with by The First-tier Tribunal for Scotland (Housing and Property Chamber) and the members of the tribunal dealing with it are Martin J. McAllister, solicitor, legal member and Carol Jones, surveyor, ordinary member.

A repairing standard enforcement order (RSEO) dated $18^{\text {th }}$ March 2016 had been made in the following terms:
(One) The Landlord is to repair or replace windows throughout the Property to ensure they are draught free and to eliminate internal condensation within the window units. The Landlord is required to produce a report from a suitably qualified window installer confirming that the windows are fit for purpose.
(Section 13 (1) (a) of the 2006 Act).
(Two) The Landlord is required to produce a report from a suitably qualified heating engineer confirming that the boiler and associated central heating system is in proper working order to provide effective heating throughout the Property.
(Section 13 (1) (c) of the 2006 Act).
(Three) The Landlord is required to repair the wall mounted kitchen cupboard and ensure that it is properly fixed to the wall. (Section 13 (1) (d) of the 2006 Act) (Section 13 (1) (d) of the 2006 Act).
(Four) The Landlord is to produce an electrical installation condition report prepared by a suitably competent person confirming that the electrical system within the Property is in a safe and efficient condition. This report should confirm that all lights in the property are functioning.
(Section 13 (1) (c) of the 2006 Act).
(Five) The Landlord is to repair or replace the extractor fan in the bathroom. (Section 13 (1) (d) of the 2006 Act).
(Six) The Landlord is to install a heat detector and a carbon monoxide detector to comply with current regulations.
(Section 13 (1) (f) and (g) of the 2006 Act).

The RSEO had been varied on three occasions to allow the Landlord more time to comply with its terms. The ordinary member re-inspected the property on 7 December 2016 and the re-inspection report is attached to this decision. Following representations from the parties the tribunal determined that the House should be inspected again prior to a further hearing to ascertain whether or not the RSEO has been complied with. The Tenant submitted representations to the effect that the House is not of a satisfactory standard and sought a rent relief order. The Tenant also intimated that he had been served with notice to quit.

An inspection was carried out on $20^{\text {th }}$ February 2017.
The tenant was present and was supported by Evelyn McCormick.

The Landlord was present and was accompanied by Mr John Dolan and Nicole Carr of Property Matters.

## Findings on Inspection

1. Glazing has been renewed on some windows and some complete window units had been replaced. No evidence of condensation was noted between the glazing and there was no evidence of draughts from the windows or from the window frames. The quality of work on windows that have been repaired is not good. There is evidence of ill fitting seals and poor workmanship.
2. The wall mounted kitchen unit has been repaired. It appears solidly fixed to the wall.
3. There is a functioning extractor fan in the bathroom.
4. There are functioning carbon monoxide, heat and smoke detectors to comply with current regulations.
5. The switch for the electrical shower is at the back of the downstairs cupboard.

6 . There is a double socket in the hall which is disconnected and is not functioning.
A schedule of internal and external photographs is attached.

## The Hearing

Following upon the inspection, a Hearing was held in Ardrossan Civic Centre. The Tenant was present and was accompanied by Ms Evelyn McCormick. The Landlord was present and was accompanied by Mr John Dolan and Ms Nicole Carr of his agents, Property Matters.

The tribunal identified the issues to be determined. Items Three, Five and Six of the RSEO had been complied with. The tribunal had before it a copy of an Electrical Installation Condition Report dated $15^{\text {th }}$ May 2016. The certificate states the overall assessment of the electrical installation appears to be satisfactory. A copy of the Report is attached to this Determination.

The tenant and his representative stated that there are still issues with the electrical installations in the House. The tenant stated that the system "trips" if he uses certain appliances at the same time. Ms McCormick said that it is not an everyday occurrence. The Landlord said that the electrician had checked matters and could find no fault. The Tenant said that the double socket in the hall had never worked.
Ms McCormick said that the location of the shower switch is inconvenient. The Tenant indicated that the lights in the House work although he said that bulbs blow.

The tribunal had before it a copy of a letter from Arco Property Maintenance dated $3^{\text {rd }}$ November 2016 which stated "Fitment of new UPNC windows, all work carried out by our company Are wind and water tight."
Ms McCormick gave detailed evidence on why she thought the windows are still defective. She said that there are draughts from around the windows. She said that
she did not think that the young installer involved in the work had been competent. She said that the work was carried out by a locksmith and the Tenant produced a card which the window contractor gave him and which relates to work as a locksmith rather than window contractor. Mr Dolan said that the contractor does both window installation and locksmith work. Ms Carr said that Arco had provided a letter confirming that the windows are wind and draught proof. Mr Stevenson said that he thought the windows were fine and that he was satisfied with the work which had been carried out.

The Tenant and Ms McCormick said that the radiators are not satisfactory. They said that, in particular, upstairs radiators are not providing consistent heat. Ms McCormick said that the radiator on the landing does not heat at all. The Landlord was referred to the terms of the RSEO and, in particular, the terms set out in item Two of the Order. The Tenant and his Agents said that a Gas Safety Record is current for the property and that this showed that the heating system is in working order. The tribunal had before it a copy of a Gas Safety Record dated 9 July 2015 which states the boiler was tested at that time and is "safe".

Ms McCormick asked the tribunal to find that the House is not of a satisfactory standard.

## Deliberations

The tribunal considered the evidence of parties and what it had found at inspection. It considered that there are three possible matters outstanding in respect of the RSEOthe windows, the electrical installation and the heating system.

From the inspection it is clear that the standard of work carried out in repairing or replacing windows is not good. It is not of a high standard but what the tribunal had to determine was whether or not the House met the repairing standard in terms of the 2006 Act. It found no evidence of condensation or draughts. On balance the tribunal considered that the windows did meet the repairing standard.

The tribunal noted the Tenant's evidence regarding the electrics in the House. It considered that the matter of the non functioning socket in the hall did not bring the house below the repairing standard. It had regard to the terms of the RSEO. The Landlord had produced an Electrical Installation Condition Report which states that the electrician's overall assessment of the installation is satisfactory. The Report raised no issue concerning the lights and the Tenant had stated that the lights are working. The tribunal considered that the Landlord had complied with the RSEO in this regard.

The tribunal accepted the evidence of the Tenant that the central heating system is not working properly. The Landlord had not produced the Report from a heating engineer which was required by the RSEO. From evidence of the Landlord, it appears that he considered that the existence of a Gas Safety Record complied with the RSEO in this regard. The tribunal accepted that such Record is in existence but that it only confirmed that the system was safe as at the date of the report, 9 July 2015. The requirement of the RSEO relates to providing evidence that the heating system provides effective heating throughout the house. In this regard it could be argued that the Landlord had not complied with the terms of the RSEO but, on balance, the tribunal
decided not to issue the appropriate Notice of failure to comply but to allow the Landlord an extension of time to comply with the RSEO. It considered it reasonable that such Report be provided four weeks from service of the Notice of Variation.

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.

Martin J. McAllister, solicitor, Legal member of tribunal.
$7^{\text {th }}$ March 2017

Schedule of photographs taken during the inspection of 2 Afton Place, Ardrossan KA22
7JD by the First-tier Tribunal for Scotland (Housing and Property Chamber) on 20
February 2017.
Reference Number : PRHP/RP/15/0332


External view - Front elevation of property


Living Room window - front


Living Room window - front


Living Room window - rear


Living Room window - front - top light


Living Room window - rear


Living Room window - rear


Kitchen window - internal


Landing window


Living Room window - front - external


Landing window


Kitchen window - external


Living Room window - front - external view of left side top light

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