

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Notice of a Decision to Vary a Repairing Standard Enforcement Order (RSEO):
Housing (Scotland) Act 2006 Section 25**

Chamber Ref: PRHP/RP/16/0248

Title Description: ABN94958

124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("The Property")

The Parties:-

ARNAUD MINETTI and CLEMENT MINETTI, both residing at 124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("the Tenants")

GRAEME MALCOLM DAVID SHARP, c/o CDM Lettings, 86 Great Western Road, Aberdeen, AB10 6QF (represented by Mr Chris Minchin of CDM Lettings) ("the Landlord")

Whereas in terms of their notice to Graeme Malcolm David Sharp, ("the Landlord") the Private Rented Housing Committee having determined on 8 May 2017 that the **Repairing Standard Enforcement Order** relative to the Property dated 26 September 2016 should be varied, the said Repairing Standard Enforcement Order is hereby varied with effect from the date of service of this notice in the following respects:-

- (a) The period allowed for completion of the works required by the RSEO is extended for a further period of four months from the date of service of this notice;

Sub-section 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 seek permission to appeal from the First-tier Tribunal on a point of law only 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.

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 summary conviction to a fine not exceeding level 3 on the standard scale. A

landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ewan K Miller, Chairman, Solicitor, Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Tribunal at Dundee on 27 April 2017 before this witness:-

E Miller

Chairperson

C Robertson

(witness)

Claire Robertson
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 25 (1)

Chamber Ref: PRHP/RP/16/0248

124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("The Property")

The Parties:-

ARNAUD MINETTI and CLEMENT MINETTI, both residing at 124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("the Tenants")

GRAEME MALCOLM DAVID SHARP, c/o CDM Lettings, 86 Great Western Road, Aberdeen, AB10 6QF (represented by Mr Chris Minchin of CDM Lettings) ("the Landlord")

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property determined that the Landlord should be given an extension of four months to the period allowed for completion of the works required in terms of Section 25 (1) of the Housing (Scotland) Act 2006 ("the Act")

Background

- 1. A Decision in relation to the Property was previously issued by the Private Rented Housing Panel on 26 September 2016. On 1 December 2016 the First Tier Tribunal for Scotland (Housing and Property Chamber) assumed the work of the Private Rented Housing Panel and accordingly the Tribunal now has jurisdiction.**
- 2. Reference is made to the said Decision of the Committee dated 26 September 2016 which determined that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act and that he had failed to ensure that the Property met the repairing standard. The works required by the RSEO were:-**
 - (a) To carry out such works as are necessary to the larger building of which the Property forms part in order to render it properly wind and watertight and free from water/damp penetration, followed by internal rectification works to the affected areas around the lounge window; and**

- (b) To carry out appropriate works to the main bedroom and ensuite bathroom to reduce the incidence of mould build-up including, without prejudice to the foregoing generality, the cleaning of mould from the windows and the application of fungicidal solution and mould resistant paint.

The RSEO gave the Landlord a period of three months from the date of service of the RSEO to carry out the works.

3. In due course a re-inspection of the Property was arranged and took place on 18 January 2017. The re-inspection was carried out by Mr Angus Anderson, the Surveyor Member of the original Committee and now ordinary member of the Tribunal. Mr Arnaud Minetti was present as was his partner, Ms L Guimaraes. Mr Chris Minchin, agent for the Landlord was again present. A copy of the Surveyor's Inspection Report is annexed to this Decision for information.
4. In relation to the external works, there appeared to be no evidence of any works having been carried out. The Landlord's agent confirmed that this was the case. As had been highlighted at the original inspection and hearing, there was a dispute between the developer and NHBC as to who was responsible for the repair/rectification works that were required to the external fabric of the larger building. This dispute was still ongoing and until such time as it is resolved it was difficult for the Landlord and the agent to progress the necessary communal works.
5. In relation to the internal works which were required to the lounge and bedroom/ensuite windows, it was apparent that areas around the windows had been cleaned internally and been redecorated. There was no longer any evidence of mould, staining from water ingress or blistered plaster. Damp meter readings taken at location as tested previously showed much the same results as before (slightly above average readings). The surveyor member noted that the Tenants are now using a dehumidifier in the main bedroom.
6. Subsequent to the re-inspection report being carried out, the report was circulated to the Parties for comment. In relation to the internal works there seemed to be some debate about exactly when these had been carried out and whether these had been done timeously. However, the Tribunal's primary interest was whether the works had been done to a satisfactory standard. The Tribunal was satisfied that this was the case and therefore the exact timing and extent of the works was a secondary issue.
7. In relation to the exterior works, the Landlord and their agent along with the Factors of the larger development were of the view that the RSEO should be lifted. They did not dispute that the works had not yet been carried out but highlighted that efforts were being made to resolve the issue between Barratts and NHBC and thereafter progress the communal works. They submitted that the RSEO served no purpose.

The Tribunal, consisting of Mr E K Miller, Chairman and Legal Member and Mr Angus Anderson, Surveyor Member considered matters and determined that the RSEO would remain in place. It was accepted that the Property did not meet the repairing standard and that there were issues in relation to water ingress within the larger building. This had impacted on the Property previously and would, almost inevitably, do so again in the future at some point until the communal works were carried out. It was appropriate for the Tribunal to remain involved given the Property did not meet the repairing standard. The Tribunal did not question that the Parties were trying to resolve matters but that did not mean it was appropriate to lift the RSEO.

The Tribunal, in the circumstances, was prepared to vary the RSEO to give the Landlord a further four months to try and resolve matters.

Decision

8. The decision of the Tribunal was to grant the Landlord a further period of four months from the date of this Decision to comply with the RSEO.
9. The decision of the tribunal was unanimous.

Right of Appeal

10. 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.

Effect of section 63

11. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming 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.

E Miller

Signed

Date

Chairperson

18/5/2017

*This is the reinspection report and schedule of photographs referred to in the
decision of 18th May 2017 in respect
of the Property at 124 Dee Village and
prepared on 18th / June 2017*



E Miller

Chairman

**Private Rented Housing Panel (prhp)
Re-inspection report**



Date of inspection: 18/01/2017

Reference Number: PRHP/RP/16/0248

Property: 124 Dee Village, Millburn Street, Aberdeen AB11 6SY

Surveyor: Angus Anderson

Access: 10.30am

Weather: Cold, damp and sunny, with mainly dry weather over the preceding seven days.

In attendance: Mr A Minetti, Tenant, Ms L Guimaraes (Tenant's partner), Mr C Minchin, Agent for Landlord.



Figure 2 Rear Elevation



Figure 3 Lounge/kitchen window to Crown Street elevation



Figure 4 Meter reading (18% as before), repainted surface left hand side (LHS) lounge window



Figure 5 Further meter reading (24%) LHS lounge window, mid level.



Figure 6 Meter reading (19%) RHS lounge window, mid level.



Figure 7 Front elevation - Efflorescence to arched window masonry, as before.



Figure 8 ~En suite shower room



Figure 9- En-suite shower room - Repainted window ingo and frame



Figure 10 Master bedroom window



Figure 7 Master bedroom - repainted window frame