

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Variation of Repairing Standard Enforcement Order
Housing (Scotland) Act 2006 Section 25**

Chamber Ref: FTS/HPC/RP/18/0551

Title no: GLA 7182

Garden Flat, 4 Kensington Road, Glasgow, G12 9LF ("The Property")

The Parties: -

Mr Alexander Thom, formerly Garden Flat, 4 Kensington Road, Glasgow, G12 9LF ("The former Tenant")

Stephanie Ryles, c/o FineHolm Letting Services Ltd, 114 Union Street, Glasgow, G1 3QQ; 6 Sisters Crescent, Drummoyne, NSW 2047; 26 Knockmyle Road, Antrim, Northern Ireland, BT41 1HE ("The Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined on 11 January 2019 that the **Repairing Standard Enforcement Order (RSEO)** relative to the property dated 5 July 2018 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 30 March 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.

In witness whereof these presents typewritten on this and the preceding page are executed by Josephine Bonnar, Solicitor, Legal Member of the Tribunal at Motherwell on 11 January 2019 before this witness:-

G Bonnar

J Bonnar

Witness

Legal Member

Gerard Bonnar

Name in full

1 Carlton Place
Glasgow

Address

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Section 25(1) Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RP/18/0551

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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 property dated 5 July 2018 should be varied in terms of Section 25(1) of the Act, determined that the RSEO should be varied.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Mr Nick Allan, Ordinary Member

Background

1. By application received on 8 March 2018 the former Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) 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").
2. The Application stated that the former Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, and (ii) The installations in the house for the supply of water, gas, and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order. Specifically, the Tenant stated that since December 2017 there has been damp and mould in the property from a leak in the plumbing and that the property was flooded on 6 March 2018 leading to a sunken ceiling and the property uninhabitable.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 8 May 2018. The parties were notified that an inspection and hearing would take place on 15 June 2018.
4. Following service of the Notice of Referral the Tribunal were notified that the Tenant had vacated the property on 31 May 2018. By Minute of Continuation dated 5 June 2018 the Tribunal determined that it would proceed to continue to determine the application in terms of Schedule 2 Paragraph 7(3) of the Act.
5. The Tribunal inspected the property on the morning of 15 June 2018. The letting agent, Leanne Drummond of Fineholm Letting Services attended on behalf of the Landlord.
6. Following the inspection of the property the Tribunal held a hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow. The letting agent, Leanne Drummond attended and gave evidence on behalf of the Landlord.
7. Following the hearing the Tribunal proceeding to issue a Repairing Standard Enforcement Order ("RSEO") in relation to the property. In terms of the RSEO the Landlord is required, (1) to instruct a

suitably qualified damp specialist and building contractor to prepare a detailed survey of the property to identify the cause and full extent of the dampness, damp staining and any remedial action. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant decoration made good, and (2) To instruct suitably qualified contractors to carry out the repairs identified in the report on the property by Advanced Preservation Specialists Ltd dated 20 June 2018 to include a repair to stop water ingress from the property above, and any resultant decoration made good. The works were to be completed within 12 weeks of intimation of the RSEO. The RSEO was issued to the Landlord on 11 July 2018.

8. The Ordinary Member of the Tribunal re-inspected the property on 1 November 2018. Prior to the re-inspection the Landlord's agent notified the Tribunal by email that the work had not yet been carried out as authorisation from the Insurance company had not yet been obtained. She further advised that an inspection by a loss adjuster had been cancelled and not yet re-arranged. Further time for completion of the work was requested.
9. At the re-inspection the Ordinary Member noted improved damp meter readings in the living room cupboard and bathroom wall. There was no change to the damp meter reading in the boiler cupboard. The ceiling in the lower bedroom was noted to be drying. A previously damp section of wall in the lower bedroom now appeared dry but another section was still saturated. The property appeared to be unoccupied and not currently habitable. A re-inspection report was issued to the Landlord on 20 November 2018.
10. On 14 December 2018 the Landlord's agent confirmed that the work stipulated in the RSEO has not yet been carried out and that insurance company authorisation is still outstanding, although progress is being made and the all necessary paperwork submitted in connection with the claim.

Reason for decision

11. The Tribunal considered the condition of the property at reinspection and the representations from the Landlord.
12. The Tribunal noted that the Landlord does not dispute that the work specified in the RSEO has not yet been carried out. The explanation provided is that the Landlord has submitted an insurance claim and

is still waiting for the insurance company to authorise the work. Meantime, the Tribunal notes that property has begun to dry out and remains unoccupied. The Tribunal is satisfied that the Landlord is making progress in relation to the repair work and that further time should be given to complete the work.

Decision

13. The Tribunal determined that further time should be allowed for the work to be completed and that the RSEO should be varied by extending the time for completion of the work until 30 March 2019.

14. The decision of the Tribunal is 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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J Bonnar

Signed.. 11 January 2019

Josephine Bonnar, Legal Member