

# 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**

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**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 7 July 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 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.

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 7 July 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

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

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

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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 proceeded 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.
11. On 11 January 2019 the Tribunal determined that the RSEO should be varied by extending the time for completion of the work until 30 March 2019. A variation of the RSEO was issued to the Landlord on 18 January 2019.
12. A re-inspection by the Ordinary Member was arranged for 22 March 2019. Prior to the re-inspection taking place the Landlord's agent requested a postponement. The postponement request was granted. A further re-inspection was arranged for 11 April 2019. A further postponement request was received which stated that the

work was now authorised by the Insurance company. The Tribunal agreed to a postponement, noting that the Landlord intended to seek a further variation of the RSEO and provide information in support of this. No request was received.

13. A further re-inspection was arranged by the Tribunal for 21 May 2019. Again, the Landlord's agent sought a postponement, which the Tribunal refused. The Ordinary Member attended at the property on 21 May 2019. Access was provided by a contractor, instructed by the Insurance company to carry out remedial work to the living room and lower bedroom. The Ordinary Member noted the existence of high moisture readings in the same areas identified at the first inspection namely, the living room, boiler cupboard, kitchen, living room cupboard, bathroom, front and lower bedroom. It was noted that the contractor has commenced work but that this is restricted to two of the affected areas.

14. A report on the reinspection was issued to the Landlord. On 20 June 2019 the Landlord's agent requested a variation of the RSEO seeking a further four months for completion of the work. The agent advised that the property remains vacant and would not be re-let until all repair work is complete. She explained that delays have been caused by a dispute with another flat owner regarding the location of a water tank and a failure by the Insurance company to authorise work. She confirmed that an industrial dehumidifier is in place to assist with drying out and that all work identified in the RSEO would be addressed.

### **Reason for decision**

15. The Tribunal considered the condition of the property at reinspection and the representations from the Landlord.

16. The Tribunal notes, with concern, that the work specified in the RSEO has now been outstanding for almost a year and that repair works have only just commenced. It is also of concern that the contractors are only instructed to carry out repairs to two of the areas affected by water penetration and dampness. However, the Tribunal notes that that work required is extensive, and that it remains unoccupied. It is also noted that the Landlord has confirmed that all of the requirements of the RSEO will be addressed. Tribunal is satisfied that the Landlord is making progress and that further time should be given to complete the work.

## Decision

17. 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 October 2019.

18. The decision of the Tribunal is unanimous

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## 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

..... 7 July 2019

Josephine Bonnar, Legal Member