

Housing and Property Chamber First-tier Tribunal for Scotland



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

Variation of Repairing Standard Enforcement Order (“RSEO”): Housing (Scotland) Act 2006 Section 25

Case Reference FTS/HPC/RP/18/2103

Miss Karen Walker, 50 Wallace Avenue, Stevenston, KA20 4BN (“the Tenant”)

Manpinder Kaur, 1 Langmuir Avenue, Irvine and care of Ayr Estate and Letting Agents, 2 Parkhouse Street, Ayr, KA7 2HH (“the Landlord”)

50 Wallace Avenue, Stevenston, KA20 4BN registered under Title Number AYR65722 (“the Property”).

Tribunal Members: Martin McAllister, Solicitor (Legal Member) and Donald Wooley, Chartered Surveyor, (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) having determined on 5th February 2019 that the repairing standard enforcement order (RSEO) relative to the Property dated 24th October 2018 should be varied, the said RSEO is hereby varied with effect from the date of service of this Notice in the following respects:-

The period allowed for the completion of the work required by the order is extended to 15th March 2019.

Subsection 25(3) of the Housing (Scotland) Act 2006 as amended does 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.

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 the house at any time during which an 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 are executed by Martin Joesph McAllister, solicitor, legal member of the Tribunal, at Kilwinning on 5th February 2019 in the presence of Audrey Boylan, 83 Main Street, Kilwinning.

A Boylan

M J McAllister

Housing and Property Chamber

First-tier Tribunal for Scotland



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Determination: Housing (Scotland) Act 2006: Section 25

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Background

1. By application received by the Tribunal on 17th August 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (the Tribunal) for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act. The Application was accompanied by a number of emails.
2. The Application stated that the Property does not meet the repairing standard set out Section 13 of the 2006 Act. It states that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order and that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. On 24th October 2018 the tribunal made a repairing standard order in the following terms:

The Landlord is to

- 1. Instruct a suitably qualified timber and damp specialist contractor to prepare a report detailing the source of damp, condensation and possible timber decay affecting the bathroom, bedrooms, living room and entrance hall, the extent of any remedial action required, complete all recommended repairs as advised and thereafter redecorate as necessary. (Sections 13 (1) (a) and 13 (1) (b) of the 2006 Act).**
- 2. Repair or replace as necessary any defective bath, shower fittings and bathroom wall linings ensuring that there is a continuous and adequate seal between the bath, shower screen and surrounding wall linings. Thereafter redecorate as necessary. (Section 13 (1) (a) of the 2006 Act).**
- 3. Repair or renew defective door handle at entrance to the property. (Section 13 (1) (b) of the 2006 Act).**
- 4. Provide a current and satisfactory Electrical Installation Condition Report for the Property including PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared by a suitably approved electrician who is either employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property together with copies of documentary evidence in support of the checklist. (Section 13 (1) (c) of the 2006 Act).**
- 5. A suitably qualified electrical contractor should investigate, report on and complete any necessary repairs relating to the intermittent fault in the living room electrical socket, situated to the right hand side of the window, ensuring that it complies with all current regulations. (Sections 13 (1) (c) of the 2006 Act).**
- 6. Repair and or renew as required the defective concrete slab driveway, ensuring that it is in good general condition, fully functional and fit for purpose. (Section 13 (1) (a) of the 2006 Act).**

The Landlord requires to comply with the repairing standard order within two months of service of it on him.

4. On 8th January 2018 the ordinary member of the tribunal inspected the Property the following was noted:

4.1 No timber / damp report had been presented to the Tribunal and none was made available during the re-inspection. The tenant indicated that a company, identified as "Kerelaw Building Preservation" had completed an inspection although she had seen no copy of any subsequent report.

Within the bathroom, where significant damp and possible decay had been previously identified, no access was available to the "sub bath" area following the erection of a bath side panel. Previously identified condensation / damp staining affecting the upper wall area within the bathroom is no longer visible.

Damp staining / condensation previously identified in two upper floor bedrooms remains. At the entrance hall, the wall adjacent to the entry door remains damp.

4.2 All previously defective bath, shower fittings and wet wall linings within the bathroom have been satisfactorily repaired and the bath is now well supported. The surrounding area has been redecorated.

4.3 The front door handle at the entrance to the property remains defective.

4.4 No current Electrical Installation Condition Report (EICR) had been submitted to the Tribunal. During the inspection the tenant exhibited a copy of an (EICR) dated 22 December 2015 on her smart phone, completed at a time the property was vacant, and prepared by a company trading as MM Electrical. She received the report in an email from the landlord / landord's representative on 16 November 2018.

4.5. No report has been provided in relation to the wall mounted electrical socket to the right of the living room window and the ordinary member was therefore unable to confirm that it fully complies with current regulations and is free from defect.

5. The ordinary member noted that the following repairs remain outstanding:

No timber/damp report has been exhibited to the Tribunal providing details regarding the source of damp, condensation and possible decay affecting the accommodation as specified in the RSEO. Visible evidence of damp and / or condensation remains within the property and there is no evidence of any remedial action having been completed at a number of areas.

No timber report has been provided detailing the extent of necessary remedial action below the bath and no supporting invoices or supplementary reports have been produced confirming satisfactory completion of any repairs to that area. Due to the erection of a bath side panel preventing inspection and as a result of the lack of documentary evidence the surveyor could not confirm that the repairs below the bath have been addressed.

The handle at the entrance door remains defective.

No current EICR has been submitted to the Tribunal and no supplementary electrical report has been provided in relation to the electrical socket in the living room.

The concrete slab driveway remains in a poor condition and in need of significant repair.

The Tenant advised the ordinary member that a Notice to Quit had been served on her which required her to leave the Property by 12th March 2019.

6. Subsequent to the inspection on 8th January 2019, the Landlord's agent submitted a report from Kerelaw Building Preservation dated 29th November 2019 which stated that there was saturation of the flooring directly below the bath due as a result of inadequate provision to seal the walls within the shower of the bath. The report stated that the extent of dampness has affected lower walls within the bathroom and adjacent hallway area. The report suggests that the specialist inspect the floor once the bathroom fittings had been removed.

7. Subsequent to the inspection on 8th January 2019, the Landlord's agent submitted an EICR dated 22nd December 2015 which stated that matters were satisfactory.

8. The ordinary member's reinspection report was sent to Ayr Estate and Letting Agents, the Landlord's agents for comment and, in response, they submitted the report from Kerelaw Building Preservation and the EICR.

In the representations dated 18th January 2019 they stated that the Kerelaw Building Preservation report states that the damp readings in the hall relate to the issue from the bathroom and that this has now been resolved. The representations state that the door handle is not defective. The representations state that the repair to the electrical socket is to be carried out on 21st January 2019. The representations state that the driveway has been inspected by a contractor whose advice is that works would not be started until better weather and that roof vents are to be installed.

9. The ordinary member's reinspection report was sent to the Tenant and on 20th January 2019 she submitted representations advising that she had been served with a Notice to Quit. The Tenant stated that she considered that a rent relief order be issued.

10. The members of the Tribunal considered matters in the context of the repairing standard enforcement order which it had made.

10.1. The terms of the report from Kerelaw Building Preservation were noted. The ordinary member noted in his reinspection report that the area under the bath was not accessible and the members of the Tribunal considered that it would require to have evidence that the necessary repairs had been done. It also noted that the issue of condensation was still to be resolved and that roof vents were being fitted.

10.2. The members of the Tribunal accepted that the bath, shower fittings and bathroom wall linings were acceptable.

10.3 The door handle had not been repaired. It remained loose and poorly secured as identified in the original decision and although functional is not in "proper working order" as defined by Section 13(1) (b) of the Housing (Scotland) Act 2006.

10.4 The Electrical Installation Condition Report which had been submitted was current and in acceptable terms.

10.5 The members of the Tribunal noted that the Landlord had arranged for the socket in the living room to be repaired. The members of the Tribunal considered that it would have to be satisfied that this had been done and that it would require to have suitable evidence of this.

10.6 The members of the Tribunal noted what had been stated in representations of the Landlord's agents with regard to the driveway. It was considered that this was a matter of safety and that the Landlord is required to deal with the matter and has had from October 2018 to do so.

11. The members noted that the Tenant considered it appropriate that a rent relief order be made. They considered matters and noted that some works had been done to implement the terms of the repairing standard enforcement order. In all the circumstances the Tribunal considered that it would be reasonable to vary the repairing standard enforcement order to give more time for work required by the order to be completed. It determined that the Landlord would have until 15th March 2019 to implement the terms of the repairing standard enforcement order.

12. Determination

The tribunal determined to vary the repairing standard enforcement order in the following terms:

The Landlord is to complete the works necessary to implement the repairing standard enforcement order by 15th March 2019.

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.

M J McAllister

MARTIN J. McALLISTER,
Legal Member, First-tier Tribunal for Scotland
5th February 2019