

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

Revocation of RSEO under Section 25(1) of the Housing (Scotland) Act 2006 as amended (“the 2006 Act”)

Chamber Ref: FTS/HPC/RP/16/0235

Title no: SLN34525

93 Barclay Way, Knightsridge, Livingston, EH54 8HA (“the Property”)

The Parties: -

Miss Stephanie Bryce and Mr Gordon Forsyth, successors in title to Ms Yohanna Dangata, residing at 93 Barclay Way, Knightsridge, Livingston, EH54 8HA  
 (“the Proprietors”)

Ms Esther Dangata and Ms Yohanna Dangata, present whereabouts unknown, previously residing at 53/1 Stenhouse Gardens, Edinburgh, EH11 3LS and 64 Birrell Gardens, Livingston, care of Express Letting Agency, Peter House, Oxford Street, Manchester, M1 5AN  
 (“the former Landlords”)

Miss Abigail Burke, present whereabouts unknown, previously residing at 93 Barclay Way, Knightsridge, Livingston, EH54 8HA  
 (“the former Tenant”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) hereby certifies that the work required by the **Repairing Standard Enforcement Order (“RSEO”)** relative to the Property, dated 25 September 2016 is no longer necessary. Accordingly, the said RSEO relative to the Property has been revoked.

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 type written on this and the preceding page(s) are executed by Susanne L M Tanner, Queen's Counsel, legal member of the Tribunal,

at Edinburgh (place)  
on 3 September 2019 (date)

in the presence of the undernoted witness:-

Susanne L M Tanner, Q.C.  
Legal member and Chair

witness

David Henderson Tanner name in full

Parliament House address

Parliament Square

Edinburgh EH1 1RF

# 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 2006 Act”)**

**Chamber Ref: PRHP/RP/16/0235**

**Title no: SLN34525**

**93 Barclay Way, Knightsridge, Livingston, EH54 8HA (“the Property”)**

**The Parties: -**

**Miss Stephanie Bryce and Mr Gordon Forsyth, successors in title to Ms Yohanna Dangata, residing at 93 Barclay Way, Knightsridge, Livingston, EH54 8HA (“the Proprietors”)**

**Ms Esther Dangata and Ms Yohanna Dangata, present whereabouts unknown, previously residing at 53/1 Stenhouse Gardens, Edinburgh, EH11 3LS and 64 Birrell Gardens, Livingston, care of Express Letting Agency, Peter House, Oxford Street, Manchester, M1 5AN (“the former Landlords”)**

**Miss Abigail Burke, present whereabouts unknown, previously residing at 93 Barclay Way, Knightsridge, Livingston, EH54 8HA (“the former Tenant”)**

**Decision**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made such enquiries as it saw fit determined that the work required by the Repairing Standard Enforcement Order (“RSEO”) relative to the property dated 25 September 2016 is no longer necessary, the said RSEO is hereby revoked with effect from the date of service of the attached notice.**
- 2. The decision of the tribunal is unanimous.**

**The Tribunal comprised: -  
Susanne L M Tanner Q.C., Legal Member and Chair  
Mr Andrew Taylor, Ordinary Member**

## **1. Procedural background**

- 1.1.** By application dated 30 June 2016 the former Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination of whether the former Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The former Tenant alleged that the Property failed to meet the repairing standard as set out in Sections 13(1)(a, b, c, d and g) of the 2006 Act.
- 1.2.** The former registered proprietor of the Property from 8 May 2006 was Ms Yohanna Dangata, residing at 64 Birrell Gardens, Livingston. The short assured tenancy agreement for the Property dated 17 March 2016 was entered into by Ms Esther Dangata and the former Tenant.
- 1.3.** On 5 August 2016, the PRHP served upon the former Landlords and former Tenant, a Notice of Referral under and in terms of Schedule 2, Paragraph 1 dated 26 July 2016. The parties were notified that an inspection and hearing would take place on 12 September 2016.
- 1.4.** Following an inspection and hearing on 12 September 2016 a Committee of the PRHP decided on 25 September to make a Repairing Standard Enforcement order ("RSEO") in respect of the Property, dated 25 September 2016. The tribunal ordered that the works specified in the RSEO be carried out and completed within the period of 6 weeks from the date of service of the RSEO. The decision and RSEO were published on the tribunal's website and intimated to the former Landlords and former Tenant of the Property.
- 1.5.** On 3 October 2016 the tribunal was advised that the former Tenant had vacated the Property on 28 September 2016.
- 1.6.** The ordinary member of the tribunal carried out a re-inspection of the Property on 6 December 2016. No access was gained to inspect works carried out internally. It was evident that no works had been carried out externally. No written reports or certificates had been received from the former Landlords since the RSEO was intimated. A re-inspection Report dated 7 December 2016 was issued to the Landlords who were advised that any comment regarding the Report should be received by the tribunal on or before 21 December 2016. No response was received from the former Landlords.

- 1.7.** By decision of 31 March 2017, the tribunal decided in accordance with section 26(2) of the 2006 Act that the Landlords had failed to comply with the RSEO. The tribunal served notice of failure to comply on the local authority. No Rent Relief Order ("RRO") was made as the former Tenant had vacated the Property.
- 1.8.** The decision was notified to the former Landlords on 1 June 2017.
- 1.9.** On 4 July 2017, the tribunal reported the former Landlords to Police Scotland in respect of investigation of a potential offence under Section 28(1) of the 2006 Act.
- 1.10.** On 1 December 2017 the Private Rented Housing Panel transferred to the First tier Tribunal for Scotland (Housing and Property Chamber).
- 1.11.** On 23 November 2018 the tribunal undertook a check of outstanding RSEOs in the system and established that the RSEO relative to the Property was outstanding. The tribunal notified Environmental health at the local authority and Landlord Registration Scotland that it is an offence if a landlord 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. The tribunal requested information in relation to the current occupancy of the Property.
- 1.12.** On 28 November 2018 an environmental health technical officer from the local authority advised the tribunal that the Property was up for sale and that he was not aware of its tenancy or occupancy arrangements.
- 1.13.** On 4 March 2019 the Property was sold to the Proprietors, Gordon Forsyth and Stephanie Bryce, formerly of 86 Barclay Way, Livingston, EH54 8HA.
- 1.14.** On 13 June 2019, the tribunal notified the Proprietors that there was an RSEO and provided a copy to them. The Proprietor Mr Forsyth engaged in correspondence with the tribunal, stating that he had been unaware of the existence of the RSEO prior to the tribunal's correspondence. The tribunal checked its internal systems and identified that the RSEO was not registered with Registers of Scotland due to an internal omission in the tribunal's systems.
- 1.15.** On 21 June 2019 the tribunal took steps to register the RSEO with Registers of Scotland.

- 1.16. A re-inspection of the Property was scheduled and the Proprietors were advised of the date and time of the re-inspection.
- 1.17. On 28 August 2019 the ordinary member of the tribunal carried out a re-inspection of the property. A re-inspection Report dated 28 August 2019 was prepared and provided to the Proprietors. During the re-inspection the Proprietors stated to the ordinary member of the tribunal that the Property was occupied by them and their children as their family home and that they had not let out the Property and did not intend to do so in the future. The Proprietors had not been aware of the RSEO at the point of sale and only became aware of the same when notified by the tribunal.
- 1.18. The majority of the works specified in the RSEO to ensure that the Property meets the repairing standard had been carried out either prior to the Property sale, or by the Proprietors. Although the boiler had been replaced and was apparently working at the date of the inspection, there was no report available in relation to the boiler installation or any Gas Safety Certificate.

## **2. Reasons for decision**

- 2.1. The Tribunal considered the condition of the property at the re-inspection and the information provided by the Proprietors of the property. The Tribunal took account of the fact that the Property is not rented to tenants and accepted the statement of the Proprietors that it had not been rented to tenants since the Proprietors purchased the Property in March 2019. The tribunal took account of the fact that the Proprietors occupy the Property as a family home and intend to continue to do so. Most of the work required by the RSEO has been carried out, either by the former Landlords or by the Proprietors. As the Property is not currently a private rented property, the owner is not required by law to obtain Gas Safe Certificate. This part of the order is therefore unnecessary. The tribunal, however, observes that although it is not mandatory for owner occupiers, the tribunal would recommend that the central heating boiler and gas installation be subject to an annual service and safety check carried out by a Gas Safe Registered engineer.
- 2.2. In all of the circumstances the Tribunal concluded that works specified in the RSEO had either been completed or were no longer necessary and determined that the RSEO should be revoked.

## 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.**

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.

Signed..  
Susanne L M Tanner QC  
Legal Member and Chair

..... 3 September 2019