



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 25 (1) of the Housing  
(Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/22/1502**

**Re: Property at 87 Gatehead Road, Crosshouse, Kilmarnock, East Ayrshire, KA2  
0JH (“the Property”)**

**Parties:**

**Mr David Reilly (“the Applicant”)**

**Mrs Irene Fowler, 1 Plann Road, Kilmarnock, KA2 0EN (“the Respondent”)**

**Slater, Hogg and Howison, 3rd Floor, 26 Springfield Court, Glasgow, G1 3DQ  
 (“the Respondent’s Representative”)**

**Tribunal Members:**

**M McAllister (Legal Member) and D Wooley, Chartered Surveyor,  
(Ordinary Member) (“the tribunal”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) determines that the Repairing Standard Enforcement Order relative to the Property dated 5<sup>TH</sup> September 2022 and served on 8<sup>TH</sup> September 2022 should be varied with effect from the date of service of this Notice in the following respect:-**

**The period allowed for the completion of the work required by the order is extended until 31st March 2023.**

**Background**

1. By application dated 18<sup>th</sup> May 2022, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 (1) of the 2006 Act.

2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the Property is not wind and watertight and in all other respects reasonably fit for human habitation, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order and that the Property does not meet the tolerable standard. Specifically, the application states that the Landlord has failed to remedy dampness, mould and condensation in the Property, that there is dampness and mould in the porch, bathroom, living room, bedrooms and kitchen. The application states that the majority of kitchen units are unusable and that mould odour is becoming unbearable.
  
3. On 30<sup>th</sup> August 2022, the Property was inspected by the tribunal and, following a Hearing, a repairing standard enforcement order ("RSEO") was made in the following terms:

The Landlord was required to:

- 3.1 Obtain a detailed report from a suitably qualified timber and damp treatment contractor confirming both the extent and the source of the dampness and mould throughout the property, together with any remedial action necessary to eradicate the problem. The report should include a detailed specification on any additional ventilation required to address the issue in the main bedroom (rear room right), the living room, the kitchen including wall mounted cupboards, and bathroom within the property. The report should be submitted to the Tribunal.
- 3.2 Complete all recommended repairs in accordance with the specification recommended and redecorate as required.
- 3.3 To replace or repair the lining of the kitchen units which are affected by dampness and/or mould.
- 3.4 The works required by the repairing standard enforcement order require to be completed by 31<sup>st</sup> October 2022.

### **Property Reinspection**

4. The members of the tribunal inspected the Property on 29<sup>th</sup> November 2022 and a copy of the ordinary member's inspection summary and schedule of photographs is attached to this Decision. This sets out the works which have

been done and identifies matters which do not comply with the repairing standard as set out in the 2006 Act.

5. The inspection summary states that some of the works have been completed and that there are outstanding items requiring attention. It also notes that the Respondent has not submitted to the Tribunal the report required in terms of the RSEO.

### **Representations**

6. A copy of the inspection summary and schedule of photographs was sent to each party.
7. The Respondent's Representative stated that "the information and recommendation had come directly from Peter Cox and not ourselves." Peter Cox is a timber and damp treatment contractor.
8. The Applicant submitted an email dated 4<sup>th</sup> December 2022 in which he made representations. He did not accept that he had failed to embrace lifestyle changes to address condensation in the Property and said that he has done his best to prevent dampness recurring. He stated that the vents were fitted four days prior to the reinspection. Mr Reilly said that there is still dampness in the walls of the Property.

### **Determination**

9. The tribunal accepted that the Respondent had taken significant remedial action to address issues in the Property. It was disappointed to note that the specialist report which had been a requirement of the RSEO had not been provided to the Tribunal. This is something which will require to be addressed. Without the benefit of further information regarding the specification of works completed and the accompanying documentation, the tribunal cannot arrive at a determination that the RSEO has been complied with.
10. The tribunal noted that some works were completed shortly before the reinspection and that it would be appropriate to allow more time to ascertain whether or not they had been effective. Given the limited time between the date of completion and date of the reinspection, the tribunal is unable to confirm that the works undertaken had resolved the issues addressed in the RSEO. It is possible that the damp identified during the reinspection may have been a residual issue as the benefits of the remedial action had yet to become fully effective.
11. The tribunal resolved to carry out a further inspection of the property by which time the effectiveness or otherwise of the repairs should be more apparent.

12. The tribunal found that, because the Respondent had made satisfactory progress to comply with the RSEO, it was appropriate to vary the the RSEO in terms of section 25 (1) (a) of the 2006 Act. The date by which the RSEO requires to be complied with is varied to 31<sup>st</sup> March 2022.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

**M J. McAllister  
Legal Member  
13<sup>th</sup> December 2022**