

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**STATEMENT OF DECISION** of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 25 (1) of the Housing (Scotland) Act 2006

**Ref: PRHP/RP/16/0119**

Re:- Property at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("**the property**")

Land Register Title No: AYR79158

The Parties:-

Mr John Cameron residing at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("**the tenant**")

And

Mrs Eva Ohnesorge, residing at 62 Ashford Road, Eastbourne, BN21 3TD represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow, PA14 5NU ("**the landlord**")

Tribunal Members

James Bauld, legal member  
Nick Allan, surveyor, ordinary member

### Background

1. On 4<sup>th</sup> April 2016, the tenant applied to the then Private Rented Housing Panel (PRHP) alleging that the landlord had failed to comply with the duties imposed by section 14 (1)(b) of the Housing (Scotland) Act 2006 ("for the 2006 Act"). Following a hearing which took place on 29<sup>th</sup> July 2016, the then Private Rented Housing Committee issued a decision on 15<sup>th</sup> September 2016 and also issued a Repairing Standard Enforcement Order ("RESEO") in respect of the property.
2. In terms of the RSEO, the landlord was ordained to carry out certain works to the property within three months of the date of the order. The works should have been completed by 15<sup>th</sup> December 2016.
3. On 10<sup>th</sup> January 2017 the surveyor member of the tribunal attended at the property to carry out a re-inspection. A report was prepared and photographs were taken. That report was not issued to the parties. Subsequent to the completion of that report, correspondence was received from the landlord's representatives providing copies of certain documents and information regarding certain ongoing repairs.

4. Having considered those documents, the Tribunal (which had now taken over the functions of the Private Rented Housing Panel) determined to issue a variation to the original Repairing Standard Enforcement Order and determined that the landlord should be allowed until 31<sup>st</sup> May 2017 to arrange for the outstanding works to be completed. An appropriate decision narrating the reasons this extension was made and issued to the parties.
5. After 31<sup>st</sup> May 2017, enquiries were made of the parties with regard to the outstanding works. It became clear from correspondence sent by the parties to the office of the Tribunal that the parties were not in agreement that the works had been completed. Accordingly, the Tribunal determined that it should hold a further inspection and a further hearing. Appropriate notice was given to the parties and the inspection and hearing took place on 27<sup>th</sup> July 2017.

#### **Further Inspection and Hearing**

6. The Tribunal members attended at the property on 27<sup>th</sup> July 2017 and inspected the property. The tenant was present during inspection as was the landlord's representative. The landlord's representative was accompanied by Hugh Wark who was the Roofing Manager from C. Hanlon Builders Glasgow.
7. After the inspection a hearing took place at a meeting room within Largs Library.
8. At the inspection it appeared to be agreed by the parties that the vast majority of the works required in terms of the RSEO had been completed. The main item which was in dispute was the requirement in terms of the original RSEO that the landlord should obtain "appropriate reports from a recognised specialist company to establish the extent of the works required to eradicate dampness in the property and in particular the living room and bedrooms of the property and to carry out these works including internal redecoration".
9. During the inspection, the surveyor member of the Tribunal had taken readings using a protimeter. At certain parts of the building especially within the living room and the bedroom, the protimeter recorded moisture levels of 100%, indicating that the affected areas were completely saturated.
10. At the hearing the landlord's representative was asked whether he had obtained the report required by the original RSEO. After extensive discussion it was agreed by the landlord's representative that no such report had been obtained. It appeared that at some point between the initial RSEO being granted and the variation being made that workmen had attended to clear a gutter at the property. It appeared that the landlord's representative had assumed that the clearance of this gutter meant that the source of the dampness within the property had now been eradicated. The landlord's representative had apparently linked the dampness in the exterior walls to the blocked gutters and drainpipe. He had made arrangements for workmen from C. Hanlon to attend at the property to carry out painting work internally but they had not been able to obtain access because the tenant was not available to allow access. The committee questioned the landlord's representative and Mr Wark from C. Hanlon as to whether C. Hanlon had been asked to provide a report. It was clear they had not been. The landlord's representative suggested that he had obtained reports from three different contractors with regard to the source of the dampness and indicated that they had been obtained from three different companies, one in Largs, one in Greenock and one in Saltcoats. No evidence of any such report was provided to the committee.
11. The committee also questioned the landlord's representative with regard to the fact that one of the requirements on the original RSEO was that the gutters should be cleared and vegetation removed from them. It transpired that although this had been done it had not been done at the instruction of the landlord or the landlord's representative. It had apparently been done by the proprietor of the business premises on the ground floor of the tenement property. The landlord's representative indicated that he did not think it was possible for these works to be done without scaffolding being erected. It transpired the works had been done by a contractor attending and using a ladder.

12. The landlord's representative indicated that the landlord was pursuing an eviction action against the tenant and indicated that it was due to call in Kilmarnock on 10<sup>th</sup> August 2017. He indicated it had already six times in court and on each occasion had been continued to allow the Tribunal process to be concluded. In each case it had appeared that the Sheriff had enquired whether the relevant works had been undertaken.
13. The Tribunal asked the parties, whether the Tribunal should exercise its powers to make a Rent Relief Order if the Tribunal determined that the landlord had failed to carry out the works in the Repairing Standard Enforcement Order. The tenant indicated he was happy to leave the matter in the hands of the Tribunal regarding such an Order. The landlord's representative's position was that such an Order should not be made.

## **Decision**

14. The Tribunal carefully reviewed matters and in particular the evidence obtained at the re-inspection.
15. The Tribunal took the view that the landlord had carried out many of the minor tasks set out in the RSEO. It was clear that the hardwired smoke alarm had been provided, the toilet seat had been replaced, the flushing mechanism in the cistern had been repaired, the kitchen flooring had been replaced and appropriate certificates had been obtained in respect of gas safety, energy performance and electrical installation conditions.
16. It was also clear that the vegetation from the gutters had been removed although this had not been done by the landlord.
17. However it was abundantly clear that the landlord had failed completely to obtain the relevant report required by the Tribunal. Despite detailed questioning by the Tribunal the landlord's representative could provide no explanation for the failure to obtain this report in a period exceeding nine months.
18. Accordingly, the Tribunal took the view that the landlord had failed to implement the works required in the Repairing Standard Enforcement Order and was in breach of the Order. In accordance with the relevant provisions of section 25 of the 2006 Act, the committee required to determine whether a Rent Relief Order should be made.
19. The Tribunal took the view that the works required in this RSEO had been outstanding since September 2016. The part of the Order which had not been completed was the obtaining of a report. There was absolutely nothing put forward by the landlord's representative which could explain this failure. The landlord and her representative had had ample time to obtain this report, to produce it to the other party and to have the works done. The Tribunal took the view that the landlord's failure to implement this part of the RSEO was significant and in all the circumstances the Tribunal determined that a Rent Relief Order should be made.
20. The Tribunal carefully considered the level at which a Rent Relief Order should be made. The Tribunal noted that the maximum percentage deduction which could be made was 90%. The Tribunal took the view that the landlord had carried out many of the requirements in the RSEO but the failure to obtain the report was a significant failure. The property was still suffering from significant and ongoing dampness. Accordingly, the Tribunal took the view that 40% was the appropriate deduction from the ongoing monthly rent and accordingly the Tribunal determined to make a Rent Relief Order in those terms.
21. The surveyor member of the Tribunal also produced a re-inspection report in respect of the inspection carried out on 27<sup>th</sup> July 2017 and said report is attached to this decision as an appendix.
22. The decision of the Tribunal was unanimous.

**Right of Appeal**

- 23. 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.
  
- 24. 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 .....  
**J Bauld**  
James Bauld, Chairperson  
**D Jones**  
.....Witness

Date 31 August 2017

# Housing and Property Chamber First-tier Tribunal for Scotland



## Rent Relief Order

### Ordered by the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 27 of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/16/0119

Property: Flat 101, 38 Boyd Street, Largs, KA30 8LE being the subjects registered in the Land Register of Scotland under Title Number: AYR79158 ("The Property")

The Parties:-

Mr John Cameron, residing at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("the Tenant")

and

Mrs Eva Ohnesorge, residing at 62 Ashford Road, Eastbourne, BN21 3TD represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow, PA14 5NU ("the Landlord")

Tribunal Members: James Bauld (legal member), Nick Allan (surveyor, ordinary member)

#### **NOTICE TO Mrs Eva Ohnesorge ("the Landlord")**

Whereas in terms of its decision dated 31 August 2017 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order ("RSEO") in relation to the house made by the Tribunal on 15<sup>th</sup> September 2016.

The Tribunal determined to make a Rent Relief Order ("RRO") in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 40% of the rent which would, but for the Order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the RRO may be appealed under section 64 of the said Act.

**A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the Tribunal is granted, then the effect of the decision and the RRO is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The RRO will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

Signed **J Bauld** ..... Date *31 August 2017*  
James Bauld, Chairperson

**D Jones**

..... Witness  
Donna Jones, Secretary  
7 West George Street, Glasgow, G2 1BA





**2<sup>nd</sup> Property Re-inspection Report**

**Flat 1/R 38 Boyd Street, Largs, KA30 8LE**

**Case Reference:** PRHP/RP/16/0119

**Surveyor:** Nick Allan

**Date of re-inspection:** 27/07/2017

**Time of re-inspection:** 14.00 pm

**Weather conditions:** Dry and sunny

**Present:** Jim Bauld (Legal Member)  
Nick Allan (Ordinary Member)  
John Cameron (Tenant)  
Robert Smith (Agent acting on behalf of  
landlord)



Requirement of RSEO: -

- **Provide hard wired smoke, heat and carbon monoxide alarms within the property to fully comply with current standards.**

**1<sup>st</sup> Re-inspection** - A functioning carbon monoxide alarm has been fitted in the kitchen. A hard-wired smoke alarm has apparently been securely attached to a wall in the hallway, but it could not be activated for testing purposes despite attempts by the tenant and Landlord's agent to do so during the re-inspection.

**2<sup>nd</sup> Re-inspection** – No heat alarm in kitchen. No smoke alarm in Living room. Hard-wired smoke alarm in hall now functioning.

**Requirement not fully met.**

- **Repair or replace flushing mechanism in cistern.**

**1<sup>st</sup> Re-inspection** - The push button flushing mechanism has been replaced. However, when it is depressed it remains depressed causing the WC to continually flush even as the water reservoir tries to fill up. The tenant has to continually remove the top cover in order to manually reset the mechanism.

**2<sup>nd</sup> Re-inspection** – WC functioning correctly.

**Requirement met.**

- **Replace or refit toilet seat.**

**1<sup>st</sup> Re-inspection** - The Landlord's agent has supplied and fitted a new toilet seat. However, the tenant stated that the seat was too small, and has since replaced it again at his own expense. The replacement seat provided by the agent has not been removed from the Flat.

**2<sup>nd</sup> Re-inspection** – No further issue with toilet seat.

**Requirement met.**

- **Replace kitchen flooring.**

**1<sup>st</sup> Re-inspection** - The kitchen flooring has been replaced and appears satisfactory.

**Requirement met.**



- **Produce and provide a valid gas safety certificate as required in terms of the Gas Safety (Installation and Use Regulations) 1998.**

**1<sup>st</sup> Re-inspection** - A Certificate dated 23/11/16 has been provided by David McArthur Gas Services of Port Glasgow. Unfortunately, I am unable to comment on the content of the certificate because it is largely unintelligible.

**2<sup>nd</sup> Re-inspection** – The Tribunal has reviewed another copy of the Certificate and is satisfied that the boiler meets relevant gas standards.

- **Obtain appropriate reports from a recognised specialist company to establish the extent of the works required to eradicate dampness in the property and in particular within the living room and bedrooms of the property and to carry out these works including internal redecoration.**

**1<sup>st</sup> Re-inspection** - Not yet obtained by the Landlord's agent.

**2<sup>nd</sup> Re-inspection** – Not yet obtained by the Landlord's agent.

**Requirement not met.**

- **Provide an energy performance certificate in respect of the property in terms of the appropriate regulations.**

**1<sup>st</sup> Re-inspection** - An EPC has been provided dated 06/12/16 – reference number 0474-1950-1232-9276-1924. The EPC indicates that the subject property is marginally above the average Scottish rating for both energy efficiency and environmental impact.

**Requirement met.**

- **Provide a valid and up to date Electrical Installation Condition Report.**

**1<sup>st</sup> Re-inspection** - An EICR from Barr Electrical has been provided dated 16/12/2016. The copy emailed to me is quite difficult to read, due to the quality of the copy itself, so I cannot provide comment on all aspects of it. Nevertheless, it does highlight some key issues, namely: -

- a) It identifies one **Code C1** – “No main bonding to gas & water services” – where immediate remedial action is required.
- b) It identifies a further six **Code 2** issues – page 2 of 6 refers in the EICR – where urgent remedial action is required.
- c) It records that there are no issues with the smoke detector – Page 6 of 6 refers in the EICR. It would therefore appear that the smoke detector has ceased to function between the 16<sup>th</sup> December 2016 and the date of the re-inspection.

**2<sup>nd</sup> Re-inspection** – Another EICR obtained dated 06/02/2017. No C1's or C2's identified, or remaining.

**Requirement met.**

- **Remove vegetation and clear gutters so that they function properly.**

**1<sup>st</sup> Re-inspection** - The guttering to the front elevation was cleared within the last 7 days according to both the Landlord's agent and the tenant. Neither could confirm how much material was removed. However, from a ground level inspection, there were no obvious signs of vegetation remaining in the gutters.

**2<sup>nd</sup> Re-inspection** – In the absence of a report from a specialised company it is not possible to rule out if possible guttering defects may be contributing to the identified dampness issues within this property.

**Requirement not met.**



Photo 1 – Saturated Lounge wall (Gable)

Photo 2 – Saturated Lounge wall (F/Elev)



Photo 3 – Bedroom dampness and rot

Nick Allan FRICS  
Surveyor Member  
First-tier Tribunal (Housing and Property Chamber)  
27<sup>th</sup> July 2017