

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

Chamber Ref: FTS/HPC/RP/18/1447

Title no/Sasines Description: LAN 117921

52 Howletnest Road, Airdrie, ML6 8AL ("the House")

The Parties:-

Miss Kirsty Leung, residing at the House ("the Tenant")

Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF ("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined on 11 March 2019 that the **Repairing Standard Enforcement Order** relative to the House dated 25 September 2018 should be varied, the said **Repairing Standard Enforcement Order** 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 **6 May 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.

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 a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents typewritten on this and the preceding page are executed by Nicola Weir, Legal Member of the Tribunal, at Glasgow on 30 March 2019 in the presence of the undernoted witness:-

F T. Weir

N Weir

_____	witness	_____	Legal Member
<u>FINIAN T. WEIR</u>	name in full		
<u>40 2 FLOID ROAD</u>	Address		
<u>MARLBOROUGH, H8 234LN</u>			

Housing and Property Chamber

First-tier Tribunal for Scotland



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)(a) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/18/1447

Title no/Sasines Description: LAN 117921

52 Howlettnest Road, Airdrie, ML6 8AL (“the House”)

The Parties:-

**Miss Kirsty Leung, residing at the House
 (“the Tenant”)**

**Mr Paul McNiven, 16 Northburn Avenue, Airdrie, ML6 6QD; care of Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF
 (“the Landlord”)**

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 (“RSE”) relative to the House should be varied in terms of Section 25(1)(a) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, agreed that the RSE should be varied.

The Tribunal comprised:-

Nicola Weir, Legal Member

Nick Allan, Ordinary Member

Background

1. By Application received on 20 June 2018, the Tenant applied to the Tribunal 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”). The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure 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 (Section 13(1)(d). Specifically, the Tenant stated "I have informed landlord there is leak from living room coming from bathroom and there is clearly a big cross crack in ceiling which will fall through at some point. You can clearly see the water mark and crack and hole." As to the nature of the work that requires to be done, the Tenant stated that the Landlord "needs to check in bathroom where leak is coming from and fix crack in the ceiling." In connection with the Application, the Tenant also submitted copy tenancy agreement, Form AT5 and proof of notification to the Landlord of the repairs required

2. On 10 July 2018, a Convener of the Tribunal, acting under delegated powers in terms of 23A of the Act made a decision to refer the Application, under section 23(1) of the Act, to a Tribunal. Notice of Referral, Inspection and Hearing in terms of Schedule 2, Paragraph 1 of the Act was served upon both the Landlord and the Tenant by letters dated 23 July 2018. In terms of same, representations were to be lodged by 13 August 2018. Neither party lodged any representations.
3. The Tribunal inspected the House on the morning of 12 September 2018. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.
4. Following the Inspection of the House, the Tribunal held a Hearing at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Tenant was present. Patricia Pryce, Legal Member (Observer) was also in attendance but took no part in the proceedings.
5. Following the Hearing, the Tribunal proceeded to make a Repairing Standard Enforcement Order ("RSEO") dated 25 September 2018 in relation to the House. In particular, the Tribunal required the Landlord:-
 - (1) *To obtain and exhibit to the Tribunal a report from a suitably qualified contractor identifying the source of the water leak (s) from the bathroom;*
 - (2) *To rectify said leak(s) by repairing or, as necessary, replacing any fixtures, fittings or appliances to ensure that they are in a reasonable state of repair and in proper working order and to prevent any further water ingress into the living room;*
 - (3) *To repair or, as necessary, replace the surface of the living room wall and ceiling to rectify the hole, cracks and other damage, including staining, caused by the said water ingress and thereafter, to paint or re-decorate same, to provide a satisfactory finish;*
 - (4) *To repair or, as necessary, replace the bathroom floor and floor covering to rectify all water damage and to ensure that the flooring is in a reasonable state of repair and in proper working order; and*
 - (5) *To make good any other damage caused by the carrying out of any of the above works.*

The Tribunal ordered that the works specified in the RSEO were to be carried out and completed within the period of 6 weeks from the date of

service of the RSEO. The RSEO was issued on 28 September 2018 and the period of 6 weeks therefore expired on 10 November 2018.

6. On 1 November 2018, the Tenant emailed the Tribunal to advise that no work had been carried out to the House.
7. On 29 November 2018, the Ordinary Member carried out a Re-inspection of the House. A copy of his Re-inspection Report dated 20 December 2018 is attached to this Decision. None of the works specified in the RSEO had been carried out.
8. The Re-inspection Report was issued to parties, requesting that they respond with written representations by 14 January 2019. The Tenant emailed the Tribunal with written representations on 10 December 2018 and also submitted the completed Tribunal form on 11 January 2019, requesting that a Rent Relief Order be made due to the limited daily usage she and her family have of the shower and bath, the unsafe equipment and the dampness caused. The Landlord emailed the Tribunal with written representations on 3, 4 and 21 December 2018 and 14 January 2019, including the completed Tribunal forms confirming that he agreed the findings of the Re-inspection Report and providing his explanation for the works required by the RSEO not having been completed; that a rent Relief Order should not be made due to the Tenant not having paid rent for 12 months; and that he wished to attend a hearing.
9. In view of the representations received from the parties, the Tribunal considered it appropriate to have a further Hearing. This took place on 11 March 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Tenant and Landlord were both in attendance, gave evidence and answered questions from the Tribunal.
10. The Tenant's position was that the works required by the RSEO were still outstanding. She indicated that she had arranged for the Fire Service to attend regarding the issue of the smoke alarms that the Tribunal had raised previously, although it did not form part of the RSEO, and that smoke alarms were now fitted. The Tenant indicated that no tradesmen had attended at the House on behalf of the Landlord after the RSEO was issued until 7 March 2019. Her position was that she answered the door to the contractor on 7 March 2019 who stated that they were there to fit the smoke alarms and she told them that these were already in place.
11. The Landlord's position was that the leak from the bathroom was an ongoing issue, that he had had tradesmen out previously to try and rectify this and that he had advised the Tenant not to use the shower. He had been living in Spain and was not at the previous Tribunal Hearing. He referred to the Tenant not paying rent over a substantial period, that an eviction notice had been served on the Tenant in June 2018 and that separate Tribunal proceedings are underway in this regard. The Landlord further stated that he had attempted to get works carried out to the House

since the RSEO was issued but has not been able to get access. He stated that his contractor had tried on three separate occasions to get access, firstly on 10 November 2018 and most recently on 7 March 2019. A Chinese man had answered the door on one occasion. The contractor had advised him that on 7 March 2019, the Tenant had been extremely rude and closed the door on the contractor. The Landlord disputed that the contractor had said he was only there about the smoke alarms and that the contractor was there to look at all the works noted in the housing report. He referred to the written submissions he had put in explaining the background and produced three copy letters from his contractor and a posting receipt in respect of the most recent letter which he said had been sent to the Tenant by recorded delivery on 1 March 2019 in advance of their attendance at the House on 7 March 2019 but that this had not been signed for. The Tenant maintained her position. She confirmed that it may have been her partner who answered the door previously but that she would have thought he would have told her if a contractor had called round.

12. The Landlord accepts that the works required by the RSEO need to be done and is still willing to instruct his contractor to carry them out. The Tenant confirmed that access would be given to the contractor if she was given notice of when this would be. There was some discussion as to what the work might involve and the likely timescale. On this basis, the Landlord confirmed that he would like the RSEO varied to give him further time for compliance. The Tribunal confirmed that they would do so, suggested that both parties keep the Tribunal informed of further developments and advised the Landlord that if access problems are encountered, he can make separate application to the Tribunal for assistance in that regard.

Reason for decision

13. The Tribunal considered the request by the Landlord for additional time to complete the works required by the RSEO and that both parties had indicated a willingness to have the necessary works completed.
14. The Tribunal accordingly considered it reasonable to vary the RSEO by extending the time for completion of the works for a further 8 weeks until 6 May 2019 and proceeded to issue a Variation of the RSEO.

Decision

15. The Tribunal accordingly determined that further time should be allowed for the work to be carried out and that the RSEO should be varied by extending the time for completion of the work until 6 May 2019.
16. The decision of the Tribunal was unanimous .

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.

N Weir

Signed.. Date: 30 March 2019
Nicola Weir, Legal Member of the Tribunal

Glasgow, 30 March 2019

This is the Re-inspection Report referred to in
the Statement of Decision attached, of even date
herewith. *N Weir*
Nicola Weir, Legal Member of Tribunal

Housing and Property Chamber
First-tier Tribunal for Scotland



Re-inspection photograph Schedule

52 Howletnest Road, Airdrie, ML6 8AL

Case Reference:	FTS/HPC/RP/18/1447
Date of inspection:	29/11/2018
Time of inspection:	11.00 am
Weather conditions:	Overcast and raining
Present:	Mr Nick Allan – Ordinary Member Miss Kirsty Leung - Tenant



Photo 1 – Front elevation



Photo 2 – Damaged Living room ceiling



Photo 3 – Water damaged L/R wall



Photo 4 – Saturated bathroom floor



Photo 5 – Damp bathroom floor



Photo 6 – Smoke detector in hallway



Photo 7 – Baseplate on landing

Inspection notes from 12/09/2018

1. Below surface dampness readings were obtained from the living room wall section visibly affected by water ingress. These readings fell within the 170-200 range, thereby constituting a risk to timber.

Re-inspection note - The levels of dampness on the wall remain the same.

2. No dampness readings were recorded from the living room ceiling, despite the visible staining on the ceiling surface. Photo 2 refers.

Re-inspection note – The ceiling remains dry.

3. Below surface dampness readings were obtained from the bathroom floor. These ranged from 250 (nearest to the shower enclosure) to 600 (nearest to the bathroom door), thereby constituting a risk to timber.

Re-inspection note – The highest dampness readings were obtained from the floor immediately adjacent to the shower enclosure. These ranged from 300-600, and there continues to be a risk to timber at this location. Photo 4 refers.

The level of dampness in the floor section adjacent to the bathroom door has fallen considerably, and no longer constitutes a risk to timber. The Tenant indicated that the Shower has been used more sparingly since the date of the original inspection. Photo 5 refers.

4. The battery operated smoke detector in the hallway was inoperative.

Re-inspection note – The smoke detector remains inoperative. Photo 6 refers.

5. The battery operated smoke detector on the landing was missing except for its baseplate.

Re-inspection note – The position remains the same. Photo 7 refers.